

## Definitions

Term	Meaning
Directive 2004/39/EC	Council Directive 2004/39/EC of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended from time to time.
MFSA Listing Policies	The listing policies issued by the MFSA, as amended from time to time.
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder.
Sponsor	As defined in Article 2(1) of the FMA.

## CHAPTER 2

### Sponsors

This Chapter contains the requirements relating to Sponsors, including the requirements for their registration, their responsibilities and ongoing obligations.

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### *Introduction*

- 2.1. This Chapter is supplementary to the requirements laid down in the FMA, the Financial Markets Act (Sponsors) Regulations (the “Regulations”) and is binding on persons to whom it applies.

### *Application for Registration as a Sponsor*

- 2.2. A person providing, or holding itself out as providing, sponsor services in relation to applications for Admissibility to Listing on a local regulated market must apply to the MFSA for registration as a Sponsor by submitting the following:
- 2.2.1. a completed Sponsor Application Form (Appendix 2.1), accompanied by the required supporting documentation; and
  - 2.2.2. the application fee specified in the Financial Markets Act (Fees) Regulations.
- 2.3. A person applying for registration as a Sponsor shall immediately inform the MFSA in writing of any material change relevant to the application.

### *Eligibility*

- 2.4. A Sponsor shall be authorised to provide investment services in terms of the Investment Services Act (Cap. 370 of the laws of Malta) or authorised to provide investment services under MiFID II, and to hold or control clients’ money or customers’ assets, but not to operate a multilateral trading facility and/or an organised trading facility.
- 2.5. In complying with the provisions of this Chapter, a Sponsor shall also consider its obligations in terms of its authorisation to provide investment services, including *inter alia* those pertaining to product governance, investor protection, organisation, conflicts of interest and the prevention of money laundering and funding of terrorism.

### *Competence*

- 2.6. A Sponsor shall:
- 2.6.1. demonstrate to the MFSA that it has a sufficient relevant experience and expertise to provide sponsor services based on:
    - 2.6.1.1. the knowledge and skills attained through professional education, training and practice;
    - 2.6.1.2. the practical and professional experience gained through previous positions and/or appointments as Sponsor; and
  - 2.6.2. employ a sufficient number of personnel with the experience and expertise necessary for it to:
    - 2.6.2.1. satisfy the minimum staffing requirement stipulated by Capital Markets Rule 2.10;
    - 2.6.2.2. adequately understand and apply:
      - i. the rules directly relevant to Sponsors as set out in this Chapter; and

ii. the Capital Markets Rules, MFSA Listing Policies and Prospectus Regulation.

- 2.7. The MFSA may, at its discretion and on the basis of a risk-based approach, conduct further assessments as it may deem necessary in determining the competence of a Sponsor. Such further assessment may *inter alia* include viva-voce interviews.
- 2.8. The onus of proving competence to provide sponsor services lies with the Sponsor.

*Organisation*

- 2.9. A Sponsor shall:
- 2.9.1. establish, implement and maintain adequate and clear reporting lines for the provision of sponsor services, including the respective responsibilities of the individuals forming part of the sponsor service offering;
  - 2.9.2. adopt effective policies, procedures and controls vis-à-vis:
    - i. the identification, management and mitigation of conflicts of interest;
    - ii. the maintenance of adequate staffing arrangements; and
    - iii. compliance with the requirements of this Chapter.
- 2.10. A Sponsor shall retain a minimum of two individuals focussed on the provision of sponsor services for the duration of a sponsor service assignment who, collectively, are capable of:
- 2.10.1. satisfying the competence requirements set out in Capital Markets Rule 2.6; and
  - 2.10.2. effectively carrying out the role of the Sponsor as set out in this Chapter.

Where appropriate and proportionate, such individuals may undertake additional duties insofar as such additional duties do not give rise to any conflicts of interest or hinder the integrity, due care and skill with which the Sponsor provides sponsor services.

- 2.11. In determining whether a Sponsor satisfies Capital Markets Rule 2.9 and Capital Markets Rules 2.10, it shall ensure that its organisational arrangements are commensurate to the scale and complexity of its business and shall *inter alia* consider:
- 2.11.1. the diversity, volume and market capitalisation of the applications for Admissibility to Listing it is appointed to or plans to undertake; and
  - 2.11.2. the risks associated with the applications for Admissibility to Listing it is appointed to or plans to undertake.

*Responsibilities*

- 2.12. The Sponsor shall be responsible for:
- 2.12.1. acting as the primary point of contact with the MFSA in relation to an application for Admissibility to Listing on which it is appointed by an Applicant;
  - 2.12.2. providing assurance to the MFSA that, to the best of its knowledge and belief, having made due and careful enquiry, the Applicant has satisfied all applicable conditions for Admissibility to Listing and other relevant requirements of the

Capital Markets Rules;

- 2.12.3. advising and guiding the Applicant as to its responsibilities and obligations to ensure compliance with the Capital Markets Rules, MFSA Listing Policies and Prospectus Regulation (as applicable);
  - 2.12.4. providing the MFSA with any information, explanation or confirmation it may reasonably require for the purposes of ensuring that the applicable requirements of the Capital Markets Rules, MFSA Listing Policies and the Prospectus Regulation (as applicable) are being complied with by an Applicant;
  - 2.12.5. ensuring 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; and
  - 2.12.6. reviewing and submitting all relevant information and documentation to the MFSA in a timely manner.
- 2.13. A Sponsor shall not delegate any of its responsibilities, nor shall it permit any other person to perform its role. In the event of the appointment of more than one Sponsor, the requirements of Capital Markets Rule 2.32 shall apply.

*Principles of conduct*

- 2.14. In carrying out its duties, a Sponsor shall:
- 2.14.1. act with integrity, due care and skill;
  - 2.14.2. deal with the MFSA in an honest, open and co-operative manner;
  - 2.14.3. deal with all enquiries raised by the MFSA promptly;
  - 2.14.4. disclose to the MFSA in a timely manner any material information of which it has knowledge relating to non-compliance by the Sponsor or the Applicant; and
  - 2.14.5. take sufficient reasonable steps to ensure that any information it provides to the MFSA is, to the best of its knowledge and belief, accurate and complete in all material respects.

*Independence and conflicts of interest*

- 2.15. A Sponsor shall be independent of an Applicant and in any event shall not act as such if the Sponsor, or the Group of which the Sponsor forms part, has:
- 2.15.1. an interest, or a holding that is equivalent to 5% or more of the Equity or Debt Securities of the Applicant or any other company in the Applicant's Group. In assessing the percentage of the interest, the Equity or Debt Securities for which application for Admissibility to Listing has been made are to be treated as having already been issued; or
  - 2.15.2. any relationship with, other than its role as Sponsor, or a financial interest (whether directly or indirectly) in the Applicant or any other company in the Applicant's Group that would give the Sponsor or the Sponsor's Group a material interest in the outcome of the transaction or which could be perceived as a conflict of interest.
- 2.16. Any interest that arises as a result of the Sponsor's discretionary client holdings is not to be included in the determination of the threshold set out in Capital Markets Rule 2.15.1.

- 2.17. A Sponsor shall not be considered to be independent of an Applicant if a director, partner, or senior officer of the Sponsor or another company in the Sponsor's Group has a material interest or is in any way involved in the Applicant or any other company in the Applicant's Group. For the purpose of this Capital Markets Rule, a holding of 5% or more in the Equity or Debt securities of the Applicant or any other company in the Applicant's Group will be deemed to be a material interest.
- 2.18. A Sponsor shall ensure that no Equity or Debt Securities are placed with connected clients of the Sponsor unless placed with a fund manager for the purpose of its business.
- 2.19. A Sponsor shall have proper arrangements in place to ensure that the individuals forming part of the sponsor service offering are not concurrently or subsequently involved in the distribution on the primary market of the financial instrument/s which are the subject of the application of Admissibility to Listing on which it has been appointed as Sponsor.
- 2.20. A Sponsor must, for so long as it is appointed by an Applicant, take all reasonable steps to identify and manage any conflicts of interest that could adversely affect its ability to properly perform its functions and shall accordingly consider circumstances which could:
- 2.20.1. create the perception that it may not be able to perform its functions properly; and/or
  - 2.20.2. compromise its ability to fulfil its obligations to the MFSA when appointed as Sponsor; and/or
  - 2.20.3. negatively impact market confidence in Sponsors.
- 2.21. For each application in respect of which it acts or intends to act as Sponsor in accordance with the Capital Markets Rules, the Sponsor is to submit to the MFSA at an early stage (in any event, by no later than the date on which any documentation in connection with the application for Admissibility to Listing is first submitted to the MFSA for review) a confirmation of its independence.

*Submission of an Application for Admissibility to Listing*

- 2.22. As the primary point of contact with the MFSA in relation to an application for Admissibility to Listing, the Sponsor shall submit the application for Admissibility to Listing and any accompanying documentation to the MFSA following the lapse of the time period specified in Capital Markets Rule 4.1A.
- 2.23. A Sponsor shall only submit to the MFSA an application for Admissibility to Listing on behalf of an Applicant once it is satisfied, after due and careful enquiry, that:
- 2.23.1. the Applicant has satisfied all applicable requirements of the Capital Markets Rules, the MFSA Listing Policies and the Prospectus Regulation (as applicable);
  - 2.23.2. the directors of the Applicant have a reasonable basis on which to make any working capital statements;
  - 2.23.3. the directors of the Applicant have established procedures which enable it to comply with the Capital Markets Rules, the MFSA Listing Policies and the

Prospectus Regulation on an ongoing basis (as applicable); and

2.23.4. the directors of the Applicant have established procedures which provide a reasonable basis for them to make proper judgements on an ongoing basis as to the financial position and prospects of the Applicant.

2.24. Where a Sponsor provides information to the MFSA which is based on information it has obtained from third parties, the Sponsor shall use its own knowledge and expertise to review and challenge the information provided by the third party, as appropriate.

2.25. For each application in respect of which it has been appointed as Sponsor, the Sponsor is to submit to the MFSA at an early stage (in any event, by no later than the date on which any documentation in connection with the application for Admissibility to Listing is first submitted to the MFSA for review) a confirmation that the requirements of Capital Markets Rule 2.23 have been satisfied.

*Review of an Application for Admissibility to Listing*

2.26. Throughout the duration of an application for Admissibility to Listing, the Sponsor shall ensure that the Applicant and the documentation accompanying the application satisfy the transparency, corporate governance and financial soundness requirements mandated by the Capital Markets Rules, the MFSA Listing Policies and the Prospectus Regulation (as applicable).

2.27. With regard to transparency, the Sponsor shall ensure that:

2.27.1. the initial draft of the prospectus submitted to the MFSA is complete in all material respects and compliant with the Prospectus Regulation, Delegated Regulations, ESMA Guidelines and ESMA Q&As, as may be amended from time to time;

2.27.2. fully completed checklists to the respective annexes of Delegated Regulation 2019/980 and any documentation incorporated by reference or forming a constituent part of the prospectus are submitted with the initial draft of the prospectus;

2.27.3. any subsequent drafts of such documents are submitted in tracked changes; and

2.27.4. the accompanying data to the prospectus in XML format is in line with the respective requirements as mandated by *inter alia* Delegated Regulation 2019/979.

2.28. With regard to corporate governance, the Sponsor shall:

2.28.1. ensure that the composition of the board of directors and the audit committee of the Applicant is in compliance with the MFSA's expectations as laid down in the Capital Markets Rules;

2.28.2. carry out adequate due diligence on the shareholders and directors of the Applicant, as well as any guarantor/s (if applicable), to ensure that the reputation and integrity of the market is upheld; and

2.28.3. satisfy itself that the directors of the Applicant understand their responsibilities and obligations under the Capital Markets Rules, MFSA Listing Policies and Prospectus Regulation (as applicable).

- 2.29. With regard to financial soundness, the Sponsor shall ensure that:
- 2.29.1. the required historical financial information has been audited and prepared in line with the applicable accounting standards;
  - 2.29.2. any pro forma financial information, profit forecasts and/or estimates meet the requirements of the Prospectus Regulation, Delegated Acts, ESMA Guidelines and ESMA Q&As, as may be amended from time to time;
  - 2.29.3. it is satisfied that any pro forma financial information, profit forecasts and/or estimates have been prepared after due and careful enquiry by the Applicant;
  - 2.29.4. the initial Financial Due Diligence Report and any subsequent submissions thereafter are complete and compliant with the expectations laid down in the MFSA Listing Policies; and
  - 2.29.5. the financial information submitted as part of an application has been properly extracted from the Applicant's accounting records.

*Record keeping*

- 2.30. A Sponsor shall arrange for records to be kept of all services provided by it, which shall be sufficient to enable the MFSA to monitor compliance with the requirements and obligations under this Chapter, including:
- 2.30.1. where a declaration, opinion or confirmation is provided by a Sponsor to the MFSA, the basis of that declaration, opinion or confirmation;
  - 2.30.2. where a Sponsor provides guidance to an issuer applying for Admissibility to Listing, the basis upon which such guidance is given; and
  - 2.30.3. the steps taken to comply with its obligations under this Chapter.
- 2.31. Records shall:
- 2.31.1. be accessible and capable of timely retrieval; and
  - 2.31.2. include material correspondence regarding the provision of sponsor services, including any advice or guidance given to an applicant seeking Admissibility to Listing in relation to its responsibilities under the Capital Markets Rules, MFSA Listing Policies and Prospectus Regulation (as applicable).

*Appointment of more than one Sponsor*

- 2.32. Where an Applicant appoints more than one Sponsor to provide a sponsor service:
- 2.32.1. the Applicant shall establish how responsibility is to be allocated and so inform the MFSA in writing;
  - 2.32.2. the appointment of more than one Sponsor does not relieve any of the Sponsors so appointed of their responsibilities and obligations under this chapter or the Regulations; and
  - 2.32.3. the Sponsors shall ensure cooperation with each other in providing the sponsor service, including through the sharing of information where appropriate.



### *Ongoing obligations*

- 2.33. A Sponsor must comply at all times with the criteria set out in Capital Markets Rule 2.4 and Capital Markets Rule 2.6 in order to retain its registration with the MFSA.
- 2.34. A Sponsor must submit to the MFSA, by no later than the first business day of January each year, a written confirmation by way of a completed Sponsor Annual Confirmation Form (Appendix 2.2) that it continues to satisfy the criteria for registration as a sponsor as set out in Capital Markets Rule 2.4 and Capital Markets Rule 2.6.
- 2.35. A Sponsor must notify the MFSA in writing as soon as possible if:
- 2.35.1. it ceases, or it becomes aware of any matter which could cause it to cease, to satisfy the criteria for registration as a Sponsor set out in Capital Markets Rule 2.4 and Capital Markets Rule 2.6; or
  - 2.35.2. it becomes aware of any matter relating to it or any of its directors, partners or employees engaged in the provision of sponsor services which, in its reasonable opinion, could adversely affect market confidence in Sponsors; or
  - 2.35.3. it, or any of its directors, partners or employees engaged in the provision of sponsor services are:
    - i. convicted of any offence, criminal or otherwise; or
    - ii. adjudicated bankrupt; or
  - 2.35.4. any of its directors, partners or employees engaged in the provision of sponsor services are disqualified by a court from acting as a director of a company or from acting in a management capacity or conducting the affairs of any company; or
  - 2.35.5. it, or any of its directors, partners or employees engaged in the provision of sponsor services, are subject to any public criticism, regulatory intervention or disciplinary action by statutory or regulatory authorities (including designated professional bodies) which have not been subsequently withdrawn by the relevant authority or body;
  - 2.35.6. there is intended to be a change of control of the Sponsor, any restructuring of the Sponsor's group or an internal reorganisation which may have an impact on the services offered by the Sponsor or a change to the directors, partners or employees engaged in the provision of sponsor services.

### *Termination*

- 2.36. A Sponsor shall advise the MFSA in writing without delay of its resignation, giving details of any relevant facts or circumstances thereto. A copy of such notification shall also be sent to the Applicant.
- 2.37. If an Applicant terminates the services of its Sponsor, the Applicant shall immediately notify the MFSA in writing and it shall copy the Sponsor stating the reasons for such termination.
- 2.38. The Applicant shall ensure that a new Sponsor is appointed immediately. The MFSA shall suspend the processing of the application for authorisation for Admissibility to Listing until a new Sponsor is so appointed.