

# Capital Markets Rules for Wholesale Securities Markets

# Contents

---

Contents	2
Scope	3
Definitions	5
1. Conditions for Admissibility to Listing	10
2. Prospectuses - Structure, Content and Publication	15
3. Approval of the Prospectus and Admissibility to Listing	26
4. Continuing Obligations	31
5. Compliance and Enforcement	39
6. Listing Agents	44
APPENDIX 1 - Fees	47
APPENDIX 2 - Admission Application Form	48
APPENDIX 3 - Listing Agent Declaration	50

## Scope

These Capital Markets Rules relate to the Admissibility to Listing on Wholesale Securities Markets (WSM) of the following types of securities, the denomination per unit of which must be at least €100,000 or equivalent in the case of securities denominated in a currency other than euro:

1. **Asset backed securities;**
2. **Debt securities;**
3. **Convertible debt securities; and**
4. **Derivative securities.**

Asset backed securities, debt securities, convertible debt securities and derivative securities are referred to in these rules as 'the Securities'.

These Capital Markets Rules apply to an Issuer seeking Admissibility of its Securities to Listing on the WSM and apply to an Issuer that has its Securities admitted to listing on the WSM.

These Capital Markets Rules are derived from, amongst others the Prospectus Regulation, Transparency Directive and the Consolidated Admissions and Reporting Directive.

## Definitions

Term	Meaning
<b>Admissibility to Listing</b>	Admissibility to Listing in accordance with the provisions of Article 12(1) of the FMA and "Admissible to Listing" and "Admissibility" shall be construed accordingly.
<b>Advertisement</b>	Announcements: 1) relating to an Admissibility to Listing on a Regulated Market; and 2) aiming to specifically promote the potential subscription or acquisition of Securities.
<b>Announcement</b>	Company announcements made by the Issuer in compliance with the on-going listing obligations and "Company Announcement" shall be construed accordingly.
<b>Applicant</b>	An Issuer which is applying for the Admissibility of its Securities to Listing.

Term	Meaning
<b>Approval</b>	The positive act at the outcome of the scrutiny of the completeness of the Prospectus by the MFSA including the consistency of the information given and its comprehensibility.
<b>Asset Backed Securities ('ABS')</b>	Securities which: <ol style="list-style-type: none"> <li>1) represent an interest in assets, including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable there under; or</li> <li>2) are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets.</li> </ol>
<b>Available to the public</b>	The information shall be deemed to be available to the public when published either: <ol style="list-style-type: none"> <li>1) by insertion in one or more widely circulated newspapers; or</li> <li>2) in a printed form to be made available, free of charge, to the public at the offices of the market on which the Securities are being traded or proposed to be traded, or</li> <li>3) in a printed form to be made available, free of charge, at the registered office of the Issuer and, if applicable, at the offices of the financial intermediaries placing or selling the Securities, including paying agents; or</li> <li>4) in an electronic form on the Issuer's website and, if applicable, on the website of the financial intermediaries placing or selling the Securities, including paying agents; or</li> <li>5) in an electronic form on the website of the Regulated Market where the Securities are being traded or proposed to be traded; or</li> <li>6) in an electronic form on the website of the MFSA if the said MFSA has decided to offer this service.</li> </ol> <p>Where, however, the information is made Available to the public in accordance with (1), (2), or (3) above, the Issuer or persons responsible for drawing up a prospectus shall also publish the said information in terms of paragraph (4) above.</p>
<b>Base Prospectus</b>	A Prospectus containing all relevant information as specified in Chapter 2 concerning the Issuer and the Securities to be Admitted to Trading, and, at the choice of the Issuer, the final terms of the offering.
<b>Business Day</b>	Any day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a public holiday as published by the Maltese Department of Information in terms of National Holidays and Other Public Holidays Act (Chapter 252) of the Laws of Malta

<b>Term</b>	<b>Meaning</b>
<b>Business Hours</b>	08.00 to 17.00 hours CET on a Business Day.
<b>CAO</b>	The Company Announcements Office of the WSM.
<b>CARD</b>	Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities.
<b>Competent Authority</b>	A central competent administrative authority designated by a Member State as being responsible for carrying out the obligations provided for in the Directives and for ensuring that the provisions adopted pursuant to the Directives are applied.
<b>Convertible Debt Securities</b>	Debt Securities convertible into or exchangeable for other securities.
<b>Credit Institution</b>	<ol style="list-style-type: none"> <li>1) An undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or</li> <li>2) An electronic money institution within the meaning of Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions.</li> </ol>
<b>Debt Securities</b>	Instruments which create or acknowledge indebtedness.
<b>Derivative Securities</b>	<p>Securities that entitles the holder to:</p> <ol style="list-style-type: none"> <li>1) require or make delivery of; or</li> <li>2) receive or make payment in cash in respect of;</li> </ol> <p>securities of an issuer which is not the issuer of the derivative securities, assets, indices or other specified variables.</p>
<b>Directives</b>	Transparency Directive and the CARD Directive.
<b>ESMA</b>	The European Securities and Markets Authority established by Regulation (EU)NO 1095/2010 of the European Parliament and the Council of 24 November 2010
<b>FMA</b>	Financial Markets Act (Cap. 345 of the Laws of Malta).
<b>Issuer</b>	Any company or other legal person or undertaking whose securities have been authorised as Admissible to Listing (other than a Public Sector Issuer).
<b>Key Information</b>	Essential and appropriate structured information which is to be provided to investors with a view to enabling them to understand the nature and the risks of the issuer, guarantor and the securities that are being offered to them or admitted to

Term	Meaning
	<p>trading on a regulated market and, without prejudice to Capital Markets Rule 2.22.(2), to decide which offers of securities to consider further. In light of the offer and securities concerned, the key information shall include the following elements:</p> <p>(a) a short description of the risks associated with and essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position;</p> <p>(b) a short description of the risk associated with and essential characteristics of the investment in the relevant security, including any rights attaching to the securities;</p> <p>(c) general terms of the offer, including estimated expenses charged to the investors by the issuer or the offeror;</p> <p>(d) details of the admission to trading;</p> <p>(e) reasons for the offer and use of proceeds.</p>
<b>Listing Agent</b>	A person appointed by the Applicant or Issuer in terms of Chapter 6.
<b>Capital Markets Rules</b>	The rules issued by the MFSA in accordance with the provisions of the FMA as they may be amended from time to time.
<b>Market Abuse Regulation</b>	Regulation (EU) No 596/2014 of the European Parliament and of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
<b>Member State</b>	A Member State of the European Community established by the Treaty of Rome in 1957 and amended institutionally and otherwise in 1986 by the Single European Act, in 1993 by the Treaty on European Union, in 1997 by the Treaty of Amsterdam and in 2001 by the Treaty of Nice, and as amended by accession agreements and as may be further amended from time to time.
<b>Offering Programme</b>	A plan which would permit the issuance of non-equity securities, including warrants in any form, having a similar type and/ or class, in a continuous or repeated manner during a specified issuing period.
<b>Overseas Company</b>	A body corporate constituted or incorporated outside the EEA (i.e. not in an EU Member State or an EEA state)
<b>Prospectus</b>	A document in such form and containing such information as may be required by or under the Prospectus Regulation.

Term	Meaning
<b>Prospectus Regulation ('PR')</b>	As defined in Article 2(1) of the FMA.
<b>Public Offer</b>	offer of securities to the public as defined in Article 2(1) of the FMA.
<b>Recognised Jurisdiction</b>	Any state, country or territory that the MFSA determines to be considered as a "Recognised Jurisdiction" and the term "non-Recognised Jurisdiction" shall be construed accordingly.
<b>RIS</b>	Regulatory Information Service.
<b>Registration Document</b>	The part of a Prospectus, as described in Chapter 2 that contains details of the Issuer.
<b>Regulated Information</b>	All information which the Issuer is required to disclose under the Transparency Directive and Article 6 of the Market Abuse Directive.
<b>Regulated Market</b>	A multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments - in the system and in accordance with its non-discretionary rules - in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly.
<b>Risk factors</b>	A list of risks which are specific to the situation of the Issuer and/or the Securities and which are material for taking investment decisions.
<b>Securities</b>	Shall be construed as referring to Asset Backed Securities, Debt Securities, Convertible Debt Securities, Derivative Securities as applicable.
<b>Securities Note</b>	The part of a Prospectus, as described in Chapter 2 that contains details of the Securities.
<b>Special Purpose Vehicle ('SPV')</b>	An Issuer whose objects and purposes are primarily the issue of securities.
<b>Tap Issue</b>	An issue of securities whereby the terms of those securities are identical to those of a previous issue other than the date of admission and such securities are in all respects fully fungible with those previously admitted to Listing and to which previous admission they relate.
<b>Third Country</b>	A country outside the EEA (i.e. not an EU Member State or an EEA state)

<b>Term</b>	<b>Meaning</b>
<b>Transparency Directive (TD)</b>	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about Issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.
<b>WSM</b>	The Wholesale Securities Market.

# 1. Conditions for Admissibility to Listing on the WSM

## *General*

- 1.1. The MFSA may make Admissibility to Listing subject to any special condition which it considers appropriate in the interests of investors. The Issuer will be expressly informed in any such case and must comply with such condition(s) at all times.
- 1.2. Issuers must continue to satisfy the conditions for listing contained in this Chapter throughout the whole period in which any of their Securities are Admitted to Listing on the WSM.

## *Conditions for All Securities*

### *Incorporation*

- 1.3. An Applicant must be:
  - 1) duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment; and
  - 2) operating in conformity with its Memorandum and Articles of Association or equivalent constitutional document.

### *Validity*

- 1.4. The Securities for which authorisation for Admissibility to Listing is sought must:
  - 1) be issued to conform with the law of the Applicant's place of incorporation;
  - 2) be duly authorised according to the requirements of the Applicant's Memorandum and Articles of Association or equivalent constitutional document; and
  - 3) be duly authorised by all necessary statutory and other authorisations for the creation and issue of such securities in terms of any applicable system of law.

- 1.5. An Issuer must be in compliance with the requirements of:
- 1) any securities regulator by which it is regulated; and/or
  - 2) any stock exchange on which it has Securities admitted to trading.

### Transferability

- 1.6. The Securities for which authorisation for Admissibility to Listing is sought must be freely transferable.

### Form of Securities

- 1.7. Where Securities have a physical form, the physical form of Securities issued in a single Member State must comply with the standards laid down by that Member State.

Where Securities are issued by an Issuer of a non-Member State, the physical form of such Securities must afford sufficient safeguards for the protection of the investors.

### Whole Class to be Listed

- 1.8. Where an application for authorisation for Admissibility to Listing is made in respect of any particular class of Security:
- 1) if none of the Securities of that class are already authorised as Admissible to Listing, the application must relate to all Securities of that class, issued or proposed to be issued; and
  - 2) if some of the Securities of that class are already authorised as Admissible to Listing, the application must relate to all further Securities of that class issued or proposed to be issued.
- 1.9. Except where Securities of the same class are already listed, the expected aggregate market value of the Securities to be listed must be at least €1,000,000 (except that there is no minimum limit in the case of Tap Issues where the amount of the Securities is not fixed). The MFSA may admit Securities of a lower value if it is satisfied that there will be an adequate market for the Securities concerned.

### Management

- 1.10. The Directors and, where applicable, senior management of the Issuer must have, collectively, appropriate expertise and experience for the management of its business.
- 1.11. An Applicant which is a company must ensure that each of its Directors is free of conflicts between duties to the Applicant and private interests and other duties, unless the Applicant can demonstrate that arrangements are in place to avoid detriment to its interests. Where there are potential conflicts the MFSA must be consulted at an early stage.

1.12 The auditors to the Issuer must be independent of the Issuer and comply with applicable guidelines on independence issued by their national bodies.

1.12A Where a proposed structure included in the prospectus includes a Calculation Agent, such Calculation Agent should be a reputable person and independent of the Issuer and of any underlying assets. This requirement should be adhered to as long as the securities are listed and any change in the appointment of the Calculation Agent should be announced through a Company Announcement.

### ***Additional Conditions for Asset Backed Securities***

1.13 The Issuer must normally be a Special Purpose Vehicle incorporated or established for the purpose of issuing Asset Backed Securities.

1.14 Except where the MFSA otherwise agrees, equity securities backing the issue of Securities must:

- 1) be listed on a stock exchange or traded on another regulated and regularly operating open market; or
- 2) represent minority interests and must not confer legal or management control of the issuing companies.

Where warrants or options or other rights relating to equity securities are used to back an issue, this paragraph applies in respect of the equity securities to which those warrants or options or other rights relate.

1.15 There must be a trustee or other appropriate independent party representing the interests of the holders of the Securities and with the right of access to appropriate and relevant information relating to the assets.

### ***Additional Conditions for Debt Securities and Convertible Debt Securities***

1.16 Save as provided for in Capital Markets Rule 1.17, an Issuer must have published or filed audited accounts that:

- 1) cover at least two years and the latest accounts must be in respect of a period ending not more than 18 months before the date of the Prospectus; and
- 2) have been independently audited.

1.17 Accounts relating to a shorter period than two years may be accepted if the MFSA is satisfied that:

- 1) such acceptance is desirable in the interests of the Applicant or of investors and investors have the necessary information available to arrive at an informed judgment concerning the Applicant and the Securities for which Admissibility to Listing is sought;

- 2) where the application is in respect of guaranteed Securities, the guarantor has published or filed accounts which cover at least two years; or
  - 3) the obligations created in respect of such Securities are fully secured.
- 1.18 The Issuer must be carrying on as its main activity, either by itself or through one or more of its subsidiary undertakings, an independent business which is supported by its historic revenue earning record, and must have done so for at least the period covered by the accounts required by Capital Markets Rule 1.16(1) (subject to Capital Markets Rule 1.17).

An Applicant whose business does not meet these requirements may be granted Admissibility to Listing if the MFSA is satisfied that such admissibility is desirable in the interests of the Applicant and investors and that investors have the necessary information available to arrive at an informed judgment concerning the Applicant and the Securities for which listing is sought.

### ***Additional Conditions for Derivative Securities***

- 1.19 Subject to Capital Markets Rule 1.20, an Issuer seeking the Admissibility to Listing of Derivative securities must satisfy one of the following conditions:
- 1) it must be a Credit Institution; or
  - 2) if it is an Overseas Company, it must:
    - (a) in the conduct of its derivatives business, be regulated by an overseas regulatory authority in a Recognised Jurisdiction, responsible for the regulation of securities firms or futures firms; and
    - (b) be carrying on its activities relating to derivatives within the approved scope of its business; or
  - 3) for an Issuer which is a Special Purpose Vehicle, the arranger or lead manager must satisfy (1) or (2) above; or
  - 4) the obligations created by the Issuer in relation to the Derivative Securities being issued must be unconditionally and irrevocably guaranteed by, or benefit from an equivalent arrangement provided by, an entity which satisfies (1) or (2) above.
- 1.20 An Issuer unable to satisfy any of the conditions stated in Capital Markets Rule 1.19 must consult the MFSA and obtain specific approval. The Issuer or guarantor must have:
- 1) net assets of at least €75 million; or
  - 2) an investment grade rating of its equity or unsecured debt by an appropriate credit rating agency.

- 1.21 Save as provided for in Capital Markets Rule 1.22, an Issuer must have published or filed audited accounts that:
- 1) cover at least two years and the latest accounts must be in respect of a period ending not more than 18 months before the date of the Prospectus; and
  - 2) have been independently audited.
- 1.22 Accounts relating to a shorter period than two years may be accepted if the MFSA is satisfied that:
- 1) such acceptance is desirable in the interests of the Applicant or of investors and investors have the necessary information available to arrive at an informed judgment concerning the Applicant and the Securities for which listing is sought; or
  - 2) where the application is in respect of guaranteed Securities, the guarantor has published or filed accounts which cover at least two years; or
  - 3) the obligations created in respect of such Securities are fully secured.
- 1.23 For a Derivative Security to be granted Admissibility to Listing the amount payable must be calculated by reference to the prices of a security which is traded on a regulated, regularly operating, recognised open market, or by reference to the prices, levels or performance of either:
- 1) a currency;
  - 2) an index;
  - 3) an interest rate;
  - 4) a commodity;
  - 5) a combination of the above; or
  - 6) be credit linked.

The MFSA may modify or dispense with this condition for other Derivative Securities, including those defined by reference to internationally recognised industry definitions or standards. The MFSA must be consulted at an early stage.

## 2. Structure and Content of Prospectuses

This Chapter relating to Prospectuses is divided into the following sections:

- (A) Structure
- (B) Content
- (C) Base Prospectus
- (D) Validity
- (E) Publication
- (F) Use of Languages
- (G) Advertising

### **(A) Structure**

2.1 A Prospectus may be comprised of a Registration Document and Securities Note. Alternatively, a Prospectus may be issued in the form of a single document.

#### Prospectus as a single document

- 2.2 A Prospectus as a single document must contain the following parts in the following order:
- 1) a clear and detailed table of contents
  - 2) the summary (if applicable)
  - 3) Risk Factors; and
  - 4) the other information items included in the relevant disclosure annexes set out in the Prospectus Regulation according to which the Prospectus is drawn up, in any order chosen by the Issuer.

## Prospectus comprising separate Registration Document and Securities Note

- 2.3 A Prospectus composed of separate documents shall divide the required information into a Registration Document containing information relating to the Issuer and a Securities Note containing information on the Securities to be admitted to trading on a Regulated Market.
- 2.4 The Securities Note and the Registration Document shall each contain the following parts in the following order:
- 1) a clear and detailed table of contents;
  - 2) Risk Factors; and
  - 3) the other information items included in the relevant disclosure annexes set out in the Prospectus Regulation according to which the Prospectus is drawn up, in any order chosen by the Issuer.
- 2.5 An Issuer may apply to the MFSA for Approval of a Registration Document. An Issuer which already has a Registration Document approved by a Competent Authority shall only be required to draw up a Securities Note when Securities are to be admitted to trading on a Regulated Market.
- 2.6 The Securities Note shall provide information that would normally be provided in the Registration Document where there has been a material change or recent development which could affect investors' assessments since the latest updated Registration Document or any supplement was approved. The Securities Note shall be subject to a separate Approval by the MFSA.
- 2.7 Where a Registration Document has been filed but not approved, the entire documentation, including updated information, shall be subject to Approval.

## Prospectus Comprising a Base Prospectus

- 2.8 The Prospectus can, at the choice of the Issuer, consist of a Base Prospectus for the following types of securities:
- 1) Non-equity Securities, including warrants in any form, issued under an Offering Programme;
  - 2) Non-equity Securities issued in a continuous or repeated manner by Credit Institutions:
    - a) where the sum deriving from the issue of the said securities are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date;
    - b) where in the event of insolvency of the related Credit Institution, the said sums are intended as a priority to repay the capital and interest falling due.
- 2.9 A Base Prospectus shall contain all relevant information concerning the Issuer and the Securities to be admitted to trading on a Regulated Market. In such event, a document comprising the final terms will also be required, though the final terms do not constitute the Prospectus.

- 2.10 Where an Issuer chooses to draw up a Base Prospectus, the Base Prospectus shall contain the following parts in the following order:
- 1) a clear and detailed table of contents;
  - 2) the summary, if applicable
  - 3) Risk Factors; and
  - 4) the other information items included in the relevant disclosure annexes set out in the Prospectus Regulation according to which the Prospectus is drawn up, in any order at the choice of the Issuer. The information on the different Securities contained in the Base Prospectus shall be clearly segregated.
- 2.11 The information given in the Base Prospectus shall be supplemented, if necessary, in accordance with Capital Markets Rule 2.26, with updated information on the Issuer and on the Securities.

## **(B) Content**

### Content of the Prospectus

- 2.12
- 1) The Prospectus shall contain all information which according to the particular nature of the Issuer and of the Securities being considered for Admissibility to Listing is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the Issuer and of any guarantor, and of the rights attaching to such Securities.
  - 2) The Prospectus shall include a paragraph stating that all of the Directors whose names appear in the Prospectus accept responsibility for the information contained in the Prospectus and that, to the best of their knowledge and belief, the information contained in the Prospectus is in accordance with the facts and that the Prospectus makes no omission likely to affect its import;
  - 3) The MFSA may require an Issuer to include supplementary information in the Prospectus if the MFSA considers this necessary for investor protection.
- 2.13 Without prejudice to the requirement to give adequate information to investors, where, in exceptional cases, certain information required to be included in a Prospectus would be inappropriate to the Issuer's sphere of activity or to the legal form of the Issuer or to the Securities to which the Prospectus relates, the Prospectus may omit that required information but, unless there is no such equivalent information, shall contain information equivalent to the required information.

## Incorporation by Reference

- 2.14 The MFSA shall allow information to be incorporated in the Prospectus by reference to one or more previously or simultaneously published documents that have been approved by or filed with the MFSA. In this regard this information shall be the latest information available to the Issuer.
- 2.15 Information may be incorporated by reference in a Prospectus or Base Prospectus, notably if it is contained in one of the following documents:
- 1) annual and interim financial information;
  - 2) documents prepared on the occasion of a specific transaction such as a merger or demerger;
  - 3) audit reports and financial statements;
  - 4) memorandum and articles of association;
  - 5) earlier approved and published Prospectuses and/or Base Prospectuses;
  - 6) Regulated Information; or
  - 7) circulars to security holders.
- 2.16 When information is incorporated by reference, a cross-reference list must be provided in the Prospectus to enable investors to identify easily specific items of information.
- 2.17 The documents containing information that may be incorporated by reference in a Prospectus or Base Prospectus or in the documents composing it shall be drawn up in terms of Capital Markets Rule 2.49.
- 2.18 If a document which may be incorporated by reference contains information which has undergone material changes, the Prospectus or Base Prospectus shall clearly state such a circumstance and shall give the updated information.
- 2.19 The Issuer may incorporate information in a Prospectus or Base Prospectus by making reference only to certain parts of a document, provided that it states that the non-incorporated parts are either not relevant for the investor or covered elsewhere in the Prospectus.
- 2.20 When incorporating information by reference, Issuers shall endeavour not to endanger investor protection in terms of comprehensibility and accessibility of the information.

## Summary

- 2.21 Where an Issuer decides to include a summary, the summary shall, in a brief manner and in non-technical language, provide Key Information, in the language in which the Prospectus was originally drawn up. The format and content of the summary of the prospectus shall provide, in conjunction with the prospectus, appropriate information about the essential elements of the securities concerned in order to aid investors when considering whether to invest in such securities. The summary shall be drawn up in a common format in order to facilitate comparability of the summaries of similar securities and its content should convey the Key Information of the securities concerned in order to aid investors when considering whether to invest in such securities.
- 2.22 The summary shall also contain a warning that:
- 1) it should be read as an introduction to the Prospectus;
  - 2) any decision to invest in the securities should be based on consideration of the Prospectus as a whole by the investor;
  - 3) where a claim relating to the information contained in a Prospectus is brought before a court, the plaintiff investor might, if the Prospectus is not drawn in the English Language, have to bear the costs of translating the Prospectus before the legal proceedings are initiated; and
  - 4) civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification, but only if the summary, when read together with the other parts of the Prospectus, is misleading, inaccurate or inconsistent or it does not provide Key Information in order to aid investors when considering whether to invest in such securities.
- 2.23 The summary (where the Issuer chooses to have one), and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.
- 2.24 The summary shall not incorporate information by reference.
- 2.25 No person shall be liable for statements made in a summary which is part of a Prospectus, including the translation thereof, unless the summary, when read together with other parts of the Prospectus, is misleading, inaccurate or inconsistent or it does not provide Key Information in order to aid investors when considering whether to invest in such securities. The summary shall contain a clear warning to that effect.

## Supplements to the Prospectus

2.26 Every significant new factor, material mistake or inaccuracy relating to the information included in the Prospectus which is capable of affecting the assessment of the Securities and which arises or is noted between the time when the Prospectus is approved and the time when listing on a Regulated Market begins, shall be mentioned in a supplement to the Prospectus.

Such a supplement shall be approved in the same way in a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original Prospectus was published.

2.27 Investors who have already agreed to purchase or subscribe for the Securities before the supplement is published shall have the right, exercisable within two working days after the publication to the supplement, to withdraw their acceptances provided that the new factor, mistake or inaccuracy referred to in Capital Markets Rule 2.26 arose before the final closing of the Public Offer and delivery of the securities. This period may be extended by the Issuer. The final date of the right of withdrawal shall be stated in the supplement.

## **(C) Base Prospectus**

### Content of the Base Prospectus

2.28 In addition to the information items set out in this Chapter and the relevant disclosure annexes set out in the Prospectus Regulation, as applicable, the following information shall be included in a Prospectus:

- 1) indication on the information that will be included in the final terms;
- 2) the method of publication of the final terms; if the Issuer is not in a position to determine, at the time of the Approval of the Prospectus, the method of publication of the final terms, an indication of how the public will be informed about which method will be used for the publication of the final terms; and
- 3) in the case of issues under an Offering Programme, a general description of the programme.

### Supplementary Information

2.29 The information given in the Base Prospectus must be supplemented, if necessary, in accordance with Capital Markets Rule 2.26, with updated information on the Issuer and on the Securities admitted to trading on a Regulated Market.

2.30 Where an event envisaged under Capital Markets Rule 2.26 occurs between the time that the Prospectus has been approved and the time that trading on a Regulated Market of those securities begins, the Issuer shall publish a supplement prior to the admission of those Securities to trading.

## Final terms

2.31 If the final terms of the offer are not included in either the Base Prospectus or a supplement Prospectus, the final terms shall be made available to investors, submitted to the MFSA and communicated by the issuer to the Competent Authority of the host Member State when each Public Offer is made as soon as practicable and, if possible, in advance of the beginning of the offer or admission to trading. The provisions of Capital Markets Rule 3.6(1) shall be applicable in any such case. The final terms shall contain only information which relates to the securities note and shall not be used to supplement the base prospectus.

2.32 The final terms attached to a Base Prospectus shall only contain the information items from the relevant disclosure items set out in the Prospectus Regulation according to which the Base Prospectus is drawn up.

2.33 The final terms shall be presented in the form of a separate document or be included in the Prospectus. The final terms shall be prepared in an easily analysable and comprehensible form. Items of the relevant Securities Note schedule and its building blocks, which are included in the Base Prospectus, shall not be reproduced in the final terms.

A clear and prominent statement shall be inserted in the final terms indicating:

- 1) that the final terms have been prepared for the purpose of the Prospectus Regulation and must be read in conjunction with the Base Prospectus and its supplement(s);
- 2) where the Base Prospectus and its supplement(s) are published in accordance with the arrangements set out in Article 21 of the Prospectus Regulation;

that a summary of the individual issue is annexed to the final terms.

2.34 The publication method for final terms related to a Base Prospectus does not have to be the same as the one used for the Base Prospectus as long as the publication method used is one of the publication methods indicated in Capital Markets Rule 2.42.

## Other provisions

2.35 Where the Issuer has previously filed a Registration Document for a particular type of Security and, at a later stage, chooses to draw up a Base Prospectus, it shall contain:

- 3) the information contained in the previously or simultaneously filed and approved Registration Document which shall be incorporated by reference, following the conditions provided for in Capital Markets Rules 2.14 to 2.20; and
- 2) the information which would otherwise be contained in the relevant Securities Note less the final terms where the final terms are not included in the Base Prospectus.

2.36 Issuers or persons asking for admission to trading on a Regulated Market may compile in one single document two or more different Base Prospectuses.

**(D) Validity**

- 2.37 A Prospectus shall be valid for 12 months after its approval provided that the Prospectus is completed by the supplements required pursuant to Capital Markets Rule 2.26.
- 2.38 In the case of an Offering Programme, the Base Prospectus, previously filed, shall be valid for a period of up to 12 months.
- 2.39 A Registration Document, as referred to in Capital Markets Rule 2.5, previously filed and approved, shall be valid for the purpose of Capital Markets Rule 2.37 for a period of up to 12 months. The Registration Document, updated if applicable in accordance with Capital Markets Rules 2.6 and 2.26 accompanied by the Securities Note, together, shall be considered to constitute a valid Prospectus.

**(E) Publication**

- 2.40 Upon a Prospectus having been approved, it shall be filed with the MFSA and made accessible to ESMA through the MFSA. The Issuer shall make the Prospectus Available to the public as soon as practicable and in any case, at a reasonable time in advance of, and at the latest at the beginning of, the admission to trading of the Securities involved.
- 2.41 The MFSA may, at its choice, publish on its website over a period of 12 months, all the Prospectuses approved in accordance with this Chapter.

**Method of Publishing**

- 2.42 A Prospectus shall be deemed Available to the public in accordance with Capital Markets Rule 2.40 when published in one of the following ways:
- 1) by insertion in one or more newspapers circulated throughout, or widely circulated in, the Member States in which the admission to trading is sought;
  - 2) in a printed form to be made available, free of charge, to the public at the offices of the market on which the Securities are being admitted to trading, or at the registered office of the Issuer and at the offices of the financial intermediaries placing or selling the Securities, including paying agents;
  - 3) in an electronic form on the Issuer's website or, if applicable, on the website of the financial intermediaries placing or selling the Securities, including paying agents; or
  - 4) in an electronic form on the website of the WSM.

Where however the Prospectus is made Available to the public in accordance with paragraphs (1) or (2) above, the Issuer or person responsible for drawing up the Prospectus shall also publish that Prospectus in accordance with paragraph (3) above.

- 2.43 In the case of a Prospectus comprising several documents and/or incorporating by reference, the documents and information making up the Prospectus may be published and circulated separately provided that the said documents are made Available to the public, free of charge. Each document shall indicate where the other constituent documents of the full Prospectus may be obtained.
- 2.44 The text and the format of the Prospectus, and/or the supplements to the Prospectus, made Available to the public, shall at all times be identical to the original version approved by the MFSA.

### Publication in Electronic form

- 2.45 Where the Prospectus is made available by publication in electronic form, a hard copy shall nevertheless be delivered to the investor, upon his request and free of charge, by the Issuer, the person asking for Admissibility to Listing or the financial intermediaries placing or selling the Securities.
- 2.46 The publication of the Prospectus or Base Prospectus in electronic form, either pursuant to Capital Markets Rule 2.42(3), or as an additional means of availability, shall be subject to the following requirements:
- 1) the Prospectus or Base Prospectus shall be easily accessible when entering the web-site;
  - 2) the file format shall be such that the Prospectus or Base Prospectus cannot be modified;
  - 3) the Prospectus or Base Prospectus shall not contain hyper-links, with exception of links to the electronic addresses where information incorporated by reference is available; and
  - 4) the investors shall have the possibility of downloading and printing the Prospectus or Base Prospectus.

The exception referred to in Capital Markets Rule 2.46(3) above shall only be valid for documents incorporated by reference; those documents shall be available with easy and immediate technical arrangements.

### Publication in Newspapers

- 2.47 In order to comply with Capital Markets Rule 2.42(1) the publication of a Prospectus or a Base Prospectus shall be made in a general or financial information newspaper having national or supra-regional scope;
- 2.48 If the MFSA is of the opinion that the newspaper chosen for publication does not comply with the requirements set out in Capital Markets Rule 2.47, it shall determine a newspaper whose circulation is deemed appropriate for this purpose taking into account, in particular, the geographic area, number of inhabitants and reading habits in each Member State.

**(F) Use of Languages**

2.49 Where Admission to Listing on a Regulated Market of Non-equity securities whose denomination per unit amounts to at least hundred thousand euro (€100,000) is sought in one or more Member States or EEA States, the Prospectus shall be drawn up either in a language accepted by the regulatory authorities of the home and host Member States or EEA States or in a language customary in the sphere of international finance, at the choice of the Issuer or person asking for Admissibility to Listing.

**(G) Advertising**

2.50 Where Malta is the Home Member State, the MFSA shall have the power to exercise control over compliance with the requirements of Capital Markets Rule 2.51 to 2.54 relating to advertising activity involving the Admissibility to Listing of Securities.

2.51 Advertisements shall be clearly recognisable as such and the information therein shall:

- 1) not be inaccurate or misleading; and
- 2) be consistent with the information contained in the Prospectus, if already published, or with the information required to be in the Prospectus, if the Prospectus is published afterwards.

2.52 In any case, any Advertisement issued for the purpose of announcing the Admissibility to Listing of Securities, shall contain a statement that a Prospectus has been or will be published and the addresses and times at which copies of the Prospectus are or will be Available to the public.

2.53 Information concerning the Admissibility to Listing on a Regulated Market disclosed in an oral or written form, even if not for advertising purposes, shall be consistent with the information contained in the Prospectus.

2.54 Advertisements related to an admission to trading on a Regulated Market may be disseminated to the public by interested parties, such as Issuer or person asking for admission, the financial intermediaries that participate in the placing and/or underwriting of Securities, notably by one of the following means of communication:

- 1) addressed or unaddressed printed matter;
- 2) electronic message or Advertisement received via a mobile telephone or pager;
- 3) standard letter;
- 4) press advertising with or without order form;
- 5) catalogue;
- 6) telephone with or without human intervention;
- 7) seminars and presentations;

- 8) radio;
- 9) videophone;
- 10) videotext;
- 11) electronic mail;
- 12) facsimile machine (fax);
- 13) television;
- 14) notice;
- 15) bill;
- 16) poster;
- 17) brochure; or
- 18) web posting including internet banners.

### 3. Approval of the Prospectus and Admissibility to Listing

- 3.1
- 1) An Issuer seeking Admissibility to Listing of its Securities on the WSM must apply to the MFSA to have its Securities approved for Admissibility to Listing.
  - 2) An application for Admissibility of Securities to Listing on the WSM must be made by the Issuer. This shall be submitted by the Listing Agent on behalf of the Issuer.

#### Draft documents to be submitted for review

- 3.2. A copy of the following documents (where applicable) must be submitted to the MFSA at the time of initial submission of the Prospectus or, where appropriate, during the Prospectus review process:
- 1) draft Prospectus (and any supplement);
  - 2) if requested, where the order of disclosure items in the Prospectus does not coincide with the order in the relevant disclosure annexes of the Prospectus Regulation, a cross-reference list in draft form identifying the pages where each item can be found in the Prospectus and also detail any disclosure items in the relevant annexes which are non-applicable;
  - 3) the letter in draft form referred to in Capital Markets Rule 3.8(3) below, if applicable;
  - 4) the letter in draft form referred to in Capital Markets Rule 3.8(4) below, if applicable; and
  - 5) documents incorporated by reference referred to in Capital Markets Rule 2.14
- 3.3 A copy of the draft Prospectus must also be submitted to the relevant WSM by 5.00 p.m. CET on any Business Day.
- 3.4 The draft Prospectus and supporting documents referred to in Capital Markets Rule 3.2 above must be:
- 1) in substantially complete form;
  - 2) in an agreed electronic format;
  - 3) accompanied by an information checklist indicating where paragraphs required by the relevant disclosure annexes in the Prospectus Regulation have been included in the Prospectus and also to detail any disclosure items in the relevant annexes which are non-applicable; and
  - 4) submitted by 5.00 p.m. CET on any Business Day

A copy of amended drafts must be resubmitted, marked to show all changes made since the previous draft reviewed by the MFSA, and must comply with Capital Markets Rule 3.4 (2) to(4) above.

## Omission of Information

3.5 A request in writing may be made to the MFSA to authorise the omission of information from the prospectus and such request must:

- 1) be submitted to the MFSA in writing from the Issuer, its Listing Agent or, where appropriate, other adviser with the initial draft of the Prospectus;
- 2) identify the specific information concerned and the specific reasons for the omission; and
- 3) state why in the opinion of the person identified in (1) above, one or more of the following grounds applies:
  - (a) disclosure of such information would be contrary to the public interest; or
  - (b) disclosure of such information would be seriously detrimental to the Issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the Issuer or guarantor, if any, and of the rights attached to the Securities to which the Prospectus relates; or
  - (c) such information is of minor importance only for a specific offer or admission to trading on a Regulated Market and is not such as will influence the assessment of the financial position and prospects of the Issuer or guarantor, if any.

The MFSA will notify the Issuer or person making a submission under (1) above of whether or not the omission of certain information from the Prospectus has been authorised.

- 3.6 Where the final offer price and amount (or both) of Securities cannot be included in the Prospectus:
- 1) the criteria, or the conditions, or both criteria and conditions, in accordance with which the above elements will be determined or, in the case of price, the maximum price, shall be disclosed in the Prospectus; or
  - 2) the acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price and amount of securities have been filed.

The final offer price or amount, or both, of Securities shall be submitted to the MFSA and published in accordance with the arrangements provided for in Capital Markets Rule 2.42.

## Approval of the Prospectus / Admissibility to Listing

3.7 Prospectuses relating to Securities being considered for Admissibility to Listing must not be published unless they are formally approved by the MFSA.

3.8 To obtain the MFSA's Approval of the Prospectus and Admissibility to Listing, the following documents, or such of them as are applicable, must be submitted to the MFSA in final form no later than 11.00 a.m. (CET) on the day on which Approval by the MFSA is sought:

- 1) the Prospectus (in electronic format);

- 2) if requested, where the order of disclosure items in the Prospectus does not coincide with the order in the relevant disclosure annexes set out in the Prospectus Regulation a cross-reference list identifying the pages where each item can be found and also detail any Capital Markets Rules which are non-applicable;
  - 3) letter requesting the MFSA to authorise the omission of information from a Prospectus (as per Capital Markets Rule 3.5);
  - 4) letter requesting the MFSA to provide a Competent Authority of a host Member State(s) with a certificate of Approval attesting that the Prospectus/supplement has been drawn up in accordance with the Prospectus Regulation (an Issuer who chose to draw up a summary must also include a translation of the summary, if required by the Competent Authority of the host Member State);
  - 5) the Application for Admissibility to Listing (as per Appendix 2);
  - 6) the Listing Agent Declaration (as per Appendix 3);
  - 7) any other information that the MFSA may require; and
  - 8) the relevant fees as set out in Appendix 1
- 3.9 The MFSA shall notify ESMA of the approval of the prospectus and any supplement thereto at the same time as that approval is notified to the Applicant and shall provide ESMA with a copy of such prospectus and any supplement thereto.
- 3.10 The MFSA may transfer an application for the Approval of a Prospectus or a supplement to the Prospectus to the Competent Authority of another Member State or EEA State, subject to the prior notification to ESMA and the agreement of that authority.

### Application for listing of Offering Programmes

- 3.11 The application for Admissibility to Listing on the WSM must cover the maximum amount of Securities which may be in issue and listed at any one time under the programme.
- The application for Admissibility to Listing in the form set out in Appendix 2 need not be submitted for issues made after the first issue in any 12 month period after Approval by the MFSA of the Prospectus (where appropriate).
- 3.12 The final terms of each issue which is intended to be listed and traded, apart from being submitted in writing to the WSM, must also be filed with the MFSA.

### Exercise of Passporting Rights

- 3.13 Where Malta is the Home Member State and an Admission to Listing is provided for in one or more Member States or EEA States, other than Malta, the Prospectus approved by the MFSA and any supplements thereto shall be valid in any number of host Member States or EEA States,

provided that ESMA and the regulatory authority of each Host Member State or EEA State are notified in accordance with Capital Markets Rule 3.16.

3.14 Where Malta is the Host Member State and there are significant new factors, material mistakes or inaccuracies as referred to in Capital Markets Rule 2.26, ESMA and the MFSA shall draw the attention of the regulatory authority of the Home Member State or EEA State to the need for any new information.

3.15 The MFSA shall notify the regulatory authority of the Host Member State or EEA State, at the request of the Issuer or the person responsible for drawing up the Prospectus and within three Working Days following receipt of that request or, if the request is submitted together with the draft Prospectus, within one Working Day after the approval of the Prospectus, with a certificate of approval and a copy of the Prospectus as approved. If applicable, this notification shall be accompanied by a translation of the summary of the Prospectus produced under the responsibility of the Issuer or person responsible for drawing up the Prospectus. The same procedure shall be followed for any supplement to the Prospectus. The Issuer or the person responsible for drawing up the prospectus shall also be notified of the certificate of approval at the same time as the regulatory authority of the host Member State or EEA State.

The MFSA shall also notify ESMA of the certificates of approval of the prospectus at the same time as this is notified to the regulatory authority of the Host Member State or EEA State.

3.16 A Prospectus in relation to an Admission to Listing which has been approved by the regulatory authority of another Member State or EEA State, other than Malta, is not deemed to be an approved Prospectus unless that authority has provided the MFSA with a certificate of approval and a copy of the Prospectus as approved together with, where requested by the MFSA, a translation into English of the summary of the Prospectus.

3.17 For the purposes of this Capital Markets Rule, the certificate of approval shall consist of a statement

- 1) that the Prospectus has been drawn up in accordance with the Prospectus Regulation;
- 2) that the Prospectus has been approved in accordance with the Prospectus Regulation by the MFSA or the regulatory authority of the Member State or EEA state, as the case may be, providing the certificate; and where applicable
- 3) of the reasons as to why the MFSA or the regulatory authority providing the certificate, authorised, in accordance with the Prospectus Regulation, the omission from the Prospectus of information which would otherwise have been included.

## 4. Continuing Obligations

An Issuer (other than a Third Country Issuer) is required to comply with Section A of these Capital Markets Rules. An Issuer whose registered office is in a Third Country is required to comply with Section B.

### Section A Requirements that apply to EEA Issuers

### Section B Issuers whose registered office is in a Third Country

### *Section A Requirements that apply to all EEA Issuers*

#### *Preliminary*

Once an Issuer's Securities have been duly authorised as Admissible to Listing on the WSM, the Issuer shall be responsible for ensuring compliance with the continuing obligations of these Capital Markets Rules at all times.

The MFSA may, at any time, require an Issuer to publish such information in such form and within such time limits as it considers appropriate to protect investors or to ensure the smooth operation of the market.

If an Issuer fails to comply with the requirement under the preceding paragraph, the MFSA may itself publish the information, if the same is available to it, after giving the Issuer an opportunity to make representations as to why it should not be published.

### Information about changes in Rights attaching to Securities

- 4.2 An Issuer must disclose to the public without delay any changes in the rights of holders of the Securities, including changes in the terms and conditions of the Securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates. An Issuer must disclose to the public without delay any new loan issues and in particular any guarantee or security in respect of such issues.

### Equality of Treatment

- 4.3 An Issuer must ensure that all holders of Securities ranking *pari passu* are given equal treatment in respect of all the rights attaching to those Securities.

## Exercise of Rights and Meetings

- 4.4 An Issuer must ensure that all the facilities and information necessary to enable Securities holders to exercise their rights are publicly available in the home Member State and that the integrity of data is preserved.
- 4.5 Securities holders must not be prevented from exercising their rights by proxy, subject to the law of country in which the Issuer is incorporated. An Issuer must make available a proxy form, on paper or, where applicable, by electronic means to each person entitled to vote at a meeting of Securities holders. The proxy form must be made available either:
- 1) together with the notice concerning the meeting; or
  - 2) after an announcement of the meeting.
- 4.6 An Issuer must publish notices or distribute circulars concerning:
- 1) the place, time and agenda of meetings of Securities holders;
  - 2) the payment of interest;
  - 3) the exercise of any conversion, exchange, subscription or cancellation rights and repayment; and
  - 4) the rights of holders to exercise their rights in relation to Capital Markets Rule 4.6 (1) to (3).
- 4.7 An Issuer may choose as a venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.
- 4.8 An Issuer must designate, as its agent, a financial institution through which Securities holders may exercise their financial rights.
- 4.9 An Issuer may use electronic means to convey information to Securities holders, provided the Issuer complies with the following:
- 1) a decision to use electronic means is taken in a general meeting;
  - 2) the use of electronic means must not depend upon the location of the seat or residence of the Security holder or a proxy representing that holder;
  - 3) identification arrangements must be put in place so that Securities holders or other persons entitled to exercise or direct the exercise of voting rights are effectively informed;
  - 4) Securities holders must be contacted in writing to request their consent for the use of electronic means for conveying information and if they do not object within a reasonable period of time, their consent can be considered to have been given. Securities holders shall be able to request at any time in the future that information be conveyed in writing; and
  - 5) any apportionment of the costs entailed in the conveyance of information by electronic means must be determined by the Issuer in compliance with the principle of equal treatment set out in Capital Markets Rule 4.3 above.

## Filing of Regulated Information

4.10 An Issuer that:

- 1) discloses Regulated Information must at the same time file that information with the MFSA; or
- 2) proposes to amend its instrument of incorporation must communicate the draft amendment to the MFSA.

Such communication must be made without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.

## Disclosure of Regulated Information

4.11 1) Capital Markets Rules 4.12 to 4.18 apply where Malta is:

- (a) an Issuer's home Member State; and
- (b) an Issuer's host Member State and the relevant securities are admitted to the Regulated Market in Malta but not in the home Member State.

2) For the purposes of Capital Markets Rules 4.12 to 4.18:

'home Member State' means the Member State where the issuer has its registered office or where the securities are admitted to trading on a Regulated Market;

'host Member State' means the Member State where admission to trading on a Regulated Market is sought or in which securities are admitted to trading on a Regulated Market, when different from the home Member State.

4.12 An Issuer must disclose Regulated Information in the manner set out in Capital Markets Rules 4.13 to 4.17 below.

4.13 Regulated Information must be disseminated in a manner ensuring that it is capable of being disseminated to as wide a public as possible, and as close to simultaneously as possible in the home Member State and in the other Member States.

4.14 1) Regulated Information, other than Regulated Information described in Capital Markets Rule 4.14(2), must be communicated to the media in unedited full text.

- 2) (a) An annual financial report that is required under Capital Markets Rule 4.22 to be made public is not required to be communicated to the media in unedited full text except for the information referred to in point (b) below.

(b) If information is of a type that would be required to be disseminated in a half-yearly financial report then information of such a type that is contained in an annual financial report must be communicated to the media in the full unedited text.

- 3) The Announcement relating to the publication of the following Regulated Information must include an indication of the website on which the annual financial report and half-yearly financial report are available.

- 4.15
- 1) Regulated Information must be communicated to the media in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorised access, and provides certainty as to the source of the Regulated Information.
  - 2) Security of receipt must be ensured by remedying as soon as possible any failure or disruption in the communication of Regulated Information.
  - 3) An Issuer is not responsible for systemic errors or shortcomings at the media to which the Regulated Information has been communicated.
- 4.16 Regulated Information must be communicated to a RIS in a way which:
- 1) makes clear that the information is Regulated Information; and
  - 2) identifies clearly:
    - (a) the Issuer concerned;
    - (b) the subject matter of the Regulated Information; and
    - (c) the time and date of the communication of the information by the Issuer.
- 4.17 Upon request, an Issuer must communicate to the MFSA, in relation to any disclosure of Regulated Information:
- 1) the name of the person who communicated the information to the RIS and/or CAO;
  - 2) the security validation details;
  - 3) the time and date on which the Regulated Information was communicated;
  - 4) the medium in which the Regulated Information was communicated; and
  - 5) details of any embargo placed by the Issuer on the Regulated Information, if applicable.
- 4.18 An Issuer must not charge investors any specific cost for providing Regulated Information.

### Other Requirements

- 4.19 In the case of guaranteed (other than state guaranteed) Securities, where the guarantor is not listed on a stock exchange, the Issuer must submit the guarantor's annual report and accounts to the WSM.
- 4.20 All documents and Announcements lodged with the CAO must be in English.
- 4.21 An Issuer that has Securities admitted to trading on the WSM (or has requested such admission) must comply with its obligations under the Market Abuse Regulation.

## Annual Accounts

- 4.22
- 1) Subject to Capital Markets Rule 4.23 below, an Issuer must publish its annual report and accounts as soon as possible after they have been approved, and in any event no later than the timeframe permitted under its national legislation.
  - 2) The annual report and accounts must:
    - (a) have been prepared in accordance with the Issuer's national law and, in all material respects, with national accounting standards or IAS; and
    - (b) have been independently audited and reported on, in accordance with:
      - (i) the auditing standards applicable in an EEA State; or
      - (ii) an equivalent auditing standard acceptable to the WSM.
  - 3) If the Issuer prepares both own and consolidated annual accounts it may publish either form provided that the form which is not published does not contain any significant additional information.
  - 4) If the relevant annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits or losses of the Issuer or group, additional information must be provided to the satisfaction of the MFSA.

4.23 An Issuer that meets the following criteria is not required to comply with Capital Markets Rule 4.22:

- 1) the Issuer:
  - (a) is a wholly owned subsidiary of a listed company;
  - (b) issues listed securities that are unconditionally and irrevocably guaranteed by the Issuer's listed holding company or equivalent arrangements are in place;
  - (c) is included in the consolidated accounts of its listed holding company; and
  - (d) is not required to comply with any other requirement for the preparation of an annual report and account; and
- 2) non-publication of the Issuer's accounts would not be likely to mislead the public with regard to facts and circumstances that are essential for assessing the Securities.

## Audit Committee

- 4.24 The Issuer shall establish and maintain an audit committee composed entirely of Directors, the majority of such members being non-executive Directors. At least one member of the audit committee shall be independent and shall be competent in accounting and/or auditing:

Provided that in the case of Issuers which fall within the definition of 'small and medium sized enterprises' as defined in the Prospectus Regulation, the functions assigned to the audit committee may be performed by the Board of Directors of the Issuer as a whole. Where the

chairman of the Board of Directors of the Issuer is an executive director, she/he cannot act as chairman of the Audit Committee.

- 4.25 The obligation to establish an audit committee shall not apply to:
- 1) an Issuer of Securities which is a Subsidiary Undertaking provided that an audit committee which is compliant with these Capital Markets Rules and which the MFSA considers to be satisfactory is set up at the ultimate Parent Undertaking;
  - 2) an Issuer the sole business of which is to issue asset backed securities, provided that the Issuer explains to the public the reasons for which it considers it inappropriate to have an audit committee;
- 4.26 The primary purpose of the audit committee is to protect the interests of the company's shareholders and assist the Directors in conducting their role effectively so that the company's decision-making capability and the accuracy of its reporting and financial results are maintained at a high level at all times.
- 4.27 The Issuer shall determine the terms of reference, life span, composition, role and function of the audit committee and shall establish, maintain and develop appropriate reporting procedures, provided that the main role and responsibilities of the audit committee shall include:
- 1) the monitoring of the financial reporting process;
  - 2) the monitoring of the effectiveness of the company's internal control, internal audit where applicable, and risk management systems;
  - 3) the monitoring of the statutory audit of the annual and consolidated accounts;
  - 4) the making of recommendations in relation to the appointment of the statutory auditor;
  - 5) the monitoring and reviewing of the statutory auditor's independence, and in particular the provision of additional services to the Issuer.
  - 6) the development and implementation of a policy on the engagement of the statutory auditor to supply non-audit services.
- 4.28 The statutory auditor shall report to the audit committee on key matters arising from the audit, and in particular on material weaknesses in internal control in relation to the financial reporting process.

## Corporate Governance

- 4.29 An Issuer shall endeavour to abide by best practices of corporate governance.
- 4.30 An Issuer shall include a corporate governance statement in its annual report which shall contain at least the following information:

- 1) a description of the main features of the Issuer's internal control and risk management systems in relation to the financial reporting process;
- 2) the information required by Article 10(1), points (c), (d), (f), (h) and (i) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

4.31 An Issuer may also elect to include the corporate governance statement in a separate report published together with the annual report or by means of a reference in the annual report where such document is publicly available on the Issuer's website. In the event of a separate report, the corporate governance statement may contain a reference to the annual report where the information required in Capital Markets Rules 4.30 (1) and (2) is made available.

### ***Section B Issuers whose Registered Office is in a Third Country and Equivalence of Requirements***

- 4.32 An Issuer whose registered office is in a Third Country must comply with:
- (1) all applicable requirements in Sections A, of this Chapter, save where otherwise permitted in Section B; and
  - (2) additional requirements set out in this Section B
- 4.33 An Issuer whose registered office is in a Third Country may be exempt from the requirements in Section A on annual financial reports, provided that the law of the Third Country in question lays down equivalent requirements or such Issuer complies with the requirements of the law of a Third Country that the MFSA considers as equivalent.
- 4.34 An Issuer whose registered office is in a Third Country may be exempt from the requirements in Capital Markets Rules 4.1 to 4.9 in Section A, provided that the law of the Third Country in question lays down equivalent requirements or such Issuer complies with the requirements of the law of a Third Country that the MFSA considers as equivalent.
- 4.35 An Issuer to whom Capital Markets Rules 4.33 and/or 4.34 apply must comply with the requirements in Capital Markets Rules 4.10 to 4.17 in respect of the information covered by the requirements laid down in the Third Country.
- 4.36 Information that is disclosed in a Third Country which may be of importance to the public in the Member States must be disclosed in accordance with Capital Markets Rules 4.11 to 4.17. This Capital Markets Rule is also applicable to information that is not 'Regulated Information'

## 5. Compliance and Enforcement

### General

- 5.1 Issuers must comply with all Capital Markets Rules applicable to them.
- 5.2 Issuers must pay to the MFSA as they fall due the fees set out in Appendix 1 in relation to an application for Admissibility to Listing.

### MFSA

- 5.4 The MFSA shall be responsible to consider Applications for Admissibility to Listing on the WSM. Article 11(1) of FMA The MFSA will be also responsible for monitoring compliance with any requirements or conditions set out in these Capital Markets Rules or as required by the MFSA in terms of the Capital Markets Rules for listed Securities to remain listed.
- 5.5 Applications for Admissibility to Listing of Securities may be authorised by the MFSA and it is entirely at the discretion of the MFSA to accept or reject such applications.
- 5.6 Additionally, in order to maintain high standards of disclosure and for investor protection, the MFSA may 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.

### Dispensing and Modification of Capital Markets Rules

- 5.7
- 1) The MFSA may dispense with or modify the application of the Capital Markets Rules in such cases and by reference to such circumstances as it considers appropriate (subject at all times to all applicable legislation).
  - 2) A dispensation or modification may be either unconditional or subject to specified conditions.
  - 3) If an Issuer has applied for, or been granted, a dispensation or modification, it must notify the MFSA immediately it becomes aware of any matter which is material to the relevance or appropriateness of the dispensation or modification.
  - 4) The MFSA may revoke or modify a dispensation or modification which it has granted in such cases and by reference to such circumstances as it considers appropriate.
  - 5) The MFSA may give guidance consisting of such information and advice as it considers appropriate in respect of the Capital Markets Rules and may publish such guidance.

## Provision of Information to the MFSA

5.8 Issuers must provide to the MFSA without delay:

- 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;
- 2) all the information that the MFSA considers appropriate in order to protect investors or to ensure the smooth operation of the WSM;
- 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.

5.9 The MFSA may require information or documents from;

- 1) Issuers or Applicants seeking admissibility to listing, and the persons that control them or are controlled by them,
- 2) auditors and managers of the Issuer or Applicants seeking Admissibility to Listing, as well as financial intermediaries commissioned to ask for admissibility to listing,
- 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 5.9 (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.

5.10 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 and Listing

5.11 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) suspend an admission to trading for a maximum of 10 consecutive working days on any single occasion;
- 2) prohibit or suspend Advertisements for a maximum of 10 consecutive working days on any single occasion;
- 3) suspend or ask the WSM to suspend trading for a maximum of 10 consecutive working days on an any single occasion;
- 4) prohibit trading on the WSM;

- 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.
- 5.12 The MFSA shall suspend the listing of a Security to protect investors or where the smooth operation of the WSM otherwise is, or may be, temporarily jeopardized.
- 5.13 Suspension of trading and/or listing may be either with or without the request of the Issuer. Any request by the Issuer to suspend the trading of any securities must be made to the WSM and the MFSA.
- 5.14 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.
- 5.15 Where trading and/or 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.
- 5.16 The continuation of a suspension of trading and/or listing 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.
- 5.17 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 Admissibility to Listing).

### Discontinuation of Listing

- 5.18 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 the WSM.

### Investigations and Imposition of Sanctions

- 5.19 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. The powers of any such investigators are governed by the relevant provisions of the FMA.
- 5.20 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.

- 5.21 An Issuer is obliged to give effect to, comply with and ensure the fulfillment 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

- 5.22 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) Exchange of information and cooperation when an Issuer has more than one home regulatory authority;
  - 2) Transfer of the Approval of a Prospectus to the regulatory authority of another Member State or EEA State.
  - 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.
- 5.23 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.
- 5.24 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.

## 6. Listing Agents

- 6.1. An Applicant applying for admissibility to listing of its Securities on the WSM which requires the production of a Prospectus or equivalent document is required to appoint a Listing Agent.
- 6.2. The Applicant shall ensure that all matters concerning applications for Admissibility to Listing of Securities must be dealt with between the MFSA and the Listing Agent.
- 6.3. The MFSA attaches particular importance to the Listing Agent's role in satisfying itself that the Securities in respect of which an application has been made in terms of these Capital Markets Rules are suitable to be granted Admissibility to Listing

### Suitability

- 6.4. A Listing Agent appointed for the purposes of the WSM shall apply in writing to the MFSA to be authorised as an approved Listing Agent by the MFSA. The Authority may grant authorization upon being satisfied that the conditions laid down in Capital Markets Rule 6.4B have been met.
- 6.4A
  - 1) The approval granted to a Listing Agent by the MFSA shall be for a two year period from the date of approval by the MFSA.
  - 2) On the expiration of such term, an approval may be renewed by the MFSA for further two-year periods at a time. Such renewal shall be subject to the provision by the Listing Agent to the MFSA of the information and/or documentation which the MFSA may request therefrom.
- 6.4B A Listing Agent shall satisfy the following conditions to be approved by the MFSA:
  - 1) be a body corporate or a partnership incorporated in an EEA State or Switzerland;
  - 2) the directors of the company or the partners of the partnership, as the case may be, the majority shareholders and any other persons entrusted with the management and administration thereof, are individuals who are fit and proper and possess the relevant experience and/or qualifications to ensure the sound and prudent management of the Listing Agent;
  - 3) the Listing Agent should prove to the MFSA that it has the necessary experience in reviewing and preparing listing applications and Prospectuses for Issuers which may qualify for an WSM listing and in advising Issuers on the application of the Capital Markets Rules;
  - 4) the Listing Agent shall have adequate resources to fulfil the role expected of a Listing Agent under these Capital Markets Rules including having sufficient number of executive staff who will handle these functions internally and be capable of giving the Applicant impartial advice before agreeing to accept the role;
  - 5) be independent of any Issuer and of any underlying assets, or related service provider, to which it provides listing agent services.
  - 6) adhere at all times to the requirements set out in Capital Markets Rule 6.5.

- 6.4C An authorised Listing Agent shall be required to have in place an effective system of governance which provides for sound and prudent management of the business of the Listing Agent. For such purpose the Listing Agent shall ensure that all persons who effectively run the undertaking or have other key functions, at all times, satisfy the fit and proper criteria. The Listing Agent shall be satisfied that such persons:
- 1) have the personal characteristics, including that of being of good repute and integrity (proper); and
  - 2) have the professional qualifications, and possess the adequate level of competence, knowledge and experience (fit), required to enable such person to carry out his duties and perform his or her key function effectively and to enable sound and prudent management of the Listing Agent.
- 6.4D The MFSA must be satisfied that there is nothing in a person's present state or past record that would make the person unsuitable for the position such person holds or proposes to hold. Testing for suitability is carried out by examining a person's integrity in response to a range of standardised requirements set out in the Personal Questionnaire or Corporate Questionnaire, as the case may be, that are highly relevant to fitness. Requirements set out in the Personal Questionnaire or Corporate Questionnaire, as the case may be, contained in Annex 5 and Annex 6, respectively, to the WSM Capital Markets Rules. All information is to be submitted in writing and signed by the person concerned.

## Responsibilities

- 6.5. In the case of any application for Admissibility to Listing, the Listing Agent's responsibilities are:
- 1) to ensure that the Issuer is guided and advised as to the application of these Capital Markets Rules;
  - 2) to be satisfied and to confirm in writing in the form set out in Appendix 3 of these Capital Markets Rules that to the best of its knowledge and belief:
    - (a) all the documents required by the Capital Markets Rules to be included in the application for Admissibility to Listing have been supplied to the MFSA;
    - (b) 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;
    - (c) having made due and careful enquiry the contents of the Prospectus are in conformity with the requirements of the Capital Markets Rules and Prospectus Regulation; and
    - (d) to ensure that all other relevant requirements of the Capital Markets Rules have been complied with;
  - 3) to communicate all matters relevant to applications for Admissibility to Listing of Securities with the MFSA;

- 4) to ensure that 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;
- 5) to disclose 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;
- 6) to ensure that it does not provide its services as a Listing Agent in relation to an Issuer from which it is not independent and shall provide a declaration in writing of its independence to the MFSA in terms of Capital Markets Rule 6.7.
- 7) to ensure that 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;
- 8) to ensure that the formal application for authorisation for Admissibility to Listing as set out in Appendix 2 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;
- 9) to deal with the MFSA in an open and co-operative manner;
- 10) to deal with all enquiries raised by the MFSA promptly;
- 11) to disclose to the MFSA in a timely manner any material information relating to the Listing Agent or Applicant of which it has knowledge which addresses non-compliance with the Capital Markets Rules; and
- 12) to carry out a full due diligence exercise on the Prospective Applicant and its business.

### *Independence*

- 6.6. The Listing Agent shall be independent of the Issuer and in any event shall not be considered to be independent by the MFSA if a director, partner, or senior officer of the Listing Agent or another company in the Listing Agent's Group has an interest in the Applicant or any other company in the Applicant's Group.
- 6.7. The Listing Agent shall file the declaration set out in Appendix 3 with the MFSA declaring, *inter alia*, its independence from the Applicant.

### *Termination and Resignation*

- 6.8. If an Applicant terminates the services of its Listing Agent, the Applicant shall immediately notify the MFSA in writing and it shall copy the Listing Agent stating the reasons for such termination.

- 6.9. If a Listing Agent resigns, the Listing Agent shall immediately notify the MFSA in writing, stating the reasons for such resignation.

In the case of a termination or resignation of a Listing Agent, the Applicant shall ensure that a new Listing Agent is appointed immediately. The MFSA shall suspend the processing of the application for authorisation for Admissibility to Listing until a new Listing Agent is so appointed.

### *Sanctions*

- 6.10 If the MFSA considers that the Listing Agent has not adequately fulfilled its responsibilities under this Chapter, the MFSA may:
- 1) prohibit the Listing Agent from acting in that capacity for the purposes of the WSM until such time as the issue(s) giving rise to the prohibition has been resolved; and/or
  - 2) impose conditions on the Listing Agent and for such duration as the MFSA may consider appropriate; and/or
  - 3) cease to recognise the Listing Agent as being suitable to act in that capacity.