

CHAPTER 4

APPLICATION FOR ADMISSIBILITY TO LISTING

This chapter gives detailed information:

- a) as to what is required to be submitted with an application for admissibility to listing.;
- b) on the contents, approval and publication of the Prospectus;
- c) on the approval of the application for admissibility to listing.

Application for admissibility to listing

- 4.1 Securities shall be admitted to listing on a Regulated Market operating in Malta only upon the approval of an application for Admissibility to Listing by the MFSA.
- 4.1A An Applicant shall notify the MFSA with its' intention to submit an Application for Admissibility to Listing at least one month before submitting the application (Appendix 4.1) and the first draft of the prospectus.

Application process

- 4.2 The Applicant shall submit the following documents to the MFSA:
 - 4.2.1 a complete application for authorisation for Admissibility to Listing in the form set out in Appendix 4.1 together with the relevant application fee;
 - 4.2.2 a Prospectus and any supplements;
 - 4.2.3 one (1) copy of the Issuer's audited Annual Accounts for each of the last three (3) Financial Years prepared on the basis described in these Capital Markets Rules;
 - 4.2.4 where the Applicant forms part of a Group of which the Applicant is a member, the Consolidated accounts of the Group of which the Issuer is a member for each of the last three (3) Financial Years prepared in accordance with either Generally Accepted Accounting Principles and Practice or with equivalent standards;
 - 4.2.5 the audited Annual Accounts of any guarantor of the Applicant for each of the last three (3) Financial Years prepared in accordance with either Generally Accepted Accounting Principles and Practice or with equivalent standards;
 - 4.2.6 application forms to subscribe for or purchase Securities;
 - 4.2.7 formal notices (see Capital Markets Rule 4.48);
 - 4.2.8 the letter referred to in Capital Markets Rule 4.25 (omission of information);
 - 4.2.9 a completed and signed directors' declaration(see Appendix 4.3);
 - 4.2.10 a certified copy of the Memorandum and Articles of Association of the Applicant, highlighting any proposed amendments as part of the issue;
 - 4.2.11 the information required to be provided by the Sponsor in terms of Chapter 2, in particular Capital Markets Rule 2.6.5 (confirmation of independence), Capital Markets Rule 2.14 (working capital) and Capital Markets Rule 2.15 (profit forecast or estimates) where relevant;
 - 4.2.12 appropriate corporate authorities sanctioning the application for Admissibility to Listing (see Capital Markets Rule 1.8);
 - 4.2.13 a valuation report prepared by an independent Expert in compliance with the requirements of Chapter 7 if the Applicant is a Property Company or intends to issue Debt Securities which are secured on Property.

Additional Documents

- 4.3 The MFSA may require a copy of any other document which it deems useful, necessary or beneficial in order for it to decide upon the authorisation of Admissibility to listing.
- 4.4 All documents forwarded to the MFSA by an Applicant shall become and remain the property of the MFSA.
- 4.5 The Issuer must retain copies of the documents referred to in Capital Markets Rule 4.2 for a period of not less than five (5) years.

Scope of Chapter 4

- 4.6 The provisions of this Chapter shall not apply to:
- 4.6.1 Units issued by collective investment undertakings other than the closed-end type;
 - 4.6.2 Non-equity Securities issued by a Member State or an EEA State or by one of a Member State's or an EEA State's regional or local authorities, by public international bodies of which one or more Member States or EEA States are members, by the European Central Bank or by the central banks of the Member States or EEA States;
 - 4.6.3 shares in the capital of central banks of the Member States or EEA States;
 - 4.6.4 Securities unconditionally and irrevocably guaranteed by a Member State or EEA State or by one of a Member State or EEA State's regional or local authorities;
 - 4.6.5 Securities issued by associations with legal status or non-profit making bodies, recognized by a Member State or EEA State, with a view to their obtaining the means necessary to achieve their non-profit making objectives;
 - 4.6.6 Non-equity Securities issued in a continuous or repeated manner by Credit Institutions where the total consideration for the offer in the European Union is less than seventy-five million Euro (€75 million), which amount shall be calculated over a period of twelve months provided that these securities:
 - 4.6.6.1 are not subordinated, convertible or exchangeable;
 - 4.6.6.2 do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument
 - 4.6.7 Non-equity Securities issued in continuous or repeated manner by Credit Institutions provided that these securities:
 - 4.6.7.1 are not subordinated, convertible or exchangeable;
 - 4.6.7.2 do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument;
 - 4.6.7.3 materialise reception of repayable deposits;
 - 4.6.7.4 are covered by a deposit guarantee scheme under Directive 94/19/EC of the European Parliament and of the Council on deposit-guarantee schemes
 - 4.6.8 non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment, or other form of immovable property or part thereof and where the shares cannot be sold on without this right being given up;

Provided that an Issuer or a person asking for Admissibility to Listing in terms of Capital Markets Rule 4.6.2, Capital Markets Rule 4.6.4 and Capital Markets Rule 4.6.6, may draw up a Prospectus in terms of this Chapter. Where securities are guaranteed by a Member State, an Issuer or a person asking for Admission to Listing shall be entitled to omit information about such guarantor.

Exemption from publishing a Prospectus

- 4.7 The obligation to publish a Prospectus shall not apply to:
- 4.7.1 securities fungible with securities already admitted to trading on the same regulated market representing, over a period of 12 months, less than 20 per cent of the number of securities already admitted to trading on the same regulated market;
 - 4.7.2 shares issued in substitution for shares of the same Class already Admitted to Listing on the same regulated market, if the issuing of such shares does not involve any increase in the issued capital;

- 4.7.3 Securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information which is regarded by the MFSA as being equivalent to that of the Prospectus;
- 4.7.4 Securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is available containing information which is regarded by the MFSA as being equivalent to that of the Prospectus;
- 4.7.5 shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same Class as the shares in respect of which such dividends are paid, provided that the said shares are of the same Class as the shares already Admitted to Listing on the same Regulated Market and that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- 4.7.6 Securities offered, allotted or to be allotted to existing or former Directors or employees by their employer or an affiliated undertaking, provided that the said securities are of the same Class as the securities already Admitted to Listing on the same Regulated Market and that a document is made available containing information on the number and nature of the Securities and the reasons for and detail of the offer;
- 4.7.7 Shares resulting from the conversion or exchange of other Securities or from the exercise of the rights conferred by other Securities, where the resulting shares are of the same Class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20% of the number of shares of the same class already admitted to trading on the same regulated market, subject to the following proviso.

Provided that the requirement that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market as referred to in the immediately preceding paragraph shall not apply in any of the following cases:

- 4.7.7.1 where a prospectus was drawn up in accordance with either the Prospectus Regulation upon the offer to the public or admission to trading on a regulated market of the securities giving access to the shares;
 - 4.7.7.2 where the securities giving access to the shares were issued before 20 July 2017;
 - 4.7.7.3 where the shares qualify as Common Equity Tier 1 items as laid down in Article 26 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 of an institution as defined in point (3) of Article 4(1) of that regulation and result from the conversion of Additional Tier 1 instruments issued by that institution due to the occurrence of a trigger event as laid down in point (a) of Article 54(1) of that regulation;
 - 4.7.7.4 where the shares qualify as eligible own funds or eligible basic own funds as defined in Section 3 of Chapter VI of Title I of Solvency II, and result from the conversion of other securities which was triggered for the purposes of fulfilling the obligations to comply with the Solvency Capital Requirement or Minimum Capital Requirement as laid down in Sections 4 and 5 of Chapter VI of Title I of Solvency II or the group solvency requirement as laid down in Title III of Solvency II.
- 4.7.8 Securities already Admitted to Listing on another regulated market, on the following conditions:
 - 4.7.8.1 that these Securities, or Securities of the same Class, have been Admitted to Listing on that other Regulated Market for more than 18 months;

- 4.7.8.2 that, for Securities first Admitted to Listing on a Regulated Market after 31st December 2003, the Admission to Listing on that other Regulated Market was associated with an approved Prospectus made available to the public in conformity with Chapter 4;
 - 4.7.8.3 that, except where Capital Markets Rule 4.7.8.2 applies, for Securities first admitted to listing after 30 June 1983, listing particulars were approved in accordance with the requirements of Directive 80/390/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing or Directive 2001\34\EC of the European Parliament and of the Council of the European Union on the admission of securities to official stock exchange listing and on information to be published on those securities;
 - 4.7.8.4 that the ongoing obligations for listing on that other Regulated Market have been fulfilled;
 - 4.7.8.5 that the person seeking the Admissibility to Listing in Malta under this exemption makes a summary document available to the public in English ;
 - 4.7.8.6 that the summary document referred to in Capital Markets Rule 4.7.8.5 is made available to the public;
 - 4.7.8.7 that the contents of the summary document complies with Chapter 4 where applicable. Furthermore the document shall state where the most recent Prospectus can be obtained and where the most recent Prospectus can be obtained and where the financial information published by the Issuer pursuant to ongoing disclosure obligations is available.
- 4.7.9 Securities resulting from the conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in Article 53(2), 59(2) or Article 63(1) or (2) of Directive 2014/59/ EU.

Scope and contents of prospectus

4.8 The essential purpose of a Prospectus is to convey factual information about a business in words and figures, as a formal basis on which to obtain certain information about the Issuer and its proposed activities. Without prejudice to Capital Markets Rule 4.22, the Prospectus shall contain all information which, according to the particular nature of the Issuer and of the Securities being considered for Admissibility to Listing is necessary to enable investors and their Investment Advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the Issuer and of any guarantor, and of the rights attaching to such Securities. This information shall be presented in an easily analysable and comprehensible form.

4.9 For the purposes of this Chapter, the Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements shall apply.

The Prospectus shall also include a summary. The summary shall, in a concise manner and in non-technical language, provide Key Information in the language in which the Prospectus was originally drawn up. The format and content of the summary of the prospectus shall provide, in conjunction with the prospectus, appropriate information about the essential elements of the securities concerned in order to aid investors when considering whether to invest in such securities. The summary shall be drawn up in a common format in order to facilitate comparability of the summaries of similar securities and its content should convey the Key Information of the securities concerned in order to aid investors when considering whether to invest in such securities.

4.10 The summary shall also contain a warning that:

4.10.1 it should be read as an introduction to the Prospectus;

4.10.2 any decision to invest in the securities should be based on consideration of the Prospectus as a whole by the investor;

4.10.3 where a claim relating to the information contained in a Prospectus is brought before a court, the plaintiff investor might, if the Prospectus is not drawn in the English Language, have to bear the costs of translating the Prospectus before the legal proceedings are initiated; and

4.10.4 civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification, but only if the summary, when read together with other parts of the Prospectus, is misleading, inaccurate or inconsistent or it does not provide Key Information in order to aid investors when considering whether to invest in such securities.

Provided that where the Prospectus relates to the Admissibility to Listing of Non-equity Securities having a denomination of at least hundred thousand Euro (€ 100,000) per unit there shall be no requirement to provide a summary except when a translation of the summary is requested.

Prospectuses consisting of separate documents

4.11 The Issuer or person seeking Admissibility to Listing, may draw up the Prospectus as a single document or separate documents.

4.12 A Prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note.

4.13 The registration document shall contain the information relating to the Issuer.

- 4.14 The securities note shall contain the information concerning the securities.
- 4.15 The registration document accompanied by the securities note, updated if applicable in accordance with Capital Markets Rule 4.17, and the summary note shall be considered to constitute a valid Prospectus.
- 4.16 An Issuer which already has a registration document approved by the MFSA shall be required to draw up only the securities note and the summary note.
- 4.17 The securities note referred to in Capital Markets Rule 4.16 shall provide information that would normally be provided in the registration document if there has been a material change or recent development which could affect investors' assessments since the latest updated registration document or any supplement as provided for in Capital Markets Rule 4.26 was approved. The securities and summary notes shall be subject to a separate approval.
- 4.18 Where an Issuer has only filed a registration document without approval, the entire documentation, including updated information, shall be subject to approval.

Base Prospectus

- 4.19 A Base Prospectus containing all relevant information concerning the Issuer and the Securities may, at the choice of the Issuer or person seeking Admissibility to Listing, be used for the following types of securities:
- 4.19.1 Non-equity Securities, including warrants in any form, issued under an Offering Programme;
- 4.19.2 Non-equity Securities issued in a continuous or repeated manner by credit institutions,
- 4.19.2.1 where the sums deriving from the issue of the said securities, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date;
- 4.19.2.2 where, in the event of the insolvency of the related credit institution, the said sums are intended, as a priority, to repay the capital and interest falling due, without prejudice to the Legal Notice Credit Institutions (reorganization and winding up) Regulation, 2004
- 4.20 The information given in the Base Prospectus shall be supplemented, if necessary, in accordance with Capital Markets Rule 4.26, with updated information on the Issuer and on the securities.

Where the final terms of the offer are neither included in the Base prospectus nor in a supplement, the final terms shall be made available to investors, filed with the MFSA and communicated by the Issuer to the regulatory authority of the host Member State when each Public Offer is made as soon as practicable and, where possible, in advance of the beginning of the Public Offer or Admission to Listing. The final terms shall contain only information that relates to the securities note and shall not be used to supplement the base prospectus. The provisions of Capital Markets Rule 4.22A shall apply in such cases.

Incorporation of information by reference

- 4.21 The MFSA shall allow information to be incorporated in the Prospectus by reference to one or more previously or simultaneously published documents that have been approved by it.
- 4.21.1 This information shall be the latest information available to the issuer.
- 4.21.2 When information is incorporated by reference, a cross-reference list must be provided in order to enable investors to identify easily specific items of information.

4.21.3 The summary shall not incorporate information by reference.

Omission of Information

4.22A The Issuer shall ensure that where the final offer price and amount of Securities offered to the public cannot be included in the Prospectus:

4.22A.1 the criteria and/or the conditions in accordance with which the above elements will be determined or, in the case of the price, the maximum price, must be disclosed in the Prospectus; or

4.22A.2 the acceptances of the purchase or subscription of Securities may be withdrawn for not less than two working days after the final offer price and amount of Securities which will be offered to the public have been filed.

The final offer price and the amount of Securities shall be filed with the MFSA and made available to the public.

4.22 The MFSA may authorise the omission of information from the Prospectus which is applicable and required by the Capital Markets Rules if it considers that:

4.22.1 the information is of minor importance only and is not such as will influence assessment of the assets and liabilities, financial position, profits and losses and prospects of the Issuer, Offeror or Guarantor, if any; or

4.22.2 disclosure would be contrary to the public interest; or

4.22.3 disclosure would be seriously detrimental to the Issuer and omission is not likely to mislead investors with regard to facts and circumstances, knowledge of which is essential for the assessment of the Issuer, Offeror or Guarantor, if any and of the rights attached to the Securities in question.

4.23 Without prejudice to the adequate information of investors, where, exceptionally, certain information required by this Chapter to be included in a Prospectus is inappropriate to the issuer's sphere of activity or to the legal form of the Issuer or to the Securities to which the Prospectus relates, the Prospectus shall contain information equivalent to the required information.

4.24 The MFSA may also authorise the omission of information which would otherwise be required in order to make the assessment referred to in Capital Markets Rule 4.8 in the circumstances referred to in Capital Markets Rule 4.22.

4.25 Requests to the MFSA to authorise any omission of information must:

4.25.1 be in writing from the Issuer;

4.25.2 identify the information concerned and the reasons for the omission; and

4.25.3 state why in the opinion of the Issuer one or more of the grounds in Capital Markets Rule 4.22 applies.

Supplements to the Prospectus

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

4.27 A supplement to the Prospectus must:

4.27.1 give details of the change or new matter;

4.27.2 contain the statements required by Capital Markets Rule 4.30

- 4.27.3 contain a statement that, save as disclosed, there has been no significant change and no significant new matter has arisen since publication of the previous Prospectus; and
- 4.27.4 contain a statement that a copy of the supplement to the Prospectus has been delivered to the MFSA.
- 4.28 Such a supplement shall be approved in the same way in a maximum of seven Working Days and published in accordance with at least the same arrangements as were applied when the original Prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.
- 4.29 Investors who have already agreed to purchase or subscribe for the Securities before the supplement is published shall have the right to withdraw their acceptances within two working days after the publication of the supplement, provided that the new factor, mistake or inaccuracy referred to above arose before the final closing of the Public Offer and the delivery of the securities. That period may be extended by the Issuer. The final date of the right of withdrawal shall be stated in the supplement. .

Responsibility

- 4.30 The Prospectus shall include a paragraph stating that:-
- 4.30.1 the Prospectus includes information given in compliance with the Capital Markets Rules for the purpose of giving information with regard to the Issuer;
- 4.30.2 all of the Directors whose names appear in the Prospectus accept responsibility for the information contained in the Prospectus;
- 4.30.3 to the best of the knowledge and belief of the Directors, the information contained in the Prospectus is in accordance with the facts and that the Prospectus makes no omission likely to affect its import;
- 4.30.4 application has been made to a Regulated Market for the Issuer's Securities to be listed and for dealings to commence on the said market once the Securities are authorised as Admissible to Listing by the MFSA and the details of the Regulated Market where application has been made.
- 4.31 A Prospectus and any supplement thereto shall be dated and signed by every person who is named therein as a Director or, at the discretion of the MFSA, by the agent or attorney of such Directors authorised in writing. A certified copy of the authority of any such agent or attorney shall be submitted to the MFSA.

Uses of Languages

- 4.32 When an Admission to Listing is made in one or more Member States or EEA States excluding Malta, the Prospectus shall be drawn up either in a language accepted by the regulatory authorities of those Member States or EEA States or in a language customary in the sphere of international finance, at the choice of the Issuer:
- Provided that for the purpose of scrutiny by the MFSA, the Prospectus shall be drawn up in Maltese or English or in a language customary in the sphere of international finance, at the choice of the Issuer.
- 4.33 Where an Admission to Listing is sought in more than one Member States or EEA States including Malta, the Prospectus shall be drawn up in English or Maltese and shall also be made available either in a language accepted by the regulatory authorities of each Host Member State or EEA State or in a language customary in the sphere of international finance, at the choice of Issuer.

- 4.34 Where Admission to Listing on a Regulated Market of Non-equity Securities whose denomination per unit amounts to at least hundred thousand Euro (€100,000) is sought in one or more Member States or EEA States, the Prospectus shall be drawn up either in a language accepted by the regulatory authorities of the home and host Member States or EEA States or in a language customary in the sphere of international finance, at the choice of the Issuer or person asking for Admission to Listing. Member States or EEA States may choose to require in their national legislation that a summary be drawn up in their official language.

Approval of Prospectus

- 4.35 Prospectuses relating to Securities being considered for Admissibility to Listing must not be published unless they are formally approved by the MFSA.
- 4.36 The MFSA shall not approve a Prospectus unless it is satisfied that:
- 4.36.1 Malta is the Home Member State in relation to the Issuer of the Securities to which it relates;
 - 4.36.2 the Prospectus has been drawn up in accordance with the provisions of the Capital Markets Rules.
- 4.37 The MFSA shall notify ESMA of the approval of the Prospectus and any supplement thereto at the same time as that approval is notified to the Applicant and shall provide ESMA with a copy of such prospectus and any supplement thereto. The MFSA shall notify the Applicant of its decision to approve or refuse a Prospectus:
- 4.37.1 within ten (10) Working Days of the submission of the draft Prospectus. The time shall be extended to 20 Working Days if the offer involves Securities issued by an Issuer which does not have any Securities Admitted to Listing on a Regulated Market and who has not previously offered Securities to the public.
 - 4.37.2 If the MFSA finds, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, the time limits referred to in Capital Markets Rule 4.37.1 above shall apply only from the date on which such information is provided by the Applicant.
- 4.38 If the MFSA fails to give a decision on the Prospectus within the time limits laid down in Capital Markets Rule 4.37.1, this shall not be deemed to constitute approval of the application. The MFSA shall notify the Applicant if the documents are incomplete within ten (10) Working Days of the submission of the application.
- 4.39 In the case of Maltese registered companies, any Prospectus approved by the MFSA should be registered with the Registrar.
- 4.40 The approval of the Prospectus by the MFSA shall not be deemed to be or construed as a representation or warranty as to the solvency or credit-worthiness of the Issuer or the truth or accuracy of the contents of the Prospectus.

Transfer to MFSA of application for Approval

- 4.41 Where the MFSA agrees to the transfer to it of an application for the Approval of a Prospectus made to the regulatory authority of another Member State or EEA State:-
- 4.41.1 Malta is to be treated for the purposes of these Capital Markets Rules as the Home Member State in relation to the Issuer of the Securities to which the Prospectus relates; and
 - 4.41.2 the time-limits referred to in Capital Markets Rule 4.37 shall apply as if the date of the transfer were the date on which the application was received by the MFSA.

Transfer by MFSA of application for Approval

- 4.42 The MFSA may transfer an application for the Approval of a Prospectus or a supplement to the Prospectus to the regulatory authority of another Member State or EEA State, subject to the prior notification to ESMA and the agreement of that authority.
- 4.43 This transfer shall be notified to the Applicant within three Working Days beginning with the first Working Day after the date of the decision taken by the MFSA.
- 4.44 On making such transfer, the MFSA ceases to undertake any Approval or administrative procedures relating to Prospectuses.

The granting of authorisation for Admissibility to Listing

- 4.45 The MFSA shall approve an application for Admissibility to Listing if it is satisfied that all the requirements of Chapter 3 and this Chapter relating to the application for Admissibility to Listing have been complied with.
- 4.46 The granting of authorisation by the MFSA for Admissibility to Listing of any Securities becomes effective when the Sponsor has been formally notified.
- 4.47 Where a Sponsor is not required to be appointed, the granting of authorisation by the MFSA for Admissibility to Listing will become effective when the Applicant has been formally notified.

Formal Notice

- 4.48 Prior to the publication of a prospectus, a formal notice shall be made available to the public which shall contain the following minimum information:
- 4.48.1 the name and country of incorporation of the Issuer and, if so desired, a brief statement of the nature of the Issuer's business;
- 4.48.2 the amount and title of the Securities in respect of which authorisation for Admissibility to Listing is sought;
- 4.48.3 if applicable, the name and country of incorporation of a guarantor of the principal or interest on such Securities;
- 4.48.4 a statement indicating the addresses and the times at which copies of the Prospectus are available to the public;
- 4.48.5 if applicable, in case of an offer by a new Applicant of Equity Securities where part of the Securities are made available directly to the general public by means of an offer for sale or subscription, a statement that a proportion (to be indicated) of the Securities is so available and how applications should be made;
- 4.48.6 the date of the notice;
- 4.48.7 in the case of Securities which are not Equity Securities and where there is a facility to issue further tranches of these Securities, the total amount of the Securities which could be issued under such an arrangement; and
- 4.48.8 the name of the Sponsor to the application for authorisation to Admissibility to Listing

Publication of Prospectus

- 4.49 Once approved, the Prospectus shall be filed with the MFSA and made accessible to ESMA through the MFSA. The Prospectus shall be made available to the public by the Applicant at

the latest six (6) Working Days before the Securities involved are Admitted to Listing. In addition, in the case of an initial Public Offer of a Class of shares not already Admitted to Listing on a Regulated Market that is seeking Admissibility to Listing for the first time, the Prospectus shall be available at least six (6) Working Days before the offer opens.

- 4.50 The MFSA shall publish on its website over a period of 12 months, at its choice, all the Prospectuses approved in accordance with this Chapter.
- 4.51 In the case of a Prospectus comprising several documents and/or incorporating by reference, the documents and information making up the Prospectus may be published and circulated separately provided that the said documents are made available to the public, free of charge. Each document shall indicate where the other constituent documents of the full Prospectus may be obtained.
- 4.52 The text and the format of the Prospectus, and/or the supplements to the Prospectus, made available to the public, shall at all times be identical to the original version approved by the MFSA.
- 4.53 Where the Prospectus is made available by publication in electronic form, a hard copy shall nevertheless be delivered to the investor, upon his request and free of charge, by the Issuer, the person asking for Admissibility to Listing or the financial intermediaries placing or selling the securities.

Advertisements

- 4.54 Where Malta is the Home Member State, the MFSA shall have the power to exercise control over compliance with the requirements of Capital Markets Rules 4.55 to 4.57 relating to advertising activity involving the Admissibility to Listing of Securities.
- 4.55 Advertisements related to any Securities which have been authorised as Admissible to Listing or which are to be listed or traded on a Regulated Market shall be clearly recognisable as such, easily readable and comprehensible.
- 4.55A An Applicant or Issuer, as the case may be, is obliged to ensure that the content of any such advertising:
- 4.55A.1 is accurate, factual and not misleading;
 - 4.55A.2 does not contain any unverifiable claims; and
 - 4.55A.3 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.
- 4.55B An Applicant shall refrain from advertising in any manner, whether directly or indirectly, from the date of the notification submitted in terms of Capital Markets Rule 4.1A and until it is in receipt of final written notice of the approval of the Admissibility to Listing from the MFSA.
- 4.55C Hidden, surreptitious and other indirect forms of advertising which are not strictly compliant with these Rules are prohibited.
- 4.55D In the case of any doubt as to what constitutes an advertisement in terms of these Capital Markets Rules, the Issuer shall contact the MFSA without delay, prior to any proposed publication, requesting a determination as to whether such material constitutes an advertisement. An Issuer shall refrain from publishing any such material in the absence of such a determination.

- 4.56 In any case, any advertisement issued for the purpose of announcing the Admissibility to Listing of Securities, shall contain a statement that a Prospectus has been or will be published and the addresses and times at which copies of the Prospectus are or will be available to the public.
- 4.57 Information concerning the Admission to Listing on a Regulated Market disclosed in an oral or written form, even if not for advertising purposes, shall be consistent with the information contained in the Prospectus.

Validity of a Prospectus, Base Prospectus and registration document

- 4.58 A Prospectus shall be valid for 12 months after its approval provided that the Prospectus is completed by the supplements required pursuant to Capital Markets Rule 4.26.
- 4.59 In the case of an Offering Programme, the Base Prospectus, previously filed, shall be valid for a period of up to 12 months.
- 4.60 In the case of Non-equity Securities referred to in Capital Markets Rule 4.19.2, the Prospectus shall be valid until no more of the Securities concerned are issued in a continuous or repeated manner.
- 4.61 A registration document, as referred to in Capital Markets Rule 4.13, previously filed, shall be valid for a period of up to 12 months.

Exercise of Passport Rights

- 4.62 Where Malta is the Home Member State and an Admission to Listing is provided for in one or more Member States or EEA States, other than Malta, the Prospectus approved by the MFSA and any supplements thereto shall be valid in any number of host Member States or EEA States, provided that ESMA and the regulatory authority of each Host Member State or EEA State is notified in accordance with Capital Markets Rule 4.64.
- 4.63 If there are significant new factors, material mistakes or inaccuracies, as referred to in Capital Markets Rule 4.26, arising since the approval of the Prospectus, the MFSA shall require the publication of a supplement to be approved as provided for in Capital Markets Rule 4.26. Where Malta is the Host Member State, ESMA and the MFSA may draw the attention of the regulatory authority of the Home Member State or EEA State to the need for any new information.
- 4.64 The MFSA shall provide the regulatory authority of the Host Member State or EEA State, at the request of the Issuer or the person responsible for drawing up the Prospectus and within three Working Days following the receipt of that request or, if the request is submitted together with the draft Prospectus, within one Working Day after the approval of the Prospectus, with a certificate of approval and a copy of the Prospectus as approved. If applicable, this notification shall be accompanied by a translation of the summary of the Prospectus produced under the responsibility of the Issuer or person responsible for drawing up the Prospectus. The same procedure shall be followed for any supplement to the Prospectus. The MFSA shall also notify ESMA and the Issuer or the person responsible for drawing up the Prospectus of the certificate of approval at the same time it notifies the regulatory authority of the host Member State or EEA State.
- 4.65 A Prospectus in relation to an Admission to Listing which has been approved by the regulatory authority of another Member State or EEA State, other than Malta, is not deemed to be an approved Prospectus unless that authority has provided the MFSA with a certificate of approval and a copy of the Prospectus as approved together with, where requested by the MFSA, a translation into English or Maltese of the summary of the Prospectus.

- 4.66 For the purposes of this Capital Markets Rule, the certificate of approval shall consist of a statement
- 4.66.1 that the Prospectus has been drawn up in accordance with the Prospectus Regulation;
 - 4.66.2 that the Prospectus has been approved in accordance with the Prospectus Regulation by the MFSA or the regulatory authority of the Member State or EEA state, as the case may be, providing the certificate; and where applicable
 - 4.66.3 of the reasons as to why the MFSA or the regulatory authority providing the certificate, authorised, in accordance with the Prospectus Regulation, the omission from the Prospectus of information which would otherwise have been included.

Approval of a Prospectus of a third-country Issuer

- 4.67 If a Prospectus relating to an Issuer whose registered office is situated in a country that is not a Member State or EEA State is drawn up in accordance with the law of that country, the MFSA shall, if Malta is the Home Member State in relation to the Issuer, approve the Prospectus if it is satisfied that:
- 4.67.1 it has concluded cooperation arrangements with the relevant supervisory authorities of that country issuer in accordance with Article 30 of the Prospectus Regulation;
 - 4.67.2 the information requirements, including information of a financial nature, are equivalent to the requirements under the Prospectus Regulation.
- 4.68 Where Malta is the Host Member State in relation to an Issuer whose registered office is situated in a country that is not a Member State or EEA State, the requirements set out in Capital Markets Rules 4.32 to 4.34 and 4.61 to 4.65 shall apply.

APPENDIX 4.1

(Capital Markets Rules 4.2.1)

APPLICATION FOR AUTHORISATION FOR ADMISSIBILITY TO LISTING
(SHARES AND DEBT SECURITIES)

This form of application for Admissibility of securities to Listing should be suitably adapted for an Issuer which is not a public limited company. Please note that Admissibility to Listing will be a pre-requisite to Admission to Listing on a Regulated Market. A separate application form must be submitted to the Regulated Market for admission of the securities to listing and trading.

To:

MFSA
Attard, MALTA

Date: _____20

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Details of securities to be listed

_____ [insert name of issuer] (“the Issuer”) hereby applies for the securities detailed below to be Admissible to Listing subject to the Capital Markets Rules of Malta.

Share capital

Authorised	Denomination	Issued and paid up (inclusive of present issue)
	in	
	in	

(Please include in brackets those shares listed under block listing procedures but not yet allotted)

Debt securities

Nominal value	Redemption date	Coupon
---------------	-----------------	--------

Please specify where the Issuer is listed and the nature of the listing

Primary

Secondary

Please specify on which Regulated Market the Issuer has applied to have its securities traded
Amounts and descriptions of securities for which application is now being made (include distinctive numbers if any)

Type of issue for which application is being made

Confirmation

We acknowledge our obligations under the Capital Markets Rules and the legal implications of Admissibility to Listing under the Financial Markets Act, Chapter 345 of the Laws of Malta. Accordingly we confirm that:

- (a) all the conditions for listing in the Capital Markets Rules which are required to be fulfilled prior to application have been fulfilled in relation to the Issuer and the securities for the admission of which application is now made;
- (b) all information required to be included in the Prospectus has been included therein, or, if the final version has not yet been submitted (or approved), will be included therein before it is so submitted; 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 and all other requirements of the MFSA in respect of the application have been or will be complied with.

We undertake to comply with the Capital Markets Rules of the MFSA as they may be applicable to the Issuer from time to time.

We undertake to lodge with you the declaration required pursuant to Appendix 4.2 of the Capital Markets Rules prior to admission of the relevant securities to listing.

Signed : _____

Director or Secretary or other duly authorised Officer for and on behalf of :

Name of Issuer: _____

Name of contact at Issuer regarding the Application : _____

Telephone number: _____

We, the undersigned, confirm that we have satisfied ourselves that the Applicant has fulfilled all the criteria and procedures necessary for filing the application and has provided all the relevant documents to obtain authorisation for admissibility to listing.

Signed: _____ (Sponsor)

Name of contact at Sponsor regarding the Application :

Sponsor: _____

Address: _____

Telephone number: _____

APPENDIX 4.2

(See Appendix 4.1)

DECLARATION BY ISSUER

This form of declaration shall be submitted after the allotment of securities and may be amended to meet individual cases. Paragraph 7 and/or paragraph 8 may be deleted where appropriate.

To:

MFSA
Attard, MALTA

Date:.....20

I, a Director/the secretary of [insert name of Company or issuer] (“the issuer”), declare as follows:

1. that all documents required by the Companies Act, Chapter 386 of the Laws of Malta to be filed with the Registrar of Companies and that all documents required by the Capital Markets Rules to be lodged with the MFSA in connection with the issue/offer/placing/introduction on 20 of the following securities of the issuer, namely [insert details] have been duly filed and lodged, and that to the best of my knowledge, information and belief (having taken reasonable care to ensure that such is the case), compliance has been made with all other legal requirements in connection with such issue/offer/placing/introduction;
2. that all applicable conditions for listing set out in the Capital Markets Rules have been fulfilled in relation to the Issuer and the securities of the Issuer referred to above;
3. that shares of [insert number and Class]] and/or nominal of [insert designation of debt securities] have been subscribed/purchased for cash and fully allotted/transferred to the subscribers/purchasers;
4. that all money due to the Issuer in respect of the issue/offer/placing has been received by it;
5. that shares of [insert number and Class] and/or nominal of [insert designation of debt securities] have been issued credited as fully paid by way of conversion/exchange/consideration for property acquired/other consideration not being cash and have been duly allotted/transferred to the persons entitled thereto;
6. that the definitive documents of title have been/are ready to be delivered;
7. that completion has taken place of the purchase by the Issuer of all property stated in Prospectus, Equivalent Offering Document or Circular to members dated 20 as having been purchased or agreed to be purchased by it and the purchase consideration for all such property has been duly satisfied;
8. that the trust deed relating to the said debt securities has been completed and executed and a copy has been lodged with the MFSA and that particulars thereof, if so required by law, have been delivered to the Registrar of Companies;
9. that all shares/debt securities of each Class referred to above are in all respects identical*;
10. that no alterations have been made to the Prospectus or Equivalent Offering Document approved for publication by the MFSA; and

11. that there are no other facts bearing on the Issuer’s application for listing of such securities which, in my opinion, should be disclosed to the MFSA.

Signed

Director or Secretary or
other duly authorised officer,
for and on behalf of

.....

Name of Issuer

Note:

* Identical means in this context:

- (a) the securities are of the same nominal value with the same amount called up or paid up;
- (b) they are entitled to dividend / interest at the same rate and for the same period, so that at the next ensuing distribution, the dividend / interest payable per unit will amount to exactly the same sum (gross and net); and
- (c) they carry the same rights as to unrestricted transfer, attendance and voting at meetings and are pari passu in all other respects.

APPENDIX 4.3

DECLARATION BY THE OFFICERS OF AN ISSUER APPLYING FOR
ADMISSIBILITY TO LISTING

This declaration shall be completed by every officer of an Issuer seeking admissibility to listing and shall be submitted to the MFSA together with Appendix 4.1 and 4.2.

1. Are there any contractual impediments or restrictions through any previous occupation or employment, which preclude you in any way from taking up the position of an officer for which this declaration is being completed?	
1.1	YES <input type="checkbox"/> NO <input type="checkbox"/> If YES, give full particulars: _____
2. Have you at any time been found in breach of regulations or convicted of any offence, criminal or otherwise, by any tribunal or court? If so, give full particulars of the forum which determined the breach, offence or conviction and/or full particulars of its decision, the offence and the penalty imposed and the date of conviction/decision. (Breaches of traffic regulations punishable by fines lower than €120 (or its equivalent) need not be reported).	
2.1	YES <input type="checkbox"/> NO <input type="checkbox"/>
2.2	Court: _____
2.3	Offence: _____
2.4	Penalty: _____
2.5	Date: _____
3. Are you the subject of any current criminal investigations and / or proceedings?	
3.1	YES <input type="checkbox"/> NO <input type="checkbox"/> If YES, please give details: _____
4. Have you been the subject of any civil proceedings or litigation? Are you presently, or do you expect to be engaged in litigation?	
4.1	YES <input type="checkbox"/> NO <input type="checkbox"/>

If YES, give full particulars:

5. Has any company or partnership with which you are or have been associated as director or partner in the last five years been declared by a court, tribunal or competent authority to be in breach of the Companies Act or has the Registrar of Companies imposed a penalty for a breach of the Act on such company or partnership?

5.1 YES
NO

If YES, give full particulars including the name of the company, the registration number, the nature of the default/s and the amount of penalties:

6. Have you or has any body corporate, partnership or unincorporated entity with which you were associated as a director, controller or manager been adjudicated bankrupt by a court or tribunal?

6.1 YES
NO

If YES, give full particulars:

7. Have you failed to satisfy any debt adjudged due and payable by you as a judgement debtor under an order of a court or tribunal?

7.1 YES
NO

If YES, give full particulars:

8. Have you, in connection with the formation or management of any body corporate, partnership or unincorporated entity been adjudged by a court liable for any fraud, forgery or other misconduct by you towards such a body or company or towards any members thereof?

8.1 YES
NO

If YES, give full particulars:

9. Have you ever been disqualified by a court from acting as a director of a company or from acting in the management or conduct of the affairs of any company?

9.1 YES
NO

If YES, give full particulars:

10. Have you ever been the subject of any order, judgement or ruling of any court, tribunal or any other regulatory authority in Malta or overseas, permanently or temporarily prohibiting you from acting as an Investment Adviser, dealer in Securities, Director or employee of a Financial Institution and from engaging in any type of business practice or activity?

10.1	YES <input type="checkbox"/> NO <input type="checkbox"/> If YES, give full particulars:
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11.	Have you or has any body corporate, partnership or unincorporated entity with which you were associated as a director, controller or manager been the subject of any public criticisms by statutory or regulatory authorities (including designated professional bodies) which have not been subsequently withdrawn by the relevant authority or body?
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11.1	YES <input type="checkbox"/> NO <input type="checkbox"/> If YES, give full particulars: _____
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12.	Has any body corporate, partnership or unincorporated entity with which you were associated as a director, controller or manager been the subject of a creditors' voluntary winding-up, winding-up by the court, reconstruction of a company, compromise or arrangement with its creditors?
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12.1	YES <input type="checkbox"/> NO <input type="checkbox"/> If YES, give full particulars: _____
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13.	Have you (in your individual capacity) or has any body corporate, partnership or unincorporated entity with which you were associated ever been asked to close a bank account or had a bank account closed by the bank?
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13.1	YES <input type="checkbox"/> NO <input type="checkbox"/> If YES, please provide details: _____
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I,, a Director/a Senior Officer/the secretary of [insert the name of issuer] (“the issuer”), certify that the above information is complete and correct to the best of my knowledge and belief, and that I have personally re-checked this information. I undertake to advise the MFSA of any material change to the contents of this declaration.

I understand that the personal information provided in this declaration will be used by the MFSA to discharge its regulatory and statutory functions under the laws under which it has been appointed Competent Authority and other relevant legislation, and will not be disclosed for any other purpose.

Knowingly or recklessly giving the MFSA information which is false or misleading may be a criminal offence.

Signed on theof,.....