

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

REQUEST FOR CONTRIBUTIONS TO A PROPOSED REVIEW OF CHAPTER 11 OF THE LISTING RULES - TAKEOVER BIDS

[MFSA REF 01/2017]

1 February 2017

Closing Date: 28 February 2017

1. Introduction

The past three years have seen an increase in the number of bids taking place for securities listed on the Malta Stock Exchange to which the provisions of Chapter 11 of the Listing Rules applied.

As the competent authority for supervising these bids the Authority has been approached on a number of occasions for clarification on certain aspects of the bid process or on the interpretation of particular listing rules in said Chapter. Feedback from parties involved in assisting the offeror and offeree has indicated that a review of certain Listing Rules of Chapter 11 would be beneficial, feedback which coincided with a review that the Authority had planned for this Chapter.

The Authority has decided to request interested parties to contribute to the revision process by suggesting amendments to the Chapter which they believe are required or would be beneficial, keeping in mind the provisions of Directive 2004/25/EC.

2. Implementation of Directive 2004/25/EC

Chapter 11 of the Listing Rules, entitled ‘Takeover Bids’, applies to takeover bids when all or some of the securities of the Offeree Company are admitted to Trading on a Regulated Market with the exception of ‘*Securities issues by central banks of the member States of States*’.

The Chapter implements the provisions of Directive 2004/25/EC of the European Parliament and of the Council of 21st April 2004 on takeover bids (the “**Directive**”). The provisions of Article 10 of the Directive covering the publication of ‘detailed information’ by companies admitted to trading on a regulated market are found in Chapter 5 of the Listing Rules.

The Listing Rules clarify in Listing Rule 11.4 that the role of the Listing Authority in respect of a takeover bid shall, as the competent authority, be ‘*to supervise a Bid*’. Importantly it should be noted that Listing Rule 11.1.2 states that in the event of the Listing Rules being in conflict with the provisions of the Directive, the Directive shall prevail.

Listing Rule 11.2 clarifies that the provisions of Chapter 11 do not apply to:

‘Securities issued by companies, the object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading

and the Units of which are, at the holders request, repurchased or redeemed, directly or indirectly, out of assets of those companies’.

3. Important General Principles set out in the Directive

The Directive gives some latitude to supervisory authorities in addressing the particular situations which may arise in their jurisdiction. Reference is made to Recital 9 which states that:

‘In order to be effective, takeover regulation should be flexible and capable of dealing with new circumstances as they arise and should accordingly provide for the possibility of exceptions and derogations. However, in applying any rules or exceptions laid down or in granting any derogations, supervisory authorities should respect certain general principles’.

Article 3(1) of the Directive sets out the principles which Member States are expected to comply with. The first of the three general principles concerns the equal treatment of investors; the second affording investors’ sufficient time and information to enable them to reach a properly informed decision on the bid; and, the third that offerees must not deny the holders of securities the opportunity to decide on the merits of the bid. These three key principles, along with the others set out in Article 3(1) are key to the Listing Authority’s supervisory role during a takeover process.

4. Invitation for Feedback

The Authority invites feedback from parties¹ interested in sharing their experience gained during the preparation of, or participating in, a takeover bid that has taken place in our market.

All feedback received would be welcome as it would help the Authority in its analysis of perceived or existing shortcomings in the Listing Rules so that it may carry out a comprehensive review of the Chapter.

¹ Including shareholders and from participating target/offeree companies.

5. Contacts

Interested parties are to send their comments in writing by not later than **28 February 2017**.

Any comments and feedback are to be addressed to the Capital Markets Team within the Securities and Markets Supervision Unit on capitalmarkets@mfsa.com.mt.

Communications Unit

Malta Financial Services Authority

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