

## Equity capital markets in Malta: regulatory overview

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### MAIN EQUITY MARKETS/EXCHANGES

#### 1. What are the main equity markets/exchanges in your jurisdiction? Outline the main market activity and deals in the past year.

##### Main equity markets/exchanges

The main equity market is the Official List (Official List) of the Malta Stock Exchange (MSE) ([www.borzamalta.com.mt](http://www.borzamalta.com.mt)). It is a regulated market in accordance with:

- Article 4 of the Financial Markets Act (Chapter 345, Laws of Malta) (Financial Markets Act).
- Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EU and Directive 2011/61/EU (MiFID II).

Both equity securities (including units in collective investment schemes) and debt securities (including government bonds and treasury bills) can be listed on the Official List.

The MSE launched a new market for start-ups and small to medium-sized enterprises (SMEs) called "Prospects" in 2016. The Prospects market is a multilateral trading facility (MTF) in accordance with the Financial Markets Act (and the Multilateral Trading Facilities and Organised Trading Facilities Regulations issued under it) and MiFID II. Prospects is operated by the MSE and is intended to provide a more flexible and cost-effective listing option for both local and foreign SME issuers. There is no minimum IPO size, no minimum track record and no minimum threshold of shares to be held by the public in order to list on the Prospects market.

##### Market activity and deals

As at 6 March 2016, 23 companies had their shares listed on the Official List. All listings were primary listings. There were also 125 primary listings and 16 secondary listings of collective investment scheme units on the MSE as at the same date. There was one new equity listing during 2017 and a rights offer with a combined initial market capitalisation of EUR258.2 million. There was also one equity delisting in 2017. Collectively, this resulted in an increase in the equity market capitalisation of EUR70.9 million. There was also one equity admitted to listing and trading (with an aggregate nominal value of EUR700,000) on the Prospects MTF market during 2017. The MSE Equity Total Return Index closed at 8669.13, down by 1.47% from 8798.58 at the end of 2015. The Index peaked at 9103.79 on the 26 July and fell to its lowest point of 8425.01 on 4 December 2017.

#### 2. What are the main regulators and legislation that applies to the equity markets/exchanges in your jurisdiction?

##### Regulatory bodies

The Maltese regulator is the Malta Financial Services Authority (MFSA). The MFSA, as the competent authority for regulated markets in Malta, authorises and supervises the MSE.

The Board of Governors of the MFSA is the Listing Authority for the MSE (Listing Authority) (*Article 7A, MFSA*). The MFSA's Listing Committee is appointed by the Listing Authority to (*Article 14, Financial Markets Act*):

- Review applications for admissibility to listing.
- Ensure compliance with the listing rules for the MSE issued by the Listing Authority under the Financial Markets Act (Listing Rules).

##### Legislative framework

The main legislation and regulations for the Maltese regulated markets are:

- The Financial Markets Act.
- The Prevention of Financial Markets Abuse Act (Chapter 476, Laws of Malta) (PFMAA).
- The Companies Act (Chapter 386, Laws of Malta).
- The Listing Rules.
- The MSE Bye-Laws.

Local legislation implements all of the relevant EU Directives, including:

- MiFID II.
- Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, as amended (Prospectus Directive).
- Directive 2004/109/EC on transparency requirements for securities admitted to trading on a regulated market and amending Directive 2001/34/EC, as amended (Transparency Directive).
- Directive 2004/25/EC on takeover bids (Takeover Directive).
- Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies (Shareholder Rights Directive).
- Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (Market Abuse Directive).

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All relevant EU Regulations are directly applicable in Malta without the need for implementation into local legislation, including:

- Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation).
- Regulation (EC) 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, as amended and supplemented (Prospectus Regulation).
- Regulation (EU) 2017/1129, on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (New Prospectus Regulation), with regard to those provisions that have been applicable since 20 July 2017.

## EQUITY OFFERINGS

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### 3. What are the main requirements for a primary listing on the main markets/exchanges?

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#### Main requirements

In addition to minimum size, trading record and accounts and free-float requirements described below, the main requirements for a primary listing on the MSE are:

- The appointment of a sponsor (see *Question 9*).
- A prospectus approved by the Listing Authority (see *Question 10*).
- That the securities in question are freely transferable and expected to enjoy adequate continuity of dealing.
- That the applicant must be a public limited company with a fully paid-up share capital of at least EUR1 million.

Foreign issuers may list their securities on the MSE. However, if an applicant incorporated in a non-EEA member state is not already listed in its jurisdiction of incorporation (or in the jurisdiction in which the majority of its shares are held), the Listing Authority must be satisfied that the absence of a primary listing in that jurisdiction is not a result of investor protection concerns of the foreign regulator. In other words, the Listing Authority will generally enquire why an application for listing was not filed or was rejected in that jurisdiction

#### Minimum size requirements

The aggregate market value of the equity securities being listed in a primary listing must be at least EUR1 million. An application for a primary listing of equity securities must relate to all of the securities of the class for which listing is sought.

#### Trading record and accounts

An applicant for listing must have audited annual accounts that cover at least three financial years preceding the application for admissibility to listing. The most recent audited financial information provided must not be for earlier than either:

- 18 months before the date of the prospectus (if the issuer can provide audited interim financial information).
- 15 months (if the issuer cannot provide audited interim financial information).

The audited annual accounts must be the consolidated accounts of the applicant and all of its subsidiaries, unless the Listing Authority agrees otherwise. The director of the applicant must specifically disclose any qualifications in the audit reports to the Listing Authority together with any relevant explanations.

Subject to certain exceptions, an applicant for listing must, either by itself or together with one or more of its subsidiaries or affiliates, demonstrate all of the following:

- At least 75% of its business is supported by a historical revenue earning record covering the three financial years for which audited accounts are submitted.
- It controls the majority of its assets and has done so for the same period.
- It will be carrying on an independent business as its main activity.

#### Minimum shares in public hands

An applicant for listing must demonstrate to the satisfaction of the Listing Authority that at least 25% of the shares for which a listing is sought are or will be in public hands. The Listing Authority may, exceptionally, agree to a lower percentage where the number of shares being listed and the extent of their distribution to the public will still enable the market for those shares to operate properly with that lower percentage.

Shares are not considered to be in public hands if certain related parties, for example, directors of the applicant or its subsidiaries or persons connected with those directors or by a "substantial shareholder" hold the shares directly or indirectly. A substantial shareholder is a person who is either:

- Entitled to exercise, or control the exercise, of 10% or more of the votes at a general meeting of the applicant.
- In a position to control the composition of a majority of the applicant's board of directors.

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### 4. What are the main requirements for a secondary listing on the main markets/exchanges?

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#### Main requirements

The main requirements for a secondary listing of equity securities on the Official List are the same as those required for a primary listing. However, if certain conditions set out in the Listing Rules are satisfied, it may not be necessary to publish a prospectus for the secondary listing on the Official List of securities that are already listed on another regulated market (see *Question 10*).

#### Minimum size requirements

See *Question 3*.

#### Trading record and accounts

See *Question 3*.

#### Minimum shares in public hands

See *Question 3*.

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### 5. What are the main ways of structuring an IPO?

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Issuers typically approach the market in an IPO using one or a combination of the following methods:

- **Offer for sale.** This is an invitation to the public to buy securities of the applicant that are already in issue from existing shareholders.
- **Offer for subscription.** An invitation to the public to subscribe for securities of the applicant not yet in issue.
- **Intermediaries offer.** A marketing of securities (whether already in issue or not yet issued) through an offer of those securities by the issuer to intermediaries, for those intermediaries to allocate to their clients.

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## 6. What are the main ways of structuring a subsequent equity offering?

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Issuers wishing to allot their shares for cash consideration must first offer those shares on a pre-emptive basis to existing shareholders in proportion to their respective holdings. These pre-emption rights can be restricted or withdrawn by an extraordinary general meeting of the shareholders, or by the directors (if they are authorised to do so by the issuer's memorandum and articles of association). If pre-emption rights apply, issuers will typically structure an equity offering as:

- A rights issue.
- An open offer in conjunction with a subsequent intermediaries offer (see *Question 5*) if the shares being offered are not fully subscribed by the existing shareholders.

### Rights issue

This is an offer of further shares to shareholders in proportion to their existing holdings. It is made through a negotiable document that the entitled shareholder may transfer as nil-paid rights to a third party before payment for the shares is due. Shares that are not taken up must be offered to the open market for subscription or purchase. Shareholders who do not take up their rights are entitled to any premium over the offer price obtained from the sale of the shares in the market, provided that the premium exceeds EUR5 per share.

### Open offer

This is an invitation to existing shareholders to subscribe for or buy shares in proportion to their holdings that is not made by means of a negotiable document. Unlike a rights issue, these may not be traded.

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## 7. What are the advantages and disadvantages of rights issues/other types of follow on equity offerings?

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A rights issue benefits from reduced disclosure requirements under Regulation (EC) 809/2004 implementing Directive 2003/71/EC regarding prospectuses and dissemination of advertisements (Prospectus Regulation), provided that it is fully subscribed. The Listing Rules require the issuer to offer to the market all shares that are not taken up by existing holders following a rights issue. This subsequent offer is subject to the full disclosure requirements that apply to shares. In practice, the issuer typically prepares a full prospectus for a rights issue at the outset just in case the shares are not fully subscribed by the existing shareholders.

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## 8. What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depositary receipts?

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### Procedure for a primary listing

To obtain a primary listing for its equity securities on the Official List, an applicant must simultaneously apply to:

- The Listing Authority for authorisation of admissibility of the securities to listing.
- The MSE for admission of the securities to listing and trading on the Official List.

In practice, the applicant first submits:

- An informal application for authorisation of admissibility to listing for review by the Listing Authority.

- A draft of the prospectus.
- A certified copy of the applicant's memorandum and articles of association and certain other documents (for example, corporate authorities sanctioning the application for admissibility to listing, a sponsor's declaration, a directors' declaration, and audited accounts).

Once the Listing Authority is satisfied with the prospectus and the supporting information, formal applications for admissibility and admission and a final version of the prospectus are submitted to the Listing Authority and the MSE (see *Question 18*).

### Procedure for a foreign company

The procedure for a listing of a foreign company is the same as that for a Maltese issuer. There are currently no foreign companies listed on the MSE and there is no procedure for listing depositary receipts on the MSE.

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## ADVISERS: EQUITY OFFERING

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## 9. Outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

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The main advisers for any equity offering (including an IPO) are:

- **The sponsor.** An applicant for admission to listing on the Official List must appoint a sponsor. The sponsor must be independent of the issuer and must hold a Category II or III licence under the Investment Services Act (Chapter 370, Laws of Malta) or be authorised to provide investment services under MiFID II. The role of the sponsor is:
    - to advise and guide the issuer through the listing and admission process.
    - to co-ordinate the process with all of the issuer's other advisers.
    - to act as the issuer's sole point of contact with the Listing Authority and the MSE (including signing and filing the admissibility and admission applications);
    - generally to ensure the applicant complies with all applicable conditions and requirements for admissibility to listing under the Listing Rules and the MSE Bye-Laws.
  - **Legal advisers.** The role of the legal advisers is:
    - to assist the issuer with drafting the prospectus (see *Question 10*);
    - to advise on the legal aspects of the offering, including on the corporate and offering structures and corporate governance requirements;
    - to advise generally on compliance with the Listing Rules.
  - **Auditors.** In addition to auditing the issuer's accounts, the auditors assist the issuer in preparing certain parts of the prospectus, for example a working capital statement and a statement of capitalisation and indebtedness. They also assist with the provision of certain statements in the prospectus required under the Prospectus Regulation, for example in relation to the compilation of forecasts and estimates or any other information they review or audit.
  - **Registrar.** The registrar is appointed to maintain the share register and provide registrar and transfer agency services. The sponsor generally fulfils this role.
  - **Underwriter.** See *Question 17*.
- The main documents produced in an equity offering are:
- Prospectus (see *Question 10*).

- Audited annual accounts (see *Question 2*).
- Corporate authorities, for such as, board resolutions approving the transaction and application for admissibility to listing.
- Any underwriting agreement (see *Question 17*).

## EQUITY PROSPECTUS/MAIN OFFERING DOCUMENT

### 10. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements?

#### Prospectus (or other main offering document) required

A prospectus that complies with all of the relevant disclosure annexes of the Prospectus Regulation is required for an equity offering that involves:

- An offer of to the public.
- Admission to trading on a regulated market (that is, the MSE).

#### Main publication, regulatory filing or delivery requirements

The prospectus must comply with the relevant disclosure requirements in the Prospectus Regulation. The competent regulatory authority of the home member state reviews it to ensure compliance.

The term "home member state" is defined in the Prospectus Directive and transposed into Maltese law through the Companies Act and the Listing Rules. The home member state for equity issuers incorporated in the EEA is the EEA member state where the issuer has its registered office. For equity issuers incorporated outside the EEA, the home member state is the EEA member state chosen by the issuer from among the EEA member states where the securities are intended to be offered to the public for the first time, or where the first application for admission to trading on a regulated market is made, subject to a subsequent election that may be made by the issuer in certain circumstances.

For equity offerings, Malta will be the home member state for a Maltese issuer or for a non-EEA issuer that is either offering its equity securities for the first time in Malta or making its first application for admission to trading on a regulated market to the MSE.

Where Malta is not the home member state but the issuer wishes to offer its equity securities to the public in Malta, or to list equity securities on the MSE, it can do so by passporting the prospectus approved by the competent authority of its home member state to Malta. This is a simple procedure. The competent authority of the home member state provides the relevant competent authority in Malta with a copy of the approved prospectus and a certificate of approval. The same (although converse) passporting procedure is available for issuers whose home member state is Malta that want to offer their equity securities to the public, or admit their equity securities to trading on regulated market, elsewhere in the EEA.

The competent regulatory authority for offers to the public is the MFSA, acting through the Registrar of Companies. The competent regulatory authority for an admission to trading on a regulated market is the Listing Authority (see *Question 2*). Equity offerings to the public are invariably listed on the MSE. The Listing Authority is the competent authority for such offerings.

All prospectuses approved by the relevant competent authority in Malta or passported into Malta are published on the Listing Authority section of the MFSA's website. The Companies Act also requires each prospectus for an equity offering by Maltese issuers to be filed and registered with the Registrar of Companies.

In addition to being uploaded on the MFSA's website, a formal notice must be published in a local daily newspaper (at least six

working days before the offer opens). The formal notice announces the publication of the prospectus, certain basic information about the offer and indicates where and when the public can procure copies of the prospectus.

### 11. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document)?

The requirement to publish a prospectus (see *Question 10*) stems from Malta's transposition and implementation of the Prospectus Directive. Similarly, all the relevant exemptions from the obligation to publish a prospectus, set out in the Prospectus Directive are also implemented into Maltese law in the Companies Act and the Listing Rules. Any issuer, whether local or foreign, wishing to offer its securities to the public in Malta or admit its securities to a regulated market in Malta, can take advantage of the exemptions.

#### Offers to the public

The Companies Act sets out the following categories of offers that are considered as non-public offers and that, accordingly, do not require a prospectus:

- An offer of securities made only to "qualified investors". These are professional clients as defined by MiFID II.
- An offer of securities to fewer than 150 persons per EEA state (not including qualified investors).
- An offer where the minimum consideration per investor is at least EUR100,000.
- An offer where the nominal value of each security is at least EUR100,000.
- An offer where the total consideration of the securities being offered in the EEA does not exceed EUR5 million.

Certain other types of offers are also exempt from the obligation to publish a prospectus. Examples are:

- A dividend paid to existing shareholders in the form of shares.
- An offer of securities to existing or former directors or employees by their employer or an affiliated undertaking (provided that the issuer's head or registered office is located in the EU).

#### Admission to listing

Whether or not an equity offering to the public qualifies for one of the exempt categories, there is still a separate obligation to publish a prospectus if those securities are to be admitted to listing and trading on the MSE (see *Question 10*). However, the Listing Rules (in conjunction with the New Prospectus Regulation) also provide that certain admissions are exempt from the obligation to publish a prospectus including:

- An issue of shares that represents, over a 12-month period, fewer than 20% of the number of shares of the same class already admitted to listing on the Official List.
- Shares offered or allotted to existing shareholders free of charge, or a dividend paid out in the form of shares (a capitalisation or bonus issue), provided that those shares are of the same class as shares already admitted to listing on the Official List.
- A secondary listing of shares (or shares of the same class) that are already listed on another regulated market, provided certain conditions apply, including:
  - the shares have been admitted to listing on the other regulated market for more than 18 months;

- the shares were originally listed with a prospectus or listing particulars (that complied with the relevant EU legislation at the time of the original listing); and
- a summary document (in English) for the secondary listing is made available to the public.

### Government issues

The Government of Malta is not required to publish a prospectus for debt issues it lists on the MSE. It is instead required to prepare a brief offering document containing certain fundamental information set out in the Listing Rules on the securities being offered.

## 12. What are the main content or disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

In line with the Prospectus Directive, a prospectus must contain all information concerning the issuer and the securities necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer (and of any guarantor) and of the rights attaching to the securities.

The prospectus must also include a summary that provides key information in concise and non-technical language to enable investors to understand any risks affecting the issuer and the securities being offered.

Both the prospectus and the summary must comply with the disclosure requirements specified by the relevant disclosure annexes of the Prospectus Regulation. For an equity offering, these are generally Annex I (Share Registration Document) and Annex III (Share Securities Note). Some of the main categories of required information are:

- Risk factors that are material and specific to the issuer and the securities.
- Principal activities and markets of the issuer.
- Organisational structure of the issuer (and its group).
- Information on the issuer's management and directors.
- Three years of audited financial information (see Question 3).
- Capital resources, working capital statement and statement of capitalisation and indebtedness.
- Conflicts of interest of persons involved in the offer (including directors).
- Material contracts.
- Rationale for offer and use of proceeds.
- Terms and conditions of the offer.
- Placing and underwriting arrangements.
- Admission to trading/dealing arrangements.
- Tax issues.

Financial statements must be prepared in accordance with International Financial Reporting Standards (IFRS) as adopted in the EU, or an equivalent standard for non-EEA issuers specified by the European Commission (which includes US Generally Accepted Accounting Principles) (US GAAP).

## 13. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

The issuer drafts the prospectus with the assistance of its legal advisers, the sponsor and auditors. While the legal advisers take a leading role in drafting the prospectus with the issuer, they are not required to and generally do not undertake any due diligence or verification exercise for the information contained in the prospectus.

Following the disclosure requirements in the Prospectus Regulation, the prospectus must list the names of the person responsible for the information in it. It must contain a statement by the directors that to the best of their knowledge and belief, the information in the prospectus is comprehensive and not misleading.

The Listing Rules require that the prospectus includes a statement that all of the directors whose names appear in it accept responsibility for the information contained in the prospectus. The prospectus must be signed by every director of the issuer (or an agent or attorney of the directors authorised to do so in writing).

The Companies Act imposes joint and several civil liability on persons who are responsible for, or who have authorised the issue of, a prospectus for any damage sustained by an investor who subscribes for shares in reliance on any untrue statement in it. These persons include the issuer, the directors of the issuer and any other person expressly accepting responsibility for the prospectus. Experts who have agreed to the inclusion of their statements in the prospectus are also be liable for any untrue statement made by them as an expert.

However, the Companies Act does provide responsible persons with certain defences to liability. For example, a responsible person will escape liability if he can prove that he had reasonable grounds to believe, and did believe, that the statement in question was true up to the time of the allotment of the shares.

## MARKETING EQUITY OFFERINGS

### 14. How are offered equity securities marketed?

Marketing of an IPO generally begins with a pre-launch or market sounding phase before the announcement of the transaction. This helps the issuer gauge the interest of potential investors and to determine pricing for the offering.

Once the issuer has determined to proceed with the IPO and established the main terms of the offer, the issuer may opt to undertake a broader marketing campaign targeting the local retail public. However, it will generally do this during the specified offering period for the shares after publication of the prospectus. Applicants for listing are expressly prohibited by the Listing Rules from advertising in any manner once they have notified the Listing Authority of their intention to submit an application for admissibility to listing until they have received final written approval of their application from the Listing Authority.

The Investment Services Act generally prohibits all forms of investment advertisements relating to a potential subscription of securities unless their content has first been approved by a local licence holder, for example, a local broker.

The Listing Rules also require any advertisement relating to listed securities or securities that are to be admitted to be admitted to listing on the MSE to be clearly recognisable as such and easily comprehensible. The issuer must ensure that the content of any advertising is:

- Accurate, factual and not misleading.
- Does not contain any unverifiable claims.

- Is consistent with any information contained in the prospectus (or to be contained in the prospectus if not yet published).

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### 15. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

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In accordance with Article 20 of the Market Abuse Regulation, persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy must take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.

A breach of Article 20 of the Market Abuse Regulation could result (in accordance with the Prevention of Financial Markets Abuse Act (PFMAA)) in a fine of up to EUR500,000 in the case of natural persons, or a fine of up to EUR1 million in the case of legal persons.

Brokers generally try to limit their liability by complying strictly with the Market Abuse Regulation. Brokers also ensure that the issuer verifies the information contained in reports in order to confirm its accuracy.

In addition, it is standard practice for brokers to include prominent disclaimers in their reports. These generally provide that the information provided should not be construed as investment advice and that any potential investment decision regarding the issuer and its securities should only be taken on the basis of the final prospectus (approved by the Listing Authority) after seeking independent professional investment advice.

## BOOKBUILDING

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### 16. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

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Pricing is typically fixed by the issuer together with its sponsoring stockbroker through information sessions and one-on-one meetings with other local brokers. Issuers may sometimes opt to privately place some of the shares with a small number of larger or institutional investors before publication of the prospectus and the offer to the public.

## UNDERWRITING: EQUITY OFFERING

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### 17. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee and/or commission?

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MSE-listed equity offerings are not always underwritten. Those that are underwritten are usually structured as a firm commitment by the underwriters (typically local banks) to purchase part or all of the outstanding shares at the offer price up to a specified maximum amount. The underwriting commitment is sometimes conditional upon a minimum amount of shares being subscribed or purchased by the market or the existing shareholders.

Underwriting fees usually range from 1% to 2% of the total proceeds of the offer. The underwriter is sometimes entitled to any commissions that would have otherwise been payable to financial intermediaries for those shares taken up by the underwriter.

The key terms generally included in underwriting agreements are:

- Representations and warranties regarding the completeness and accuracy of the information in the prospectus and compliance with all applicable legislation.
- Covenants by the issuer to inform the underwriter of any material events relating to the issue and listing of the shares, or of any material changes to the information contained in the prospectus.
- Conditions precedent. These can include:
  - that the shares are admitted to the Official List;
  - that no material adverse change, event or development which affects the issuer's business or financial condition occurs between the dates as of which information is given in the prospectus (or the date of the underwriting agreement) and the date of the prospectus; and
  - an indemnity in favour of the underwriter against all losses or liability resulting from any inaccuracy or omission of a material fact (or information required to make any statements in the prospectus not misleading) from the prospectus.

## TIMETABLE: EQUITY OFFERINGS

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### 18. What is the timetable for a typical equity offering? Does it differ for an IPO?

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The timetable for a typical IPO and listing on the Official List generally ranges from three to six months and usually includes the following steps:

- Appointment of the sponsor and other advisers (*see Question 9*).
- The applicant notifying the Listing Authority of intention to submit an application for admissibility to list at least one month before submission of the application and the first draft of the prospectus.
- Conversion of the issuer to a public limited company (if issuer is a private limited company) and any amendments required to the issuer's memorandum and articles of association.
- Drafting of prospectus and other transaction documents (including underwriting agreements and other service provider agreements).
- Submission of draft prospectus to Listing Authority together with a draft application for admissibility to listing.
- The Listing Authority providing its comments on the prospectus, with revised drafts being submitted until the Listing Authority has no further comments.
- Submission of the final application for admissibility to listing to the Listing Authority (including final version of the prospectus to be published) and application for admission to listing to the MSE.
- Listing Authority authorisation of admissibility to listing of shares (including prospectus approval) and MSE approval of admission application.
- Publication of the prospectus (at least six working days before the shares are admitted to listing).
- Publication of the formal notice announcing publication of the prospectus in a local daily newspaper at least six working days before the offer opens.
- Company announcement publishing results of offer.
- Allotment of and admission to listing of shares.

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The part of the process that will take the longest is the drafting of the prospectus and the preparation of all other documentation required for the admissibility application. This process will take anywhere from one to three months once the sponsor and other advisers are appointed.

Once a draft prospectus has been submitted to the Listing Authority, the review and feedback process until the Listing Authority is satisfied with contents of the prospectus can take up to a month or more. Once the final prospectus and final application for admissibility to listing are submitted to the Listing Authority, approval must be granted within 20 working days.

Subsequent equity offerings will generally benefit from a reduced time-frame given that the issuer will be familiar with the process and the prospectus disclosure requirements. In addition, many of the fundamental disclosures required would have already been prepared or be in the process of being prepared as part of the issuer's ongoing disclosure obligations (see *Question 21*).

## STABILISATION

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### 19. Are there rules on price stabilisation and market manipulation in connection with an equity offering?

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The Prevention of Financial Markets Abuse Act (PFMAA) also transposes into local law, as necessary, the relevant provisions of the Market Abuse Directive and the Market Abuse Regulation restraining market manipulation.

The PFMAA permits price stabilisation that would otherwise be considered as market manipulation provided it complies Article 5 (exemption for buy-back programmes and stabilisation) of the Market Abuse Regulation. This specifies the conditions that permitted buy-back programmes and stabilisation measures need to satisfy, including conditions for trading, restrictions on time and volume of shares bought back, disclosure and reporting obligations, and price conditions.

## TAX: EQUITY ISSUES

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### 20. What are the main tax issues when issuing and listing equity securities?

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Transfers of equity securities issued by a Maltese company that are listed on the Official List benefit from an exemption from tax to the extent that the transferor derives a capital gain from the transfer of the shares. This exemption does not extend to trading profits of a person who is buying and selling the equity securities in the context of a trade.

The transfer of equity securities listed on the Official List is also exempt from the payment of Maltese duty on documents and transfers (stamp duty).

The issue of equity securities is not a taxable supply for Maltese VAT purposes.

## CONTINUING OBLIGATIONS

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### 21. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies?

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The continuing obligations of issuers of securities listed on the Official List are set out in Chapter 5 of the Listing Rules (which also reflect, as necessary, the relevant provisions of the Transparency Directive and the Market Abuse Regulation).

- **Disclosure to the market.** Several key events relating to the issuer set out in the Listing Rules must be disclosed to the

market by company announcement without delay. These include substantial transactions in the issuer's shares. There is also a general obligation to disclose without delay all price sensitive facts relating to an issuer and its activities that are not public knowledge (that is, inside information that is likely to have an effect on the price of the shares)

- **Financial reporting.** Issuers must publish half-yearly and annual financial reports that comply with the requirements set out in the Listing Rules.
- **Corporate governance.** Issuers must comply (or explain why they are not complying) with each of the principles and provisions set out in the Listing Rules' Code of Principles of Good Corporate Governance.
- **Share dealing restrictions.** These are imposed on the directors and certain officers and employees of the issuer (and its group) for the issuer's shares.
- **Related party transactions.** Related party transactions must be vetted and approved by the issuer's audit committee. Where a related party transaction is not approved by the audit committee, shareholder approval for the transaction is required.
- **Significant transactions.** If undertaken by the issuer, and depending on their size, these require an announcement to the public or prior shareholder approval.

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### 22. Do the continuing obligations apply to listed foreign companies and to issuers of depositary receipts?

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The continuing obligations apply equally to foreign companies whose securities are listed on the Official List. In relation to depositary receipts, see *Question 8*.

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### 23. What are the penalties for breaching the continuing obligations?

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The Financial Markets Act provides that a person who contravenes any provision of the Listing Rules including any of the continuing obligations will be liable to an administrative penalty of up to EUR150,000 for each infringement. That person is also guilty of a criminal offence and liable to a EUR466,000 fine or to a term of imprisonment of up to four years, or liable to both penalties.

The Financial Markets Act further provides that:

- An issuer of listed financial instruments that has failed to make public any "regulated information," or any other person subject to the Listing Rules who has failed to notify, within the required time limit, the acquisition or disposal of a major holding (in each case in accordance with those Listing Rules that transpose the relevant provisions of the Transparency Directive), will be liable, in the case of a natural person, to whichever is higher of the following:
  - an administrative penalty of up to EUR2 million; or
  - up to twice the amount of profits gained or losses avoided because of the breach (where those can be determined).
- An issuer or other legal entity (including legal entities that have failed to notify about an acquisition or a major holding) will receive whichever is higher of the following administrative penalties:
  - up to EUR10 million; or
  - up to 5% of the total annual turnover according to the last available annual accounts approved by the management body; or

- up to twice the amount of profits gained or losses avoided because of the breach (where those can be determined),

## MARKET ABUSE AND INSIDER DEALING

### 24. What are the restrictions on market abuse and insider dealing?

#### Restrictions on market abuse/insider dealing

The Prevention of Financial Markets Abuse Act (PFMAA) generally prohibits:

- A person from using information to trade in any financial instrument admitted to a regulated market if he possesses that information as a result of his membership in the issuer's management, his shareholding in the issuer, the exercise of his employment, profession or duties, or his criminal activities (insider dealing).
- Unlawful disclosure of inside information, whether that inside information is used (for trading of financial instruments listed on a regulated market) or not.
- A person from manipulating a regulated market by disseminating false, exaggerated or misleading information, spreading false rumours or putting into effect simulated or artificial operations, transactions or orders (market manipulation).

#### Penalties for market abuse/insider dealing

A person who breaches any of the insider dealing or market manipulation provisions of the PFMAA is:

- Liable to an administrative penalty imposed by the MFSA consisting of a fine of:
  - in respect of natural persons, up to EUR5 million for each infringement; and
  - in respect of legal persons, up to EUR15 million or 15% of the total annual turnover of the legal person, according to the last available accounts approved by the management body.
- Guilty of a criminal offence and:
  - in the case of natural persons, liable to a fine of up to EUR5 million (or up to three times the profit made or the loss avoided by virtue of the offence, whichever is the greater), and/ or to imprisonment for a term not exceeding six years, or to both; and
  - in the case of legal persons, a fine of up to EUR15 million (or up to three times the profit made or the loss avoided by virtue of the offence, whichever is the greater) or to certain

other measures including (but not limited to) temporary or permanent disqualification from the practice of commercial activities or to judicial winding up.

## DE-LISTING

### 25. When can a company be de-listed?

#### De-listing

A listed company can voluntarily apply to the Listing Authority for authorisation to delist its shares from the Official List if it obtains the approval of shareholders holding in aggregate at least 75% of the nominal value of those shares. Shareholder approval is obtained at a meeting of shareholders and by following the procedure set out in the Listing Rules.

The Listing Authority may also require the compulsory de-listing of an issuer's shares if it believes that regular dealings in those shares are no longer possible.

#### Suspensions

The Listing Authority can suspend trading of an issuer's shares if it establishes, or has reasonable grounds to suspect, that the Listing Rules have been infringed, or if it believes it is necessary to protect investors, or where the smooth operation of the MSE is otherwise temporarily jeopardised. Suspension of shares may also take place at the request of the issuer to the Listing Authority.

The MSE can suspend trading of an issuer's shares from the Official List if it has reason to believe that this is in the interest of the Exchange or the public or investors generally.

The MSE will also suspend trading or discontinue the listing of an issuer's shares from the Official List immediately upon being informed by the Listing Authority that it has authorised such suspension or discontinuation.

## REFORM

### 26. Are there any proposals for reform of equity capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

The New Prospectus Regulation entered into force on 20 July 2017 introducing, among other things, the concept of a universal registration document and a less stringent disclosure regime for SMEs with securities listed on SME growth markets. The majority of the New Prospectus Regulation will begin to apply as of 21 July 2019.

## ONLINE RESOURCES

### Malta Financial Services Authority (MFSA)

W [www.mfsa.com.mt/](http://www.mfsa.com.mt/)

**Description.** The Listing Authority section of the MFSA website contains up-to-date information on (and links to) the Listing Rules, the Prospectus Regulation, all prospectuses approved by the Listing Authority or passported into Malta, and MFSA policies.

The Legislation & Regulations (Securities and Markets – Financial Markets) section of the MFSA website contains an up-to-date list of (and links to) all relevant legislation and subsidiary legislation. All these resources are also available from the website of the Ministry for Justice: [www.justiceservices.gov.mt/LOM.aspx?pageid=24](http://www.justiceservices.gov.mt/LOM.aspx?pageid=24)

### Malta Stock Exchange (MSE) Borza ta' Malta

W [www.borzamalta.com.mt/](http://www.borzamalta.com.mt/)

**Description.** This is the official website of the MSE and contains up-to-date information on the MSE including the MSE Bye-Laws and all equities securities listed on the Official List and their relevant trading information.



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## Practical Law Contributor profile

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#### Recent publications.

- *Debt capital markets in Malta: regulatory overview*, Practical Law Thomson Reuters, 2018.
- *Structured Finance and Securitisation in Malta: overview*, Practical Law Thomson Reuters, 2018.
- *Malta in 2018: Beyond Brexit*, Captive Review Malta Report, 2018.
- *Securitisation Solutions for the Maritime Industry*, Marine Money Magazine, Oct/Nov 2017.
- *Unique Malta*, Captive Review ILS Report 2017, 2017.
- *International Comparative Legal Guide to Securitisation (Malta)*, ICLG, 2017.
- *Structured Finance & Securitisation in 13 jurisdictions worldwide 2015 – Malta Chapter*, Getting the Deal Through.
- *The Maltese Securitisation Cell Companies Regulations: An Overview*, Butterworths Journal of International Banking and Financial Law, 2015 3 JIBFL 164.