

Capital Markets Rules

Institutional Financial Securities Market

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REVISIONS LOG

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Definitions

This section should be read in conjunction with the FMA and regulations issued thereunder. In the event that definitions contained hereunder conflict with those stipulated in the FMA or regulations issued thereunder, the definitions set out in the FMA or the regulations issued thereunder shall prevail.

Term	Meaning
Admissibility to Listing	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.
Advertisement	<p>A communication with both of the following characteristics:</p> <ol style="list-style-type: none"> 1) relating to Admissibility to Listing on a Regulated Market; and 2) aiming to specifically promote the potential subscription or acquisition of Securities.
Announcement	Company announcements made by the Issuer in compliance with the ongoing listing obligations and “Company Announcement” shall be construed accordingly.
Approval	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.
Asset Backed Securities	<p>Non-Equity Securities which either:</p> <ol style="list-style-type: none"> 1) represent an interest in assets, including any rights intended to ensure the servicing of those assets, the receipt or the timely receipts by holders of those assets of the amounts payable under those assets; or 2) are secured by assets and the terms of the securities provide for payments calculated by reference to those assets.

	Information shall be deemed to be available to the public when published in electronic form on any of the following websites:
Available to the public	<ol style="list-style-type: none"> 1) the Issuer's website or on the website of the person asking for admission to trading on a Regulated Market; 2) the website of the financial intermediaries placing or selling the Securities, including paying agents; 3) the website of the Regulated Market where the Securities are being traded or proposed to be traded.
Business Day	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 (Cap. 252 of the Laws of Malta).
Capital Markets Rules	The rules issued by the MFSA in accordance with the provisions of the FMA, as may be amended from time to time.
Convertible Securities	Securities which are convertible into, or exchangeable for, other securities.
Credit Institution	As defined in Article 2(1) of the FMA.
Derivatives	<p>Securities that entitle the holder to:</p> <ol style="list-style-type: none"> 1) require or make delivery of; or 2) receive or make payment in cash in respect of; <p>Securities of an Issuer which is not the Issuer of the Derivatives, assets, indices or other specified variables.</p>
Equity Securities	Shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer.

FMA	Financial Markets Act (Cap. 345 of the Laws of Malta)
IFSM	The Institutional Financial Securities Market, a Regulated Market in terms of MiFID that is authorised and supervised by the MFSA.
Issuer	As defined in Article 2(1) of the FMA.
Market Abuse Regulation	As defined in Article 2(1) of the FMA.
Member State	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.
MFSA	The Malta Financial Services Authority established by the Malta Financial Services Authority Act (Cap. 330 of the Laws of Malta)
MiFID	As defined in Article 2(1) of the FMA.
Non-Equity Securities	All securities that are not Equity Securities.
Offering Programme	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.
Overseas Company	A body corporate constituted or incorporated outside the EEA (i.e. not in an EU Member State or an EEA state).

Professional Securities	Non-Equity Securities, the denomination per unit of which must be at least €100,000 or equivalent in any other currency, that are generally acquired and traded only by [i] professionals who possess the experience, knowledge and expertise to make informed investment decisions including, but not limited to, professional clients and eligible counterparties as defined in MiFID, and [ii] investors who are provided with investment advice or portfolio management by such professionals.
Prospectus	A document in such form and containing such information as may be required by or under the Prospectus Regulation.
Prospectus Regulation	As defined in Article 2(1) of the FMA.
Public Offer	An “offer of securities to the public” as defined in Article 2(1) of the FMA.
Regulated Information	All information which the Issuer is required to disclose under the Transparency Directive and the Market Abuse Regulation.
Regulated Market	As defined in Article 2(1) of the FMA.
Securities	As defined in Article 2(1) of the FMA.
Shariah Adviser	A natural or legal person possessing necessary qualifications and demonstrable expertise in Islamic jurisprudence, particularly in Islamic finance, who is appointed to provide independent opinions, guidance, and, where applicable, certification on the compliance of financial products, services, or transactions with Shariah principles.
Special Purpose Vehicle	An Issuer whose objects and purposes are primarily the issue of Securities.
Sponsor	As defined in Article 2(1) of the FMA.

Sukuk	Non-Equity Securities which comply with the principles and provisions of Shariah.
Tap Issue	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.
Third Country	A country outside the EEA (i.e. not an EU Member State or an EEA state).
Trading Venue	As defined in Article 2(1) of the FMA.
Transparency Directive	As defined in Article 2(1) of the FMA.
Trustee	A person who holds and manages property or assets for the benefit of designated individuals or entities (beneficiaries).

Scope and Application

These Capital Markets Rules relate to the Admissibility to Listing on the IFSM of Professional Securities. Professional Securities may include, but are not limited to:

1. **Asset Backed Securities;**
2. **Convertible Securities;**
3. **Derivatives; and**
4. **Sukuk.**

These Capital Markets Rules apply as follows:

- I. Chapter One - Conditions for Admissibility to Listing on the IFSM
- II. Chapter Two - Approval of Prospectuses and Admissibility to Listing
- III. Chapter Three - Continuing Obligations
- IV. Chapter Four - Compliance and Enforcement
- V. Chapter Five - Sponsors.

The persons to whom these Capital Markets Rules apply shall act honestly, fairly and professionally and shall comply with the relevant provisions of the FMA, the regulations issued thereunder, these Capital Markets Rules, as well as with other relevant legal and regulatory requirements including any relevant EU Regulations and Directives, Commission Delegated Regulations, Regulatory Technical Standards and Implementing Technical Standards, as well as any Guidance Notes which may be issued from time to time.

Chapter 1 - Conditions for Admissibility to Listing on the IFSM

General

- 1.1 The Securities for which Admissibility to Listing on the IFSM may be sought must be Professional Securities.
- 1.2 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.
- 1.3 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.
- 1.4 In addition to satisfying the conditions applicable to all Professional Securities as set out in Capital Markets Rules 1.7 to 1.18, an Issuer shall also satisfy the additional conditions for Asset Back Securities, Convertible Securities, Derivatives and Sukuk, as applicable.
- 1.5 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 IFSM.
- 1.6 Issuers must pay to the MFSA as they fall due the fees set out in the Financial Markets (Fees) Regulations (S.L. 345.28), as amended from time to time, in relation to an application for the approval of a Prospectus.

Conditions for All Professional Securities

Incorporation

- 1.7 An Issuer must be:
 - i) duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment; and

- ii) operating in conformity with its memorandum and articles of association or equivalent constitutional document.

Validity

1.8 The Securities for which authorisation for Admissibility to Listing is sought must:

- i) be issued to conform with the law of the Issuer's place of incorporation;
- ii) be duly authorised according to the requirements of the Issuer's memorandum and articles of association or equivalent constitutional document; and
- iii) be duly authorised for the creation and issue of such securities in terms of any applicable system of law.

1.9 An Issuer must be in compliance with the requirements of:

- i) any securities regulator by which it is regulated; and/or
- ii) any Trading Venue on which it has Securities admitted to trading.

Transferability

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

Form of Securities

1.11 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

1.12 Where an application for authorisation for Admissibility to Listing is made in respect of any particular class of Security:

- i) 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
- ii) 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.

1.13 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.

Financial Information and History

1.14 Save as provided for in Capital Markets Rule 1.15, or in respect of Asset Backed Securities, an Issuer must have published or filed audited accounts that:

- i) 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
- ii) have been independently audited.

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

- i) such acceptance is desirable in the interests of the Issuer or of investors and investors have the necessary information available to arrive at an informed judgment concerning the Issuer and the Securities for which Admissibility to Listing is sought; or
- ii) where the application is in respect of guaranteed Securities, the guarantor has published or filed accounts which cover at least two years; or
- iii) the obligations created in respect of such Securities are fully secured.

1.16 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 1.14(1) (subject to Capital Markets Rule 1.15).

An Issuer 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 Issuer and investors and that investors have the necessary information available to arrive at an informed judgment concerning the Issuer and the Securities for which Admissibility to Listing is sought.

Management

- 1.17 The Directors of the Issuer and, where applicable, senior management responsible for the day-to-day management of the Issuer must have, collectively, appropriate expertise and experience for the management of its business.
- 1.18 An Issuer must ensure that each of its directors is free of conflicts between duties to the Issuer and private interests and other duties, unless the Issuer 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.

Supplementary Rules for Asset Backed Securities

- 1.19 In addition to Capital Markets Rules 1.7 to 1.18 above, an Issuer seeking Admissibility to Listing of Asset Back Securities must also satisfy the below conditions.
- 1.20 The Issuer must normally be a Special Purpose Vehicle incorporated or established for the purpose of issuing Asset Backed Securities.
- 1.21 Except where the MFSA otherwise agrees, Equity Securities backing the issue of Securities must:
 - i) be listed on a Trading Venue or traded on another regulated and regularly operating open market; or
 - ii) 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 Capital Markets Rule applies in respect of the Equity Securities to which those warrants or options or other rights relate.

- 1.22 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.

Supplementary Rules for Derivatives

- 1.23 In addition to Capital Markets Rules 1.7 to 1.18 above, an Issuer seeking Admissibility to Listing of Derivatives must also satisfy the below conditions.
- 1.24 Subject to Capital Markets Rule 1.25, an Issuer seeking the Admissibility to Listing of Derivatives must satisfy one of the following conditions:
- i) it must be a Credit Institution; or
 - ii) 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 as may be determined by the MFSA, 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
 - iii) for an Issuer which is a Special Purpose Vehicle, the arranger or lead manager must satisfy (i) or (ii) above; or
 - iv) the obligations created by the Issuer in relation to the Derivatives being issued must be unconditionally and irrevocably guaranteed by, or benefit from an equivalent arrangement provided by, an entity which satisfies (i) or (ii) above.
- 1.25 An Issuer unable to satisfy any of the conditions stated in Capital Markets Rule 1.24 must consult the MFSA and obtain specific approval.
- 1.26 For Derivatives 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:
- i) a currency;
 - ii) an index;
 - iii) an interest rate;
 - iv) a commodity;
 - v) a combination of the above; or
 - vi) be credit linked.

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

Supplementary Rules for Convertible Securities

- 1.27 In addition to Capital Markets Rules 1.7 to 1.18 above, an Issuer seeking Admissibility to Listing of Convertible Securities must also satisfy the below condition.
- 1.28 The Admissibility to Listing of Convertible Securities may only be sought if the Securities into which they are convertible or for which they are exchangeable or over which they give a right to buy or subscribe are already, or will become at the same time, admitted to trading on:
- i) a Regulated Market; or
 - ii) a multilateral trading facility as defined in MiFID; or
 - iii) any such market as deemed equivalent by the MFSA.

In exceptional circumstances, the MFSA may dispense with this requirement if it is satisfied that holders of the Convertible Securities have at their disposal all the information necessary to form an opinion about the value of the underlying Securities.

Supplementary Rules for Sukuk

General

- 1.29 In addition to Capital Markets Rules 1.7 to 1.18 above, an Issuer seeking Admissibility to Listing of Sukuk must also satisfy the below conditions.
- 1.30 An Issuer seeking Admissibility to Listing of Sukuk must appoint a Trustee or other appropriate independent party representing the interests of the Sukuk holders and with the right of access to appropriate and relevant information relating to the assets underlying the Sukuk.

Shariah Adviser

- 1.31 An Issuer seeking Admissibility to Listing of Sukuk shall appoint or engage one or more Shariah Adviser(s) to undertake the following responsibilities:
- i) advise on all structural and documentary aspects of the Sukuk issuance;
 - ii) issue a Shariah certification which clearly confirms that the structure, documentation, and underlying contractual arrangements of the Sukuk are in full compliance with the principles and rulings of Shariah;

- iii) apply *ijtihad* (independent reasoning) to ensure that every aspect of the Sukuk issuance complies with applicable Shariah principles;
- iv) such other functions as may be stipulated by the MFSA from time to time.

1.32 A Shariah Adviser shall be any of the following:

- i) a natural person;
- ii) a Shariah advisory firm; or
- iii) a Shariah committee of an entity licensed by the relevant regulatory authority to carry out Islamic financial activities.

Termination and Resignation of Shariah Adviser(s)

- 1.33 If an Issuer terminates the services of its Shariah Adviser(s), the Issuer shall immediately notify the MFSA in writing and it shall copy the Shariah Adviser(s) stating the reasons for such termination.
- 1.34 In the case of resignation, the Issuer shall immediately notify the MFSA in writing, stating the reasons for such resignation.
- 1.35 In the case of a termination or resignation of the Shariah Adviser(s), the Issuer shall ensure the immediate appointment of a new Shariah Adviser(s).

Eligibility Criteria

- 1.36 In order to be eligible for Admissibility to Listing, the Issuer must ensure that the Sukuk meet the following conditions:
- i) the Sukuk structure and transaction must be certified as Shariah-compliant by a Shariah Adviser in terms of Capital Markets Rule 1.31(ii); and
 - ii) the assets underlying the Sukuk must be clearly identified and legally owned or leased by the originator and/or Issuer or a Special Purpose Vehicle acting on its behalf.

Revision or Waiver of Terms and Conditions

- 1.37 Prior to the revision or waiver of any of the terms and conditions of the Sukuk, the Issuer must ensure that:
- i) the approval of the Sukuk holders with respect to the proposed revision or

waiver is obtained at a meeting convened and held for such purpose, and due process observed in securing their approval for the proposed revision or waiver, as applicable; and

- ii) all material information pertinent to the revision or waiver, including the impact on any credit rating and the Shariah Adviser's opinion on whether or not such revision or waiver complies with the principles of Shariah, has been communicated and disclosed to Sukuk holders.

- 1.38 Following a revision to the contractual terms of the Sukuk, a new *'aqd* (contract) shall be executed, expressly stipulating the revised information, thereby superseding the original contractual arrangement.

Chapter 2 - Approval of Prospectuses and Admissibility to Listing

- 2.1 An Issuer seeking Admissibility to Listing on the IFSM must apply to the MFSA to have its Professional Securities authorised for Admissibility to Listing.
- 2.2 An application for Admissibility to Listing on the IFSM must be made by the Issuer. This shall be submitted by the Sponsor on behalf of the Issuer.

Documents to be submitted for review

- 2.3 A copy of the following documents (where applicable) must be submitted to the MFSA at the time of initial submission of the Prospectus and/or application for authorisation for Admissibility to Listing, as appropriate:
- i) draft Prospectus (and any supplement);
 - ii) fully completed checklists to the respective annexes of Commission Delegated Regulation 2019/980 supplementing the Prospectus Regulation;
 - iii) any documentation incorporated by reference or forming a constituent part of the Prospectus;
 - iv) the letter referred to in Capital Markets Rule 2.5 below, if applicable;
 - v) the Application for Admissibility to Listing (as per Appendix 1);
 - vi) a certified copy of the memorandum and articles of association (or equivalent constitutional document) of the Issuer;
 - vii) appropriate corporate authorities sanctioning the application for Admissibility to Listing and/or publication of the Prospectus; and
 - viii) any material agreements or documentation relevant to the processing of the Application which may *inter alia* include valuation reports, trust deeds, transfer agreements and loan agreements.
- 2.4 The draft Prospectus and supporting documents referred to in Capital Markets Rule 2.3 above must be:
- i) in substantially complete form; and
 - ii) in an agreed electronic format.

A copy of any draft which is amended must be resubmitted, marked to show all changes made to the last draft reviewed by the MFSA.

Omission of Information

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

- i) be submitted to the MFSA in writing by the Issuer with the initial draft of the Prospectus;
- ii) identify the specific information concerned and the specific reasons for the omission; and
- iii) state why, in the opinion of the Issuer, one or more of the grounds identified in Article 18(1) of the Prospectus Regulation applies.

The MFSA will notify the Issuer whether or not the omission of certain information from the Prospectus has been authorised.

Additional Documents and Disclosures for Sukuk

2.6 Further to the documentation required in terms of Capital Markets Rule 2.3, Issuers applying for the Admissibility to Listing of Sukuk must also submit to the MFSA:

- i) Shariah certification issued by a Shariah Adviser in terms of Capital Markets Rule 1.31(ii);
- ii) copies of approval letters from any other relevant regulatory authorities, where applicable; and
- iii) any other material information in relation to the issue.

2.7 In addition to the applicable disclosures required in terms of the Prospectus Regulation, a Prospectus pertaining to Sukuk shall also include the following information:

- i) a description of the transaction associated with the Sukuk, including the mechanisms of structuring and risks associated with the issuance or offering of the Sukuk;
- ii) a declaration by the Issuer that (a) the proceeds will be used in a Shariah-compliant manner and (b) the returns or profits to be paid to Sukuk holders shall be derived in a Shariah-compliant manner;
- iii) a description of the mechanisms for the re-allocation of assets or proceeds should the Sukuk cease to be compatible or compliant with Shariah;
- iv) detailed information of the existing Sukuk issue to be refinanced by the proposed issue, where applicable;

- v) Shariah certification issued by a Shariah Adviser in relation to the Sukuk;
- vi) the identity of the Shariah Adviser including details of any conflicts of interest and related mitigating measures, if applicable;
- vii) a statement of the method and conditions for distributing the expected returns or profits to Sukuk holders, including the rate and basis for any payment calculations and the dates on which such distributions shall fall due;
- viii) disclosure of the underlying assets or projects associated with the Sukuk and related contracts, including their nature, valuation, and how they generate returns;
- ix) a statement that any amendment to the terms and conditions of the Sukuk contracts and documents, or any of the terms or conditions of issuance in general, are required to be acceptable to Shariah; and
- x) any other material information in relation to the issue as may be stipulated by the MFSA from time to time.

Application for listing of Offering Programmes

- 2.8 The application for Admissibility to Listing on the IFSM 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 1 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).

- 2.9 The final terms of each issue which is intended to be listed and traded, apart from being submitted in writing to the IFSM, must also be filed with the MFSA.

Chapter 3 - Continuing Obligations

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

Section A - Requirements applicable to all EEA Issuers

Preliminary

- 3.2 Once an Issuer's Securities have been duly authorised as Admissible to Listing on the IFSM, the Issuer shall be responsible for ensuring compliance with the continuing obligations of these Capital Markets Rules at all times.
- 3.3 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.
- 3.4 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 the opportunity to make representations as to why it should not be published.

Disclosure of Information

- 3.5 An Issuer must disclose to the public without delay information in relation, but not limited to, any of the following:
- i) 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, interest or return rates or paying agents;
 - ii) the redemption or cancellation of Securities in particular before the due date;
 - iii) any change to the scheduled maturity date of any existing Securities which are Admitted to Listing;
 - iv) any change of name of the Issuer;
 - v) any payment default, any decision relating to any bankruptcy, insolvency or cessation of payments; and

- vi) any reorganisation, merger, change of control of the Issuer or any substitution of the Issuer.

Equality of Treatment

- 3.6 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

- 3.7 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.
- 3.8 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:
- i) together with the notice concerning the meeting; or
 - ii) after an announcement of the meeting.
- 3.9 An Issuer must publish notices or distribute circulars concerning:
- i) the place, time and agenda of meetings of Securities holders;
 - ii) the payment of interest or returns;
 - iii) the exercise of any conversion, exchange, subscription or cancellation rights and repayment; and
 - iv) the rights of holders to exercise their rights in relation to (i) to (iii) above.
- 3.10 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.
- 3.11 An Issuer must designate, as its agent, a financial institution through which Securities holders may exercise their financial rights.
- 3.12 An Issuer may use electronic means to convey information to Securities holders, provided the Issuer complies with the following:

- i) a decision to use electronic means is taken in a general meeting;
- ii) 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;
- iii) 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;
- iv) 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
- v) 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 3.6 above.

Filing of Regulated Information

- 3.13 Whenever an Issuer discloses Regulated Information, it must at the same time file that information with the MFSA.
- 3.14 Where an Issuer proposes to amend its instrument of incorporation, it 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

- 3.15 Capital Markets Rules 3.16 to 3.22 apply where Malta is:
- i) an Issuer's home Member State; or
 - ii) 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.

For the purposes of Capital Markets Rules 3.16 to 3.22:

'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.

- 3.16 An Issuer must disclose Regulated Information in the manner set out in Capital Markets Rules 3.17 to 3.21 below.
- 3.17 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.
- 3.18 Regulated Information, other than Regulated Information as described in (i) and (ii) below must be communicated to the media in unedited full text:
- i) An annual financial report that is required under Capital Markets Rule 3.26 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.
 - ii) 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.
- 3.19 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.
- 3.20 The Issuer must use such media as may reasonably be relied upon for the effective dissemination of Regulated Information to the public, which media 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.
- 3.21 Security of receipt must be ensured by remedying as soon as possible any failure or disruption in the communication of Regulated Information.
- 3.22 An Issuer is not responsible for systemic errors or shortcomings at the media to which the Regulated Information has been communicated.
- 3.23 Regulated Information must be communicated in a way which:
- i) makes clear that the information is Regulated Information; and

- ii) 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.

3.24 Upon request, an Issuer must communicate to the MFSA, in relation to any disclosure of Regulated Information:

- i) the name of the person who communicated the information;
- ii) the security validation details;
- iii) the time and date on which the Regulated Information was communicated;
- iv) the medium in which the Regulated Information was communicated; and
- v) details of any embargo placed by the Issuer on the Regulated Information, if applicable.

3.25 An Issuer must not charge investors any specific cost for providing Regulated Information.

Other Requirements

3.26 In the case of guaranteed (other than state guaranteed) Securities, where the guarantor is not listed on a Trading Venue, the Issuer must publish the guarantor's annual report and accounts as soon as possible after they have been approved, and in any event by no later than the timeframe permitted under the guarantor's national legislation.

3.27 All documents and Announcements lodged with the Company Announcements Office of the IFSM must be in English.

3.28 An Issuer that has Securities admitted to trading on the IFSM (or has requested such admission) must comply with its obligations under the Market Abuse Regulation.

Annual Accounts

3.29 Subject to Capital Markets Rule 3.30 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.

3.30 The annual report and accounts must:

- i) have been prepared in accordance with the Issuer's national law and, in all material respects, with national accounting standards or International Financial Reporting Standards; and
- ii) have been independently audited and reported on, in accordance with:
 - a) the auditing standards applicable in an EEA State; or
 - b) an equivalent auditing standard acceptable to the IFSM.

3.31 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.

3.32 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.

3.33 An Issuer that meets the following criteria is not required to comply with Capital Markets Rules 3.29 to 3.32:

- i) 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 accounts; and
- ii) 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

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

- 3.35 The members of the audit committee as a whole must have competence relevant to the sector in which the Issuer is operating.
- 3.36 The obligation to establish an audit committee shall not apply to:
- i) 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;
 - ii) 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.
- 3.37 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.
- 3.38 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:
- i) the monitoring of the financial reporting process;
 - ii) the monitoring of the effectiveness of the company's internal control, internal audit where applicable, and risk management systems;
 - iii) the monitoring of the statutory audit of the annual and consolidated accounts;
 - iv) the making of recommendations in relation to the appointment of the statutory auditor;
 - v) the monitoring and reviewing of the statutory auditor's independence, and in particular the provision of additional services to the Issuer; and
 - vi) the development and implementation of a policy on the engagement of the statutory auditor to supply non-audit services.
- 3.39 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

- 3.40 An Issuer shall endeavour to abide by best practices of corporate governance including, but not limited to, the appointment of a board of directors which:
- i) maintains a clear division of responsibilities between the running of the board and the executives responsible for the day-to-day running the Issuer's business;
 - ii) is of sufficient size that the balance of skills and experience is appropriate for the requirements of the Issuer's business;
 - iii) provides an adequate mix of executive and non-executive directors, including independent non-executives;
 - iv) executes the essential roles of accountability, monitoring, strategy formulation and policy development;
 - v) meets regularly to discharge its duties effectively;
 - vi) actively participates in the appointment of senior officers such as the Chief Executive Officer;
 - vii) undertakes an annual evaluation of its own performance and that of its committees;
 - viii) communicates effectively with the market, the Issuer's shareholders and other key stakeholders; and
 - ix) avoids, or effectively mitigates, any conflicts of interest.
- 3.41 An Issuer shall include a corporate governance statement in its annual report which shall contain detailed information on at least the following:
- i) a description of the main features of the Issuer's internal control and risk management systems in relation to the financial reporting process;
 - ii) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings)
 - iii) the holders of any securities with special control rights and a description of those rights;
 - iv) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities
 - v) the rules governing the appointment and replacement of board members and

- the amendment of the articles of association; and
- vi) the powers of board members, and in particular the power to issue or buy back shares.

3.42 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 3.41 (i) and (ii) is made available.

Section B - Issuers whose Registered Office is in a Third Country

3.43 An Issuer whose registered office is in a Third Country must comply with:

- i) all applicable requirements in Section A of this Chapter, save where otherwise permitted in Section B; and
- ii) additional requirements set out in this Section B.

3.44 An Issuer whose registered office is in a Third Country may be exempt from the requirements in Section A on annual accounts, 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.

3.45 An Issuer whose registered office is in a Third Country may be exempt from the requirements in Capital Markets Rules 3.2 to 3.12 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.

3.46 An Issuer to whom Capital Markets Rules 3.38 and/or 3.39 apply must comply with the requirements in Capital Markets Rules 3.13 to 3.21 in respect of the information covered by the requirements laid down in the Third Country.

3.47 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 3.13 to 3.21. This Capital Markets Rule is also applicable to information that is not 'Regulated Information'.

Additional Requirements for Sukuk

3.48 In addition to the ongoing obligations set out in Section A or Section B (as applicable), an Issuer of Sukuk shall publicly disclose the following information on an annual basis, by no later than four (4) months from its financial year end:

- i) Annual reporting on the performance of the assets underlying the Sukuk; and
- ii) Annual Shariah recertification for the outstanding period of the Sukuk.

3.49 The following must be disclosed by the Issuer without undue delay:

- i) any material changes affecting the Shariah compliance of the Sukuk; and
- ii) any matters relating to the Shariah Adviser(s) which could adversely affect confidence in the Sukuk issuance and/or the integrity and independence of the Shariah Adviser(s).

Chapter 4 - Compliance and Enforcement

General

- 4.1 Issuers must comply with all Capital Markets Rules applicable to them.
- 4.2 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 make public the fact that an Issuer or any other person subject to the Capital Markets Rules is failing to comply with its obligations.

Dispensing and Modification of Capital Markets Rules

- 4.3
- 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.
- 4.4 An application to the MFSA to dispense with or modify a Capital Markets Rule must be in writing. The application must:
- i) contain a clear explanation of why the dispensation or modification is requested;
 - ii) include details of any special requirements, for example, the date by which

- the dispensation or modification is required;
- iii) contain all relevant information that should be brought to the MFSA's attention;
- iv) contain any statement or information that is required by the Capital Markets Rules to be included for a specific type of dispensation or modification; and
- v) include copies of all documents relevant to the application.

4.5 An application to dispense with or modify a Capital Markets Rule should ordinarily be made:

- i) for a Capital Markets Rule that is a continuing obligation, at least five Business Days before the proposed dispensation or modification is to take effect; and
- ii) for any other Capital Markets Rule, at least ten Business Days before the proposed dispensation or modification is to take effect.

Provision of Information to the MFSA

4.6 Issuers must provide to the MFSA without delay:

- i) all the information and explanations that the MFSA may require for the purpose of any decisions of the MFSA as to whether to grant an application for Admissibility to Listing of Securities and/or Approval of a Prospectus;
- ii) all the information that the MFSA considers appropriate in order to protect investors or to ensure the smooth operation of the IFSM; and
- iii) any other information or explanations that the MFSA may require for the purpose of verifying whether the Capital Markets Rules are being and have been complied with.

4.7 The MFSA may require information or documents from;

- i) Issuers and the persons that control them or are controlled by them, auditors and managers of the Issuer or Issuers seeking Admissibility to Listing, as well as financial intermediaries commissioned to ask for Admissibility to Listing; and
- ii) 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 4.7(i) 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.

Suspension and Discontinuation of Trading and Listing

- 4.8 Without prejudice to the relevant provisions of the FMA, the MFSA shall suspend the listing of a Security to protect investors or where the smooth operation of the IFSM otherwise is, or may be, temporarily jeopardized.
- 4.9 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 in writing to both the IFSM and the MFSA.
- 4.10 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.
- 4.11 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.
- 4.12 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.
- 4.13 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).
- 4.14 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 IFSM.

Investigations and Imposition of Sanctions

- 4.15 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.
- 4.16 If the MFSA considers that an 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 Issuer or any other person subject to the Capital Markets Rules a financial penalty or publish a statement censoring the Issuer subject to the provisions of the FMA or both.
- 4.17 An Issuer is obliged to give effect to, comply with and ensure the fulfilment of the terms of the Prospectus as approved by the MFSA. Failure to strictly adhere to these obligations shall be deemed a serious breach. In such instances, the MFSA may impose one or more of the following administrative sanctions, proportionate to the nature of the nature and gravity of the breach:
- i) the imposition of a penalty;
 - ii) the publication, at the Issuer's expense of a public statement relating to the breach; or
 - iii) the imposition of any other sanction allowed by the Capital Markets Rules or by the FMA.

Chapter 5 - Sponsors

General

5.1 This Chapter:

- i) shall apply to Sponsors providing sponsor services in relation to applications for Admissibility to Listing on the IFSM;
- ii) is supplementary to the requirements laid down in the FMA and the Financial Markets Act (Sponsors) Regulations (the “Regulations”); and
- iii) is binding on persons to whom it applies.

Application for Registration as a Sponsor

5.2 A person providing, or holding itself out as providing sponsor services in relation to applications for Admissibility to Listing on the IFSM must apply to the MFSA for registration as a Sponsor by submitting the following:

- i) a completed Sponsor Application Form (Appendix 2), accompanied by the required supporting documentation; and
- ii) the application fee specified in the Financial Markets Act (Fees) Regulations.

5.3 A person applying for registration as a Sponsor shall immediately inform the MFSA in writing of any material change relevant to the application.

5.4 A person granted registration as a Sponsor pursuant to an application for registration made under these Capital Markets Rules shall only be appointed by Issuers seeking authorisation for Admissibility to Listing on the IFSM.

Provided that Sponsors already registered as such in terms of the relevant provisions of the FMA and providing sponsor services in relation to applications for Admissibility to Listing on a local regulated market which is not the IFSM need not re-apply for registration in terms of these Capital Markets Rules, and shall automatically be eligible to act as Sponsors in relation to applications for Admissibility to Listing on the IFSM.

Eligibility

5.5 A Sponsor providing sponsor services in relation to applications for Admissibility to Listing on the IFSM shall be:

- i) a Sponsor already registered in terms of the relevant provisions of the FMA and providing sponsor services in relation to applications for Admissibility to Listing on a local regulated market which is not the IFSM;
- ii) 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; or
- iii) a company service provider, authorised under the Company Service Providers Act (Cap. 529 of the laws of Malta) which is: (a) not authorised as an under-threshold company service provider; and (b) not authorised as an individual company service provider.

5.6 In complying with the provisions of this Chapter, a Sponsor shall also consider its obligations in terms of its relevant registration or authorisation, including *inter alia* those pertaining to product governance, investor protection, organisation, conflicts of interest and the prevention of money laundering and funding of terrorism, as applicable.

Competence

5.7 A Sponsor shall:

- i) demonstrate to the MFSA that it has a sufficient relevant experience and expertise to provide sponsor services based on:
 - a) the knowledge and skills attained through professional education, training and practice;
 - b) the practical and professional experience gained through previous positions and/or appointments as Sponsor; and
- ii) employ a sufficient number of personnel with the experience and expertise necessary for it to adequately understand and apply:
 - a) the rules directly relevant to Sponsors as set out in this Chapter; and
 - b) the Capital Markets Rules applicable to the IFSM and the Prospectus Regulation.

5.8 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.

5.9 The onus of proving competence to provide sponsor services lies with the Sponsor.

Organisation

5.10 A Sponsor shall:

- i) 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;
- ii) adopt effective policies, procedures and controls vis-à-vis:
 - a) the identification, management and mitigation of conflicts of interest; and
 - b) compliance with the requirements of this Chapter.

Responsibilities

5.11 In the case of any application for Admissibility to Listing on the IFSM, the Sponsor's responsibilities are:

- i) to act 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 Issuer;
- ii) to ensure that the Issuer is guided and advised as to the application of these Capital Markets Rules;
- iii) to be satisfied and to confirm in writing 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 Issuer 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;
- iv) to communicate all matters relevant to applications for Admissibility to Listing to the MFSA;
- v) 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;
- vi) to disclose to the MFSA without delay any information or explanations that the MFSA may require for the purpose of verifying any information which should be taken into account in considering an application for Admissibility to Listing; and

- vii) to carry out adequate due diligence on the shareholders and directors of the Issuer, the Shariah Adviser(s) as well as any guarantor/s (as applicable), to ensure that the reputation and integrity of the market is upheld.

5.12 A Sponsor shall not delegate any of its responsibilities, nor shall it permit any other person to perform its role.

Principles of conduct

5.13 In carrying out its duties, a Sponsor shall:

- i) act with integrity, due care and skill;
- ii) deal with the MFSA in an honest, open and co-operative manner;
- iii) deal with all enquiries raised by the MFSA promptly;
- iv) 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 Issuer; and
- v) take sufficient 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

5.14 A Sponsor shall be independent of an Issuer and in any event shall not act as such if the Sponsor, or the Group of which the Sponsor forms part, has:

- i) an interest, or a holding that is equivalent to 5% or more of the Securities of the Issuer or any other company in the Issuer's Group. In assessing the percentage of the interest, the Securities for which application for Admissibility to Listing has been made are to be treated as having already been issued; or
- ii) any relationship with, other than its role as Sponsor, or a financial interest (whether directly or indirectly) in the Issuer or any other company in the Issuer'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.

5.15 Where applicable, 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 5.14.

5.16 A Sponsor shall not be considered to be independent of an Issuer 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 Issuer or any other company

in the Issuer's Group. For the purpose of this Capital Markets Rule, a holding of 5% or more in the Securities of the Issuer or any other company in the Issuer's Group will be deemed to be a material interest.

- 5.17 Where applicable, a Sponsor shall ensure that no Securities are placed with connected clients of the Sponsor unless placed with a fund manager for the purpose of its business.
- 5.18 Where applicable, 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.
- 5.19 A Sponsor must, for so long as it is appointed by an Issuer, take all necessary 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:
- i) create the perception that it may not be able to perform its functions properly; and/or
 - ii) compromise its ability to fulfil its obligations to the MFSA when appointed as Sponsor; and/or
 - iii) negatively impact market confidence in Sponsors.

For each application in respect of which it acts or intends to act as Sponsor in accordance with these 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

- 5.20 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.
- 5.21 A Sponsor shall only submit to the MFSA an application for Admissibility to Listing on behalf of an Issuer once it is satisfied, after due and careful enquiry, that:

- i) the Issuer has satisfied all applicable requirements of these Capital Markets Rules and the Prospectus Regulation (as applicable);
- ii) the directors of the Issuer have established procedures which enable it to comply with these Capital Markets Rules and the Prospectus Regulation on an ongoing basis (as applicable); and
- iii) the directors of the Issuer 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 Issuer.

5.22 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.

5.23 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 5.21 have been satisfied.

Review of an Application for Admissibility to Listing

5.24 Throughout the duration of an application for Admissibility to Listing, the Sponsor shall ensure that the Issuer and the documentation accompanying the application satisfy the requirements mandated by these Capital Markets Rules and the Prospectus Regulation (as applicable).

5.25 The Sponsor shall ensure that:

- i) 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;
- ii) fully completed checklists to the respective annexes of Commission 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;
- iii) any subsequent drafts of documents filed with the MFSA are submitted in tracked changes;

- iv) the accompanying data to the prospectus in XML format is in line with the respective requirements as mandated by *inter alia* Commission Delegated Regulation 2019/979.
- v) it carries out adequate due diligence on the shareholders and directors of the Issuer, as well as any guarantor/s (if applicable), to ensure that the reputation and integrity of the market is upheld;
- vi) it is satisfied that the directors of the Issuer understand their responsibilities and obligations under these Capital Markets Rules and the Prospectus Regulation (as applicable);
- vii) the required historical financial information has been audited and prepared in line with the applicable accounting standards;
- viii) 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; and
- ix) it is satisfied that any pro forma financial information, profit forecasts and/or estimates have been prepared after due and careful enquiry by the Issuer.

Record keeping

- 5.26 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:
- i) where a declaration, opinion or confirmation is provided by a Sponsor to the MFSA, the basis of that declaration, opinion or confirmation;
 - ii) where a Sponsor provides guidance to an issuer applying for Admissibility to Listing, the basis upon which such guidance is given; and
 - iii) the steps taken to comply with its obligations under this Chapter.
- 5.27 Records shall:
- i) be accessible and capable of timely retrieval; and
 - ii) include material correspondence regarding the provision of sponsor services, including any advice or guidance given to an Issuer seeking Admissibility to Listing in relation to its responsibilities under the Capital Markets Rules and Prospectus Regulation (as applicable).

Ongoing obligations

- 5.28 A Sponsor must comply at all times with the criteria set out in Capital Markets Rule 5.5 and Capital Markets Rule 5.7 in order to retain its registration with the MFSA.

- 5.29 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 3) that it continues to satisfy the criteria for registration as a sponsor as set out in Capital Markets Rule 5.5 and Capital Markets Rule 5.7.
- 5.30 A Sponsor must notify the MFSA in writing as soon as possible if:
- i) 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 5.5 and Capital Markets Rule 5.7; or
 - ii) 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
 - iii) it, or any of its directors, partners or employees engaged in the provision of sponsor services are:
 - a) convicted of any offence, criminal or otherwise; or
 - b) adjudicated bankrupt; or
 - c) 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
 - d) 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;
 - iv) 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 and Resignation

- 5.31 If an Issuer terminates the services of its Sponsor, the Issuer shall immediately notify the MFSA in writing and it shall copy the Sponsor stating the reasons for such termination.
- 5.32 If a Sponsor resigns, the Sponsor shall immediately notify the MFSA in writing, stating the reasons for such resignation. A copy of the notification shall also be sent to the Issuer.

- 5.33 In the case of a termination or resignation of a Sponsor, the Issuer 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.

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Appendix 1 – Application for Admissibility to Listing

To: *Head, Capital Markets Supervision Function, MFSA*

Details of securities to be listed

_____ [insert name of Issuer(s)] (the “Issuer(s)”) hereby apply for the Securities detailed below to be approved for Admissibility to Listing by the MFSA and to be admitted to listing and trading on the IFSM.

Amounts and descriptions of Securities for which application is now being made (where the Securities are to be issued under a programme, give a description of the programme and the maximum amount of securities which may be listed at any one time).

Type of issue for which application is being made

Are the Securities for which application is now made

Yes/No

A

intended to be fully fungible with an existing class of security?

B

the subject of an application for listing and/or trading in another Member State either within the previous six months, now or in the near future?

If yes, state when and on which Trading Venue(s)

Declaration

We acknowledge our obligations arising under the Capital Markets Rules of the MFSA and the legal implications of listing under the Financial Markets Act, and regulations to be construed therewith. In addition, we acknowledge our obligations under the Admission Requirements and Disclosure Standards of the IFSM. Accordingly, we declare that:

-
- A all the conditions for Admissibility to Listing in the Capital Markets Rules, and conditions for Admissibility to Trading in the Admission Requirements and Disclosure Standards of the IFSM which are required to be fulfilled prior to application have been fulfilled in relation to the Issuer(s) and the Securities for the admission of which application is now made;
-
- B either
- 1 a prospectus has been drawn up in accordance with the Prospectus Regulation and has been approved by the MFSA; ☐ or
 - 2 a prospectus has been drawn up in accordance with the Prospectus Regulation and has been approved by the competent authority of a Member State other than Malta; ☐ and
-
- C all the documents and information required to be included in the application have been or will be supplied in accordance with the Capital Markets Rules of the MFSA and the Admission Requirements and Disclosure Standards of the IFSM in respect of the application have been or will be complied with.
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We undertake to comply with the Capital Markets Rules of the MFSA and the Admission Requirements and Disclosure Standards of the IFSM so far as applicable to the Issuer(s).

We acknowledge the obligation to comply with the continuing obligations of the Capital Markets Rules and also acknowledge the obligation to comply with the continuing obligations of the Admission Requirements and Disclosure Standards of the IFSM.

Signature	
Full Name	
Position	
On behalf of	
Date	

DRAFT

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