

6 December 2021

Amendments to Chapter 5, Chapter 11 and Chapter 12 of the Capital Markets Rules – Shareholder Rights Directive II and Central Counterparties Regulation

1.0 Introduction

Reference is made to the Authority's Circular, dated [01 July 2019](#), whereby Chapter 5 and Chapter 12 of the Capital Markets Rules ("CMRs") were revised in order to transpose the requirements of Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC (hereinafter referred to as "Shareholder Rights Directive II" or "SRDII"). As part of the transposition process, additional amendments have been reflected in the Capital Markets Rules, specifically Chapter 5 and Chapter 12.

Moreover, reference is also made to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 (hereinafter referred to as "Central Counterparties Regulation" or "CCPR"). The CCPR amends several Directives, whereby Articles 90 and 91 of the Regulation amend the Takeover Bids Directive (2004/25/EC) and SRD II (2007/36/EC) respectively. Consequently, the Capital Markets Rules were impacted. The respective amendments address the necessary changes required in view of the CCPR.

Further information on the additional amendments required as a result of SRD II and CCPR are outlined in Section 2.0 of this Circular.

2.0 Details of the Amendments

The MFSA presents the amendments passed in the Capital Markets Rules, specifically in Chapter 5, Chapter 11, and Chapter 12 (Capital Markets Rules are in italics whilst the amendments are in italics and bold).

2.2 Amendments to Chapter 5

(A) Capital Markets Rule 5.143A – Material Related Party Transactions Exemption

The Authority has included a new Capital Markets Rule to exempt transactions entered into in the ordinary course of business from the requirements relating to Material Related Party Transactions as laid down from CMR 5.141 to CMR 5.143A.

QUOTE

5.143A *The requirements set out in Capital Markets Rules 5.141 to 5.142A shall not apply to transactions entered into in the ordinary course of business and concluded on normal market terms.*

UNQUOTE

2.3 Amendments to Chapter 11

Capital Market Rules in Chapter 11 – *Takeover Bids* have been amended slightly as outlined below.

Capital Markets Rule 11.2A – Exemptions

The CMR has been amended to include reference to the CCPR, so that the requirement to make a Mandatory Bid in terms of CMR 11.8 does not apply in the case of central counterparties.

QUOTE

11.2A *The requirement to make a Mandatory Bid in terms of Capital Markets Rule 11.8 shall not apply in the case of use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 or in Title V of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132.*

UNQUOTE

2.4 Amendments to Chapter 12

(A) Capital Markets Rule 12.2 – Exemptions

The CMR has been amended to include reference to the CCPR, so that the requirements relating to Shareholders Rights in terms of Chapter 12 of the CMRs do not apply in the case of central counterparties.

QUOTE

12.2.4 *credit institutions and/or investment firms subject to the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 or Title V of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132.*

UNQUOTE

(B) Capital Markets Rule 12.2A – Definition of ‘director’

It is deemed that persons in charge of operations or activities of issuers also fall within the definition of ‘director’ for the purposes of the Chapter 12 of the CMRs. CMR 12.2A has been amended accordingly.

QUOTE

‘director’ means:

- a) *Any member of the board of directors;*
- b) *Where they are not members of the administrative, management or supervisory bodies of a company, the chief executive officer and, if such function exists in a company, the deputy chief executive officer; or*
- c) ***Any other person who is in charge of operations or activities of the Issuer.***

UNQUOTE

(C) Capital Markets Rules 12.4A – Notice of General Meetings

CMR 12.4A has been amended to include reference to the CCPR by extending the applicable requirements to central counterparties.

QUOTE

12.4A *For the purposes of Directive 2014/59/EU and **Regulation (EU) 2021/23** the general meeting may, by a majority of two thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in Capital Markets Rule 12.4, to decide on a capital increase, provided that:*

12.4A.1 *that meeting takes place at least ten calendar days after the convocation is issued;*

12.4A.2 *the conditions of Article 27 or 29 of Directive 2014/59/EU or of **Article 18 of Regulation (EU) 2021/23** are met; and*

12.4A.3 *the capital increase is necessary to avoid the conditions for resolution laid down in Articles 32 and 33 of Directive 2014/59/EU or in **Article 22 of Regulation (EU) 2021/23**.*

UNQUOTE

(D) Capital Markets Rule 12.26 – Directors’ Responsibility

Two (2) new CMRs, CMR 12.26O and 12.26P have been added in order to clarify the Directors’ responsibility in complying with the relevant CMRs.

QUOTE

CMR 12.26O *Directors, acting within their field of competence as may be assigned to them by law, shall be collectively responsible for ensuring that the remuneration report is drawn up and published in accordance with the requirements of the Capital Markets Rules.*

CMR 12.26P *The Issuer and its directors shall equally be held liable for any breach of duties prescribed by Capital Markets Rules 12.26M and 12.26O.*

UNQUOTE

3.0 Amended Capital Markets Rules

The revised Capital Markets Rules, as amended on 06 December 2021, are annexed to this Circular.

4.0 Effective Date

These amendments to the Capital Markets rules are applicable with immediate effect.

Contacts

Should you require any additional clarification in respect of the above, kindly contact the Authority on transparency@mfsa.mt.