

CHAPTER 10

Alternative Company Listing Requirements

This Chapter details the requirements relating to the authorisation for Admissibility to Listing of Securities to the Alternative Company Listing (ACL).

General

- 10.1 The MFSA will consider applications for Admissibility to Listing of Securities on the ACL if the Applicant does not fully meet the listing requirements of Chapter 3 of these Capital Markets Rules.
- 10.2 The MFSA will refuse an application for admission to the ACL if it is satisfied that the Applicant fully meets the listing requirements of Chapter 3 of these Capital Markets Rules.
- 10.3 The MFSA may authorise Securities as Admissible to Listing on the ACL subject to any special conditions which the MFSA considers appropriate in the interests of protecting investors and of which the MFSA has explicitly informed the Applicant.
- 10.4 In exceptional circumstances, the MFSA may consider an application for Admissibility to Listing on the ACL by an Applicant which does not comply with all of the entry requirements contained in this Chapter, provided that the MFSA is satisfied that alternative conditions have been met which provide equivalent information and investor protection. The MFSA must be consulted in advance in such circumstances.
- 10.5 The MFSA may refuse an application for admission to the ACL if the Applicant does not comply with any special condition which the MFSA considers appropriate and of which the MFSA has informed the Applicant and/or its Sponsor. The MFSA may also refuse an application for Admissibility to Listing to the ACL of Securities which are already officially listed in another Member State when the Applicant has failed to comply with the obligations resulting from Admission to Listing in that other Member State.
- 10.6 Without prejudice to any of the above, the MFSA may refuse an application for Admissibility to Listing on the ACL if it considers that the application is not in the interest of investors generally.
- 10.7 The provisions of Chapter 1 on the Powers of the MFSA, Chapter 11 on Takeover Bids and Chapter 12 on Shareholders' Rights are applicable to those Issuers whose Securities have been Admitted to Listing on the ACL.

Application for Admissibility to Listing

- 10.8 Any application for Admissibility to Listing on the ACL shall:
- 10.8.1 be made in writing on the application form set out in Appendix 10.1 and signed by all the Directors and/or authorised representatives;
 - 10.8.2 be accompanied by a Prospectus drawn up in accordance with the requirements of Commission Regulation 809/2004; and
 - 10.8.3 contain a declaration by the Sponsor relating to the satisfaction by the Applicant of Capital Markets Rules 10.33.1 and 10.34
- 10.9 An application for Admissibility to Listing on the ACL of any Class of Securities must:
- 10.9.1 if no Securities of that Class are already Admitted, relate to all Securities of that Class, issued or proposed to be issued; or
 - 10.9.2 if Securities of that Class are already Admitted, relate to all further Securities of that Class, issued or proposed to be issued. (*Directive 2001/34/EC Articles 49, 56*)

Where an Applicant has a Substantial Shareholder, it must demonstrate, by means of the presence of independent Directors on the board or otherwise to the satisfaction of the

MFSA, that it is capable at all times of operating and making decisions independently of any such shareholder and all transactions and relationships in the future between the Applicant and any Substantial Shareholder must be at arms' length and on a normal commercial basis.

Basic Conditions applicable for all Securities

- 10.10 A Company applying for Admissibility to Listing on the ACL of its Securities must:
- 10.10.1 appoint the services of a Sponsor (see Capital Markets Rule 10.32);
 - 10.10.2 be duly incorporated or validly established under the laws of its country of incorporation or establishment and operating in conformity with the laws and regulations to which it is subject; (*Directive 2001/34/EC Articles 42,52*)
 - 10.10.3 have published Accounts that conform with Generally Accepted Accounting Principles and Practice or equivalent standards;
 - 10.10.4 ensure that the Securities listed are freely transferable (*Directive 2001/34/EC Articles 46, 54*)
- 10.11 The issue of Securities for which authorisation for Admissibility to Listing on the ACL is sought must be made by a Company whose fully paid up share capital must be in conformity with the relevant laws of its place of incorporation or establishment but, in any case, cannot be less than fifty thousand euro (€50,000) or the equivalent value in any other convertible currency.
- 10.12 The Securities for which authorisation for Admissibility to Listing is sought must:
- 10.12.1 be duly authorised according to the Applicant's Memorandum and Articles of Association or equivalent constitutional document; and
 - 10.12.2 be duly authorised by all necessary statutory and other authorisations for the creation and issue of such Securities in terms of any applicable system of law. (*Directive 2001/34/EC Articles 45, 53*)
- 10.13 In the case the Company has been generating revenue for less than two (2) years, the Directors and all employees must agree not to sell any interests they may have in the Company's Securities for at least one (1) year from the date when the securities are Admitted to Listing on the ACL. The Prospectus should also include a statement that all the persons who, at the time of the application for authorisation for Admissibility to Listing on the ACL, are Directors or employees of the Issuer have agreed not to dispose of any interest in the Securities of that Issuer for a period of one (1) year from the date of the Admission to Listing on the ACL, save in the event of an intervening court order, a takeover offer relating to that Issuer's shares becoming or being declared unconditional or the death of a Director or employee;
- 10.14 Every Prospectus and Supplements thereto required pursuant to this Chapter 10 shall contain:
- 10.14.1 a prominent risk warning that Alternative Company Listings are markets designed primarily for companies to which a higher investment risk than that associated with established companies tends to be attached and that a prospective investor should be aware of the potential risks in investing in such companies and should make the decision to invest only after careful consideration and consultation with his or her own independent financial adviser; and
 - 10.14.2 a prominent disclaimer that the MFSA accepts no responsibility for the accuracy or completeness of the Prospectus and expressly disclaims any liability

whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of the Prospectus.

Effective Date of Authorisation

- 10.15 Authorisation for Admissibility to Listing of any Securities on the ACL becomes effective only when the MFSA issues an official notice to that effect.
- 10.16 The Applicant must pay any fees due in relation to an application for Admissibility to Listing on the ACL as set by the MFSA from time to time.

Specific Conditions for Listing of Equity Securities

Market Capitalisation

- 10.17 The expected market capitalisation of the Equity Securities for which application for Admissibility to Listing on the ACL is sought must be of at least one million euro (€1,000,000) or the equivalent value in any other convertible currency. If such Market Value cannot be assessed the Applicant's capital and reserves, including profit or loss, from the last financial year must be of at least one million euro (€1,000,000). Further issues of Equity Securities of a Class already authorised as Admissible to Listing are not subject to this limit. (*Directive 2001/34/EC Article 43*)
- 10.18 Notwithstanding Capital Markets Rule 10.17, the MFSA may admit Equity Securities of a lower value if it is satisfied that there will be an adequate market for the Equity Securities concerned. (*Directive 2001/34/EC Article 43(2)*)

Denomination

- 10.19 A Company may apply for Admissibility to Listing of Equity Securities on the ACL provided that the minimum subscription amount is of at least €10,000 per individual investor. Where a person is subscribing for securities on behalf of third parties, such minimum amount shall apply to each underlying beneficial owner:

Provided that the minimum subscription amount shall not apply to those persons already having a minimum holding of €10,000 in the equity securities being listed on the ACL.

Transferability

- 10.20 The Equity Securities for which authorisation for Admissibility to Listing is sought must be freely transferable. (*Directive 2001/34/EC Article 46(1)*)
- 10.21 The MFSA may treat Equity Securities which are not fully paid up as freely transferable if arrangements have been made to ensure that the transferability of such Equity Securities is not restricted and that dealing is made open and proper by providing the public with all appropriate information. (*Directive 2001/34/EC Article 46(2)*)
- 10.22 The MFSA may, in the case of the authorisation for Admissibility to Listing of Equity Securities which may be acquired subject to approval, derogate from Capital Markets Rule 10.20 only if the applicable approval procedure does not, in the opinion of the MFSA, disturb the market. (*Directive 2001/34/EC Article 46(3)*)

Shares in the Hands of the Public

- 10.23 An Applicant on the ACL shall, together with its application for Admissibility to Listing demonstrate to the satisfaction of the MFSA that at least twenty-five percent (25%) of each Class of Shares in respect of which application for Admissibility to Listing has been made must be in the hands of the public. Exceptionally a lower percentage may be accepted by the MFSA when, in view of the large number of Shares of the same Class and the extent of their distribution to the market, the market will operate properly with a lower percentage. *(Directive 2001/34/EC Article 48)*
- 10.24 Shares are not considered to be held in public hands if they are held, directly or indirectly by:
- 10.24.1 a Director of the Applicant or any of its Subsidiary Undertakings;
 - 10.24.2 a person connected with a Director of the Applicant or of any of its Subsidiary Undertakings;
 - 10.24.3 any person who under any agreement has a right to nominate a person to the Board of Directors of the Applicant; or
 - 10.24.4 a Substantial Shareholder.
- 10.25 Where Admissibility to Listing is sought for a further block of shares of the same class, the MFSA may assess whether a sufficient number of shares has been distributed to the public in relation to all the shares issued and not only in relation to this further block. *(Directive 2001/34/EC Article 48(2))*

Accounts

- 10.26 An Applicant seeking authorisation for Admissibility to Listing of its Equity Securities must have published or filed annual accounts in accordance with national law for the three financial years preceding the application for Admissibility to Listing. By way of exception the MFSA may derogate from this condition where such derogation is desirable in the interests of the Applicant or of investors and where the MFSA is satisfied that investors have the necessary information available to be able to arrive at an informed decision on the Applicant and the Equity Securities for which application for Admissibility to Listing is sought. *(Directive 2001/34/EC Article 44)*
- 10.27 The MFSA will grant authorisation for Admissibility to Listing to Shares of a company incorporated in a non-EU Member State or EEA State that are not listed whether in the company's country of incorporation or in the country in which the majority of its Shares are held only if the MFSA is satisfied that the absence of a listing is not due to the need to protect investors. *(Directive 2001/34/EC Article 51)*

Specific Conditions for Listing of Debt Securities

- 10.28 A Company may apply for the Admissibility to Listing of Debt Securities on the ACL:
- 10.28.1 without having a trading record;
 - 10.28.2 provided the Company offers at least two hundred euro (€200,000) or the equivalent value in any other convertible currency of issued debt capital of the Class to be Admissible to Listing. In the case of Tap Issues where the amount of Debt Securities is not fixed this provision shall not apply; and
 - 10.28.3 provided that the minimum subscription amount is at least €50,000 per individual investor and a subsequent minimum holding of €50,000 per individual investor is maintained throughout his/her investment. Where a person is subscribing for securities on behalf of third parties, such minimum amount shall apply to each underlying beneficial owner.

Convertible Securities

- 10.29 Securities convertible or exchangeable into another Class of Securities or options or warrants to subscribe or purchase such other Class, may become authorised as Admissible to Listing on the ACL only if that other Class of Securities is or will become at the same time a Class of Securities authorised as Admissible to Listing. However, the MFSA may grant an application for Admissibility in respect of such Securities, options or warrants in other circumstances if they are satisfied that holders have the necessary information available to form an opinion concerning the value of the underlying Securities to which such Securities, options or warrants relate. (*Directive 2001/34/EC Article 59*)

Directors

- 10.30 The Directors of an Applicant must collectively have appropriate expertise and experience for the management of the Company's business.
- 10.31 An Applicant must ensure that each of its Directors is free from any conflict of interest unless the Applicant can demonstrate that arrangements are in place to avoid detriment to its interests.

Sponsors

- 10.32 A Company seeking authorisation for Admissibility to Listing on the ACL must appoint a Sponsor in terms of Capital Markets Rule 10.10.1 who must:
- 10.32.1 satisfy itself that the Applicant has satisfied all relevant conditions for authorisation for Admissibility to Listing on the ACL;
 - 10.32.2 guide and advise the Applicant as to the requirements of the MFSA on authorisation for Admissibility to Listing on the ACL and on an ongoing basis; and
 - 10.32.3 conduct the application process with the MFSA on behalf of the Applicant.

- 10.33 The responsibilities of a Sponsor owed to the MFSA, are:
- 10.33.1 to confirm to the MFSA in writing in such form as the MFSA may from time to time prescribe:
 - 10.33.1.1 that, in relation to any application for authorisation for Admissibility to Listing on the ACL which requires the production of a Prospectus:
 - 10.33.1.1.1 in its opinion, it is satisfied that the Issuer and the Securities the subject of the application are appropriate to be authorised as Admissible to Listing on the ACL;
 - 10.33.1.1.2 the Directors of the Issuer have received advice and guidance, from the Sponsor or other appropriate professional adviser, as to the nature of their responsibilities and obligations to ensure compliance by the Issuer with the rules contained in this Chapter;
 - 10.33.1.1.3 to the best of the knowledge and belief of the Sponsor, having made due and careful enquiry, all relevant requirements of the Capital Markets Rules have been complied with; and
 - 10.33.1.2 immediately when it ceases to be the Applicant's Sponsor giving full reasons for such cessation; and
 - 10.33.2 to provide to the MFSA such information in such form and within such time limits as the MFSA may require.

10.34 A Sponsor must:

- 10.34.1 provide the MFSA with any information known to it which the MFSA may reasonably require for the purpose of verifying whether these Capital Markets Rules have been complied with by it or the Applicant;
- 10.34.2 comply with any relevant eligibility criteria established by the MFSA from time to time;
- 10.34.3 confirm that all matters known to it which should be taken into account by the MFSA in considering the particular application have been disclosed in the Prospectus or otherwise in writing to the MFSA.

10.35 A Sponsor appointed under this Chapter would need to satisfy the requirements of Capital Markets Rule 2.5 and 2.7 to 2.11.

Prospectus

10.36 The requirements of Chapter 4 of these Capital Markets Rules relating to the contents, approval and publication of the Prospectus shall also apply to Applicants seeking Admissibility to Listing of their Securities on the ACL, other than the provisions of Capital Markets Rules 4.1A, 4.2, 4.31, 4.39, 4.45-4.48, 4.53-4.57, Appendix 4.1 and Appendix 4.

Advertising

- 10.37 The MFSA shall have the power to exercise control over the the compliance of any advertising activity relating to the Admissibility to Listing of Securities on the ACL.
- 10.38 Any Advertisements shall be clearly recognisable as such. Advertisements must also state that a Prospectus has been or will be published and must indicate where investors are or will be able to obtain copies of such Prospectus.
- 10.39 An Applicant is obliged to ensure that the content of any such advertising:
- 10.39.1 is accurate, factual and not misleading;
 - 10.39.2 is consistent with the information contained in the Prospectus, if already published, or with the information required to be in the Prospectus if the Prospectus is published afterwards. (*Directive 2003/71/EC Article 15*)

Directors' Responsibilities

- 10.40 An Issuer must:
- 10.40.1 ensure that its Directors accept full responsibility, collectively and individually, for the Issuer's compliance with this Chapter; and
 - 10.40.3 adopt a code of dealing by board resolution and take all proper and reasonable steps to ensure compliance by its Directors and relevant employees with the said code of dealing.

Continuing Obligations (Directive 2004/109/EC)

- 10.41 In the case of Issuers whose Securities are authorised as Admissible to Listing on the ACL, the provisions of Chapter 5 of these Capital Markets Rules shall be disapplied except as follows:

Capital Markets Rules

5.1; 5.4; 5.6-5.9	<i>Preliminary Sections</i>
5.16.10; 5.16.14; 5.17	<i>Company Announcements</i>
5.28-5.29; 5.32, 5.33-5.37	<i>Information Requirements</i>
5.55.1-5.55.2; 5.56-5.58; 5.63; 5.67-5.69	<i>Annual Financial Report</i>
5.72-5.74	<i>Audit Report</i>
5.74-5.75	<i>Half-Yearly Report</i>
5.76-5.80	<i>Condensed set of Financial Statements</i>
5.81-5.85	<i>Interim Directors' Report</i>
5.117; 5.123-5.124; 5.127	<i>Audit Committee</i>
5.146	<i>Memorandum & Articles of Association</i>
5.176-5.194; 5.196-5.197; 5.199-5.204	<i>Notification of major holdings</i>
5.205-5.214	<i>Notification by management companies</i>
5.215-5.216	<i>Calendar of trading days</i>
5.217-5.218	<i>Exemptions for Third-country Issuers</i>
5.219-5.237	<i>Equivalence Third-Country Issuers</i>
5.238-5.245	<i>Use of Languages</i>
5.246	<i>Access to Regulated Information</i>
5.247	<i>Filing of Regulated Information</i>
5.248-5.256	<i>Disclosure of Regulated Information</i>
5.257-5.258	<i>Disclosure of information in non-EU</i>

10.42 Notwithstanding the provisions of Capital Markets Rule 10.41 above, Issuers exclusively of Debt Securities Admitted to Listing on the ACL the denomination per unit of which is at least one hundred thousand Euro (€100,000) or, in the case of Debt Securities denominated in a currency other than Euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least one hundred thousand Euro (100,000), shall be exempted from the obligation to draw up and make available to the public the half-yearly financial report and the interim Directors' Report.

Corporate Governance (Directive 2006/46/EC)

10.43 A company whose Securities are Admitted to Listing on the ACL shall include a corporate governance statement in its Annual Financial Report. That statement shall be included as a specific section of the Annual Report and shall contain at least the following information:

10.43.1 a reference to:

- (i) the corporate governance code to which the company is subject, and/or
- (ii) the corporate governance code which the company may have voluntarily decided to apply, and/or
- (iii) all relevant information about the corporate governance practices applied beyond the requirements under national law.

10.43.2 where points (i) and (ii) apply, the company shall also indicate where the relevant texts are publicly available. Where point (iii) applies, the company shall make its corporate governance practices publicly available.

10.43.3 to the extent to which a company, in accordance with national law, departs from a corporate governance code referred to under Capital Markets Rule 10.43.1 (i) or (ii), an explanation by the company as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code referred to Capital Markets Rule 10.43.1 (i) or (ii), it shall explain its reasons for doing so;

10.43.4 a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process;

10.43.5 unless the information is already fully provided for in national laws or regulations, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised;

10.43.6 the composition and operation of the Board of Directors and their committees.

10.44 An Issuer may elect to set out the information required by Capital Markets Rule 10.43 in a separate report published together with the annual report or by means of a reference to 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 Rule 10.34 is made available.

10.45 Issuers that only issue Securities other than Equity Securities shall be exempt from the requirement to disclose in their corporate governance statement the information prescribed by Capital Markets Rules 10.43.1-10.43.3, 10.43.5-10.43.6 unless such companies have

issued shares which are traded in a multilateral trading facility, within the meaning of Article 4(1), point (15) of Directive 2004/39/EC.

Publication of Information

10.46 The MFSA may, at any time:

- 10.46.1 require an Applicant to provide to the MFSA such information in such form and within such time limits as the MFSA may require;
- 10.46.2 require an Applicant to publish such information in such form and within such time limits as it considers appropriate; and
- 10.46.3 itself publish such information if an Issuer fails to comply with Capital Markets Rule 10.46.2.

Sanctions against the Issuer

10.47 Without prejudice to the generality of its rights and powers in terms of the FMA or other applicable law, the MFSA may suspend or discontinue the listing of Securities on the ACL where:

- 10.47.1 dealings in those Securities are not being conducted in an orderly manner; or
- 10.47.2 protection of investors so requires, or
- 10.47.3 the integrity and reputation of the market has been or may be impaired by dealings in those Securities;

and will discontinue the listing of those Securities where those securities have been suspended for six (6) months or more.

Sanctions against a Director

10.48 If the MFSA considers that a contravention of these Capital Markets Rules by an Applicant is due to a failure by all or any of its Directors to discharge their responsibilities, it may do one or more of the following:

- 10.48.1 censure the relevant Directors;
- 10.48.2 publish the fact that those Directors have been censured;
- 10.48.3 in the case of wilful or persistent failure by a Director to discharge his responsibilities, state publicly that in its opinion the retention of office by the Director is prejudicial to the interest of investors; and
- 10.48.4 if the Director remains in office following a public censure by the MFSA under paragraph 10.36.3 above, suspend trading in or discontinue the listing of the Securities, or any Class of Securities.

Sanctions against a Sponsor

10.49 If the MFSA considers that a contravention of these Capital Markets Rules is due to a failure by the Sponsor to discharge its responsibilities, the MFSA may report such contravention to the competent authority for appropriate procedures to be adopted in relation to the Sponsor.