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Malta

CAPITAL MARKETS

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This country-specific Q&A provides an overview of capital markets laws and regulations applicable in Malta.

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MALTA
CAPITAL MARKETS

Please note the following capitalised terms used throughout this guide:

"**Act**" means the Companies Act (Cap. 386).
"**ESMA**" means the European Securities and Markets Authority.
"**FMA**" means the Financial Markets Act (Cap. 345).
"**Issuer**" means a public limited liability company with, or seeking to have, debt or equity securities listed on a regulated Market in Malta.
"**MAR**" means the Market Abuse Regulation (596/2014).
"**MFSA**" means the Malta Financial Services Authority.
"**MSE**" means the Malta Stock Exchange.
"**PFMAA**" means the Prevention of Financial Markets Abuse Act (Cap. 476).
"**PR**" means the Prospectus Regulation (2017/1129).
"**Rules**" means the Capital Markets Rules published by the MFSA.

1. Please briefly describe the regulatory framework and landscape of both equity and debt capital market in your jurisdiction, including the major regimes, regulators and authorities.

The MFSA is the authority regulating the regime for Issuers seeking to list either debt or equity securities in Malta. In May of 2022, the MFSA established the Capital Markets Supervision Function for the purpose of regulating and overseeing activities in capital markets including (i) applications for admissibility to listing on regulated markets, (ii) approval of prospectuses, (iii) supervising continuing obligations, and (iv) identification of market abuse. Once a prospective Issuer has sought, and been granted, admissibility to listing by the MFSA, the Issuer would then seek admission to a recognised list of the MSE.

Information on the essential requirements to a main market listing may be found in our reply to question 6. Information on the obligations to publish a prospectus may be found in our reply to question 2, and information on the continuing obligations applicable to Issuers may be found in our reply to question 16.

In addition, the MSE's Institutional Financial Securities Market (the "IFSM") is a market which allows Issuers to target institutional investors, and applications can be made in respect of debt securities, asset-backed securities, insurance linked notes, convertible debt securities and derivative securities. The MSE has also developed a start-up market named Prospects for which there is no minimum public float requirement, track record or minimum issue size. Both are regulated by their own sets of rules (the Wholesale Securities Market Rules and the Prospect Rules). The MSE and IFSM are regulated markets. Prospects is a multi-lateral trading facility.

The key applicable legislation and regulations are (a) the Act, (b) the Rules, (c) the FMA, (d) the MAR, (e) the PFMAA, (f) the PR, and (g) the MSE Bye-Laws. These, and others, also implement the following EU Directives:

- the Shareholder Rights Directive;
- the Takeover Directive;
- the MiFID II Directive; and
- the Transparency Directive.

2. Please briefly describe the common

exemptions for securities offerings without prospectus and/or regulatory registration in your market.

The exemptions from the obligation to publish a prospectus set out in Article 1(5) of the PR are directly applicable in Malta and have also been implemented through the Act and the Rules.

In terms of the Act, the following do not require the publication of a prospectus:

- an offer of securities made only to qualified investors;
- an offer made to less than 150 persons per Member State or EEA State (not including qualified investors)
- an offer where the minimum consideration per investor is at least 100,000 Euro;
- an offer where the nominal value of each security is at least 100,000 Euro;
- an offer where the total consideration of the securities for the offer in the European Union and the EEA does not exceed 5,000,000 Euro, calculated over a period of twelve months;
- an offer in respect of non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration of the offer in the European Union and the EEA, over a period of twelve months is less than 75,000,000 Euro;
- dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid;
- an offer of securities allotted to existing or former directors or employees by their employer/affiliated undertaking provided that the company's head/registered office in the European Community; or
- in relation to shares issued on the redemption or reduction of shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital.

In terms of the Rules, the obligation to publish a prospectus shall not apply to:

- an issue of securities that represents less than 20% of the number of securities of the same class already admitted to listing on the Official List, calculated over a 12-month period;
- an offer of shares offered or allotted to existing shareholders free of charge, or a dividend paid out in the form of shares provided that those shares are of the same class as shares already admitted to listing on the Official List; or
- a secondary listing of securities that are already listed on another regulated market, provided that certain conditions apply.

3. Please describe the insider trading regulations and describe what a public company would generally do to prevent any violation of such regulations.

In terms of the PFMAA and the MAR, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, is also considered to be insider dealing.

Inside information is primarily defined as "information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments."

The relevant articles on insider dealing in the PFMAA and the MAR apply to persons who are in possession of inside information as a result of:

- being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;
- having a holding in the capital of the issuer or emission allowance market participant;
- having access to the information through the exercise of an employment, profession or duties; or
- being involved in criminal activities.

The PFMAA provides for various administrative sanctions that may be imposed by the MFSA with respect to insider dealing including:

- in respect of a natural person, an administrative pecuniary sanction which does not exceed 5,000,000 Euro for each infringement; and
- in respect of a legal person, an administrative

pecuniary sanction which does not exceed 15,000,000 or 15% of the total annual turnover of the legal person.

Furthermore, the said person will be guilty of a criminal offence and:

- in the case of a natural person, liable on conviction to a fine not exceeding 5,000,000 Euro 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 a legal person, liable on conviction to a fine not exceeding 15,000,000 Euro or up to three times the profit made or the loss avoided by virtue of the offence, whichever is the greater), or to other measures which may include (a) temporary or permanent disqualification from the practice of commercial activities (b) temporary or permanent closure of establishments used for committing the offence or (c) to judicial winding up.

In order to ensure compliance and prevent violation, an Issuer may:

- have procedures and manuals in place to allow persons to (i) correctly identify inside information, (ii) restrict the dissemination of inside information and (iii) ensure its confidentiality;
- create and maintain insider lists, properly identifying the inside information being disclosed, to whom and when;
- provide the appropriate training to persons within the public company who are likely to encounter inside information;
- have procedures in place requiring internal confirmation before trading in the securities of the company can take place;
- not allow any exceptions to the black out period during which no trading can take place; and
- have an in house watchdog.

4. What are the key remedies available to shareholders of public companies / debt securities holders in your market?

With respect to shareholders of public companies, please see points (a) through (c) in reply to question 10. In addition to these remedies, shareholders have the right to be represented and vote at the company's general meetings.

In the case of debt securities, in an event of default (i.e. typically the failure to pay the principal and/or interest), the primary remedy for a bondholder is to bring an action against the Issuer to enforce their rights under the bonds/notes. That is, to seek the declaration that the principal and/or intertest (as the case may be) is/are due, and, on the basis of that affirmative declaration, obtain the necessary warrants against the Issuer. If the bond issue is secured, the bondholder would also seek to enforce their rights over the security provided. Locally, a security trustee is typically appointed to hold the security on behalf and in the interest of the bondholder and, as such, these rights of enforcement would be exercised by the trustee on behalf of the bondholder. Lastly, a bondholder is entitled to be represented and vote at bondholder meetings for the purpose of exercising any rights granted to them in terms of the prospectus and to be exercised at that meeting.

5. Please describe the expected outlook in fund raising activities (equity and debt) in your market in 2023.

Equity issues continue to remain less popular than their corporate bond counterpart and, despite strong equity issues being brought to market, the market remains cautious. This creates a cycle in which equity issues are rarely fully subscribed which then causes prospective Issuers to opt for debt rather than equity. On the other hand, 2022 saw a new record for corporate bond issuances and, adjusting for the COVID years of 2020 and 2021, 2022 shows an upward trend surpassing the previous record year for corporate bond issuances, which was 2019.

Ultimately, most investors in Malta are retail investors and local investment will largely depend on the continued cost of living increase and the income left in your average investor's pocket. Nevertheless, the local investor's preference for debt, coupled with rising and uncertain interest rates would point towards a continued rise in the issuance of corporate bonds.

6. What are the essential requirements for listing a company in the main stock exchange(s) in your market? Please describe the simplified regime (if any) for company seeking a dual-listing in your market.

The following are the conditions which must be satisfied by an applicant in order to obtain authorisation for

admissibility to listing:

a. Legal Form and Memorandum and Articles: an applicant must be a public limited company and be governed by a memorandum and articles of association that conform with the provisions set out in Appendix 5.2 of the Rules.
b. Issued Share Capital: the applicant must have a fully paid-up share capital of at least 1,000,000 Euro.
c. Market Capitalisation: the aggregate market value of all equity securities subject to the application must be at least one million euro (€1,000,000);
d. Shareholder Funds: shareholders' funds less intangible assets of at least six hundred thousand euro (€600,000);
e. Appointment of a Sponsor: an applicant applying for a primary listing of its securities which requires the production of a prospectus or equivalent document is required to appoint a sponsor which is independent of the issuer and appropriately licenced under the Investment Services Act (Cap. 370) or authorised under MiFID II.
f. Transferability: the securities for which authorisation for admissibility to listing is sought must be freely transferable.
g. Prospectus: preparation of a prospectus.
h. Formal Application: application to be made to the MFSA and MSE.
i. Accounts: an applicant must have three financial years preceding the application for admissibility to listing and the last year of audited information may not be older than 18 months from the date of the registration document.
j. Shares in Public Hands: upon listing, the Issuer must have at least 25% of the class of shares in respect of which application is made are in the hands of the public.

The procedure, when applying for a secondary listing, is largely the same as when applying for a primary listing save that a prospectus may not be required in terms of Article 1(5) of the PR.

7. Are weighted voting rights in listed companies allowed in your market? What special rights are allowed to be reserved (if any) to certain shareholders after a company goes public?

The Rules provide that Issuers shall ensure equal treatment for all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting. On the basis of freedom of contract, and provided that this is set out in the company's memorandum or articles of association and/or offering document, there should be no restriction to having different classes of shares carrying different rights.

Nevertheless, reference should also be made to Article 135 of the Act which governs ordinary and extraordinary resolutions. In the case of ordinary resolutions, the law provides that such resolutions are carried when passed by "more than 50% of the voting rights attached to shares represented and entitled to vote at the meeting, or such other higher percentage as the memorandum or articles may prescribe."

On the other hand, in the case of extraordinary resolutions, the same Article 135 provides that such resolutions are carried when passed by "not less than 75% in nominal value of the shares represented and entitled to vote at the meeting and at least 51%, or such other higher percentage as the memorandum or articles may prescribe, in nominal value of all the shares entitled to vote at the meeting."

Therefore, the use of nominal value, as opposed to voting rights, would indicate that in the case of extraordinary resolutions, weighted voting would not be allowed.

8. Is listing of SPAC allowed in your market? If so, please briefly describe the relevant regulations for SPAC listing.

Although there was initial positivity surrounding this type of vehicle, interest has dropped off. There is no particular regime governing SPACs in Malta, although the nature of the structure necessitates some differences from the typical initial public offering. The main challenges with the vehicle center around the ability to provide appropriate disclosures and/or the complexity of the product being sold. As such, ESMA had issued a public statement which, although addressed to national competent authorities, should be taken into account by Issuers when drawing up prospectuses concerning SPACs.

With respect to complexity, ESMA's expectation is that the Issuer should determine whether retail clients should be excluded from participation. Moreover, there should be additional focus on a number of disclosure requirements to bridge the gap between the disclosures in the prospectus (prior to the identification of the target

company) and the necessary information to allow an investor to make an informed investment decision. These range from specific disclosures on the Issuer's strategy and objectives (including the criteria for the selection of the target company) to information on potential dilution following acquisition.

9. Please describe the potential prospectus liabilities in your market.

a. Civil Liability: in terms of Article 94 of the Act, "the persons who are responsible for or who have authorised the issue of a prospectus shall be jointly and severally liable for any damage sustained by a person subscribing for shares or debentures on the faith of that prospectus, by reason of any untrue statement included in such prospectus." Furthermore, Article 15B of the FMA provides that the "issuer, the offeror, the person asking for the admission to listing and, or trading on an authorized regulated market, the guarantor or, when any of the foregoing is a legal entity, the members of its administrative, management or supervisory bodies, as the case may be, shall be jointly and severally responsible and civilly liable for the information submitted in a prospectus, and any supplement thereto." Additionally, as the prospectus is a contract between the Issuer and the investor, civil liability may also arise under the general civil law provisions contained in the Civil Code (Cap. 16).
b. Administrative: in terms of Article 11 of the FMA, it is the function of the MFSA to ensure compliance by Issuers with the requirements or conditions set out in inter alia the PR and the Rules. A person who contravenes any provision of the Rules (which transpose requirements of the PR) is liable to an administrative penalty of up to 150,000 Euro for each breach or failure to comply.
c. Criminal: any person guilty of an offence under the provisions of Article 40 of the FMA (which likewise, brings in the failure to abide by the requirements of the PR), shall be liable on conviction to a fine of up to 466,000 Euro or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.

10. Please describe the key minority shareholder protection mechanisms in your market.

The following mechanisms are available to minority shareholders of Issuers:

a. 402 Action: under Article 402 of the Act, any member of a company who complains that the affairs of the company have been or are being or are likely to be conducted in a manner that is, or that any act or omission of the company have been or are or are likely to be, oppressive, unfairly discriminatory against, or unfairly prejudicial, to a member or members or in a manner that is contrary to the interests of the members as a whole, may make an application to the court. The protection afforded under this Article is relatively wide and the Court, if it determines that the complaint is well founded and that it is just and equitable to do so, can make a number of different orders including (a) regulating the company's conduct and (b) restricting, prohibiting or requiring the carrying out of an act.
b. Right to Call Meeting: members holding not less than 1/10 of the issued paid up capital of a company have the right to call an extraordinary general meeting.
c. Right to put Items on the Agenda of the General Meeting and to table draft Resolutions: a shareholder or shareholders holding not less than 5% of the voting issued share capital of the Issuer may (i) request the Issuer to include items on the agenda of the general meeting and (ii) table draft resolutions for items included in the agenda of a general meeting.
d. Conflicts of Interest: the model articles (please see question 6) provide that a director shall not vote on any contract or arrangement or any other proposal in which he has a material interest.
e. Mandatory Bid: where a person acquires 50% plus 1 of the voting rights of a company, such a person shall, as a means of protecting the minority shareholders of that company, make an offer to all the holders of securities in that company for all their holdings.
f. Disclosure and Reporting of Related Party Transactions: (please see question 12).
g. Corporate Governance Framework: the scrutiny of the audit committee and the independence requirements of the board of directors.

11. What are the common types of transactions involving public companies that would require regulatory scrutiny and/or disclosure?

The following are the common types of transactions that require either approval by the MFSA and/or disclosure by the Issuer:

a. Applications for admissibility to listing of securities;
b. Applications for discontinuance of listing of securities;
c. Transactions by Directors and Officers of Issuers;
d. Transactions with Related Parties;
e. Acquisitions and Realisations;
f. Transactions Involving Substantial Shareholdings;
g. Notification of the acquisition or disposal of major holdings to which voting rights are attached;
h. Amalgamations; and
i. Employee Share Schemes and Directors' Share-based Schemes.

12. Please describe the scope of related parties and introduce any special regulatory approval and disclosure mechanism in place for related parties' transactions.

In accordance with the Rules, a Related Party has the same meaning as that provided in the International Financial Reporting Standards ("IFRS") and a transaction carried out with a Related Party must be entered into at arm's length and on a normal, commercial basis.

With respect to approvals, it is the role of the Audit Committee of the Issuer to vet and approve related party transactions. If, once the Audit Committee has considered the related party transaction, it deems the proposed transaction to be material and approves such a transaction, then the board of directors of the Issuer may approve the transaction and if so approved, is to, by way of disclosure, publish a company announcement (containing the information set out in the Rules).

Where the transaction is material but is not approved by the board of directors of the Issuer, then the Issuer will be required to (i) publish a company announcement (containing the information set out in the Rules and stating the fact that it was not approved by the Audit Committee), (ii) send a circular to shareholders and (iii) obtain approval from the shareholder at the general meeting. This circular will need to have been approved by the MFSA.

Whether or not a transaction is material, is prescribed by the Rules. Using either the gross assets test, the profits test or the consideration test, where any of these tests amount to 5%, the transaction is deemed to be a material transaction.

There are also additional disclosures, in that an Issuer needs to disclose all related party transactions ex post facto in the annual financial report. Lastly, the interim directors' report must also contain an update to the transactions in the previous annual financial report and related party transactions that have taken place in the first 6 months of the financial year and that materially affect the financial position/performance of the Issuer.

13. What are the key continuing obligations of a substantial shareholder and controlling shareholder of a listed company?

The Rules define a Substantial Shareholder as anyone entitled to exercise or control the exercise of 10% or more of the votes able to be cast at general meetings of an Issuer or is in a position to control the composition of a majority of the board of directors of an Issuer.

In the case of a potential disposal, a Substantial Shareholder must (a) use every endeavour to prevent the creation of a false market in the securities of the issuer and (b) take care that statements are not made which may mislead shareholders or the market.

Any shareholder who acquires or disposes shares to which voting rights are attached is to notify the Issuer and the MFSA of the proportion of voting rights of the issuer held by such shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15% 20%, 25%, 30%, 50%, 75% and 90%.

14. What corporate actions or transactions require shareholders' approval?

As a general principle, the governance of the company is, save for those which are reserved for the shareholders, either in terms of law or the memorandum and articles of association, vested in the board of directors.

In terms of law, the following corporate actions require shareholder approval:

i. Removal of a director before the expiration of his period of office.
ii. Calling of a general meeting. Please see point (b) in replies to question 10.
iii. Reduction in share capital.
iv. Increase in share capital (unless the board of directors have been so authorized in terms of Article 85 of the Act).
v. Acquisition of own shares.
vi. Restriction of pre-emption rights.
vii. Approval of dividend.
viii. Appointment and remuneration of auditor.
ix. Approval of financial statements.
x. Winding up and dissolution.
xi. Amendments to the memorandum and articles of association will require shareholder approval. The extent of the approval required will be dictated by the articles of association.

With respect to the memorandum and articles of association, there is no obligation to require shareholder involvement beyond that of the general meeting and the matters to be approved therein. However, shareholders may, in addition to the annual general meeting, insert shareholder reserved matters in the memorandum and articles of association, which would require the board of directors to seek shareholder approval when seeking to action any of those reserved matters.

15. Under what circumstances a mandatory tender offer would be triggered? Is there any exemption commonly relied upon?

Where a person acquires more than 50% of the voting rights of a company, that person is required to make a bid for the remainder of the securities so as to protect minority shareholders. Therefore the trigger is the acquisition of control. There is no requirement to make a mandatory bid when a bid is made to all shareholders for all their holdings when the person making such a bid does not have control but, as a result of this voluntary bid, subsequently acquires control.

The MFSA may grant exemptions from the obligation to make a mandatory bid on the basis of a written application in certain circumstances. These circumstances include inter alia when control was acquired as a result of (a) a reduction of share capital, (b) an exercise of pre-emption rights, (c) transmission causa mortis, (d) a merger, or (e) normal acquisition, but with the intention to sell within a short term.

16. Are public companies required to engage any independent directors? What are the specific requirements for a director to be considered as “independent”?

The Rules contain the Code of Good Corporate Governance which adopts a comply or explain approach, encouraging listed companies to comply with its provisions. In terms of the Code, “the board should be composed of executive and non-executive directors, including independent non-executives.”

Despite the Code’s approach, the Rules do, subject to very limited exceptions, oblige a public company with listed securities establish an audit committee and this therefore prescribes the appointment of independent directors. The audit committee must satisfy the following criteria:

- it should be composed entirely of non-executive Directors and having at 3 members;
- the majority of such members shall be independent of the Issuer;
- at least 1 member of the audit committee shall be competent in accounting and/or auditing; and
- the chairman of the audit committee shall be appointed by the board of directors of the Issuer and shall be independent of the Issuer.

The Rules then provide that “a Director shall be considered independent only if he is free of any business, family, or other relationship with the Issuer, its controlling shareholder or the management of either, that creates a conflict of interest such as to impair his judgement”. When determining the independence or otherwise of the Director, the Board of Directors are to take the following situations into account:

- whether, within the previous 3 years, the director has been an executive officer or employee of the Issuer or a subsidiary or parent of the Issuer;
- whether, within the previous 3 years, the director has had a significant business relationship with the Issuer;
- whether the director has received or receives significant additional remuneration from the Issuer or any member of the group of which the Issuer forms part in addition to a director’s fee;
- whether he has close family ties with any of the Issuer’s executive Directors or senior employees;
- whether he has served on the Board of the Issuer for more than 12 consecutive years; or
- whether, within the previous 3 years, he is or

has been within the last three years an engagement partner or a member of the audit team of the present or former external auditor of the Issuer or any member of the group of which the Issuer forms part.

"business relationship" includes the situation of a significant supplier of goods or services (including financial, legal, advisory or consulting services), of a significant customer, and of organisations that receive significant contributions from the Issuer or its group.

17. What financial statements are required for a public equity offering? When do financial statements go stale? Under what accounting standards do the financial statements have to be prepared?

Applicants must have published or filed audited annual accounts covering a minimum of at least 3 financial years preceding the application with the last year of audited information not being older than 18 months from the date of the prospectus. Additionally, these must be consolidated to include any companies in which the Issuer holds more than 50% of the issued share capital and, unless adequate explanations are provided with respect to any qualification, should contain no qualification in the audit reports.

Financial statements must be prepared in accordance with the IFRS or an equivalent standard for non-EEA issuers specified by the European Commission.

18. Please describe the key environmental, social, and governance (ESG) and sustainability requirements in your market. What are they key recent changes or potential changes?

The Act requires large public interest entities (PIEs) to provide, in their Directors' Report a non-financial statement containing information as would provide an understanding of the company's development, performance, position and impact of its activity, relating to, as minimum, environmental, social and employee matters, respect for human rights and anti-corruption and bribery matters. Undertakings qualify as PIEs if on their balance sheet date, they exceed the criterion of the average number of 500 employees during the financial year.

In their disclosures, companies are required to provide (i) a description of the undertaking's business model; (ii) a description of the policies pursued by the undertaking in relation to environmental, social and employee matters, respect for human rights and anti-corruption and bribery matters, including due diligence processes implemented in relation thereto; (iii) the outcome of those policies; (iv) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks; and (v) non-financial key performance indicators relevant to the particular business. Where an undertaking does not pursue policies in relation to one or more of the matters, it is required to provide a clear and reasoned explanation for not doing so in its non-financial statement.

Public-interest entities which are parent undertakings of a large group exceeding, on its balance sheet date, on a consolidated basis, the criterion of the average number of 500 employees during the financial year are also required to include a consolidated non-financial statement in the consolidated directors' report containing the information set out above as would provide an understanding of the group's development, performance, position and impact of its activity, relating to as minimum, environmental, social and employee matters, respect for human rights and anti-corruption and bribery matters.

In addition to the requirement set out in the Act, the Rules require companies having in excess of 500 employees to provide a description of the entity's diversity policy in its corporate governance statement, which forms part of the annual report. The statement should include a description of how the entity's diversity policy is applied to its board of directors with regard to aspects such as age and gender, the objectives of the diversity policy, the manner in which it has been implemented and its results. Reporting is made on a comply or explain basis.

The ESG reporting requirements set out in the Act and the Rules transpose the provisions of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (NFRD) into Maltese law.

With the coming into effect of the Taxonomy Regulation in July 2020, large public interest companies are also required to report on the entity's environmental performance. Article 8 of the Regulation requires large undertakings to disclose information on the manner and extent to which the undertaking's activities are associated with environmentally sustainable economic

activities. Article 8(2) specifies the key performance indicators related to turnover, capital expenditure and operational expenditure that must be disclosed.

Following the coming into force of Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU as regards corporate sustainability reporting, changes to the nature and manner in which ESG matters are currently being reported are expected in the near future.

The Directive, known as the Corporate Sustainability Reporting Directive (CSRD) has promulgated a new and detailed sustainability reporting framework which also seeks to align disclosure formats and standards across the European Union. Going forward, listed companies must report on matters including environmental and climate issues, social rights, human rights, governance matters such as rights of employees, anti-corruption and anti-bribery in accordance with the European Sustainability Reporting Standards which are being developed by the European Financial Reporting Advisory Group. In terms of the CSRD, disclosures, which need to be externally audited, are to be reported in a dedicated section of the company's management report. Reporting under CSRD will be phased-in with large companies currently subject to NFRD being required to publish a CSRD-compliant report in 2025. Small and medium-sized listed companies are expected to comply as from 2026, with their first CSRD-compliant reports being published in 2027. The application of the CSRD framework will result in gradual phasing-out of the rules under the NFRD.

19. What are the typical offering structures for issuing debt securities in your jurisdiction? Does the holding company issue debt securities directly or indirectly (by setting up a SPV)? What are the main purposes for issuing debt securities indirectly?

The most commonly used structure in Malta is the issuance of fixed rate bonds which are issued by the holding company directly. Acting as the finance arm of the group, the Issuer would then lend the proceeds to the operating subsidiaries within the group. If secured, assets would be granted as security for the bond obligations. If unsecured, it is common for negative covenants to be in place as well as a subordination of loans between the subsidiary and the Issuer in favour of the bondholders.

Certain structure do include the incorporation of a special purpose vehicle for a particular debt issue. The most common motivations are tax restructuring and/or the ringfencing of assets.

20. Are trust structures adopted for issuing debt securities in your jurisdiction? What are the typical trustee's duties and obligations under the trust structure after the offering?

Yes, debt offerings are commonly secured and, as such, the Issuer will engage a trustee for the lifetime of the bond. In addition to those that emerge from the Trust and Trustees Act (Cap. 331), the rights and obligations of the trustee are outlined in the trust deed. The primary role of the trustee is the acceptance of the security granted on trust for the benefit of the bondholders. The most common form of security in Malta is immovable property which is secured against the performance of the Issuer's obligations via the granting of hypothecs in favour of the security trustee for the benefit of the bondholders.

21. What are the typical credit enhancement measure (guarantee, letter of credit or keep-well deed) for issuing debt securities? Please describe the factors when considering which credit enhancement structure to adopt.

The most commonly used credit enhancement measure in Malta is collateralisation. That is, approaching the market with a fully secured bond. This is done either through the Issuer (or typically, a related party) granting its assets as security for the its obligations under the bond. A further measure commonly adopted is the parent guarantee, although this is sometimes a related or even third party guarantee. This is done to guarantee the obligations of the Issuer and is either in the form of a corporate guarantee (without providing specific security) and/or the guarantor granting its assets as security for the Issuer's obligations under the bond.

Lastly, a less common measure, and with bonds issued on Prospects (please see our reply to question 1), is the Issuer's undertaking to build a sinking fund so that, over the lifetime of the bond, funds are segregated with an obligation to have the principal available for settlement upon maturity.

22. What are the typical restrictive covenants in the debt securities' terms and conditions, if any, and the purposes of such restrictive covenants? What are the future development trends of such restrictive covenants in your jurisdiction?

The two most common negative covenants when issuing debt securities aim to preserve the Issuer's assets and/or avoid over indebtedness. In the case of a secured bond issue, it is common for the security provider to undertake not to (a) sell, transfer or otherwise alienate the property making up the security and/or (b) perform acts which reduce the value of the property making up the security and/or cause any preference over that property to be granted to any person which will rank above the rights of the bondholders. When the bond issue is not secured, Issuers often undertake, for the lifetime of the bond, not to create or permit to subsist any encumbrance upon the their present or future assets or revenues to secure any financial indebtedness of the Issuer, unless the Issuer's indebtedness under the bonds is secured equally. This latter restriction will typically allow certain exceptions in that the encumbrance may be granted to a lender provided it is for a certain purpose and there being appropriate debt to security cover.

In terms of secured bonds, we expect this restrictive covenant to continue, although a number of Issuers are increasingly building in the ability to remove and/or alter the initial security package provided that adequate replacements and/or cover are provided. In terms of unsecured bonds, we also expect the applicable negative undertaking to be predominantly used, however we may start seeing a handful of Issuers move away from this standard, opting for other types of negative undertakings, e.g. net debt to EBIDTA ratios.

23. In general, who is responsible for any profit/income/withholding taxes related to the payment of debt securities' interests in your jurisdiction?

The default rule under the Income Tax Management Act (Cap. 372) is that interest earned on bonds is charged a withholding tax of 15%. This is typically withheld, and then remitted to the Government, by the financial intermediary/ stockbroker. However it is possible for the bond holder to ask the registrar to issue the interest on a bond as gross. Usually this is declared at subscribing stage. The individual opting out of the withholding tax regime would then have the self-assessment responsibility to inform Inland Revenue and declare these earnings. These earnings will be declared with gross income, thus subject to income tax.

24. What are the main listing requirements for listing debt securities in your jurisdiction? What are the continuing obligations of the issuer after the listing?

Please see our reply to question 6 which, unless in relation to equity securities, are applicable. Note that with respect to issued share capital, when listing debt securities, the applicant must have a fully paid-up share capital of at least 250,000 Euro.

The continuing obligation of the Issuer are contained in Chapter 5 of the Rules provided that not all need be followed in the case of Issuers which only have debt securities listed. The main continuing obligations are the following:

a. Company Announcements: the Rules provide instances mandating disclosure to the market, although disclosures are not simply limited to those instances. Debt Issuers however need not make notifications regarding major holdings, voting rights and own shares.
b. Financial Reporting: the Issuer is required to publish half yearly and annual financial reports.
c. Audit Committee: the Issuer must establish an audit committee made up entirely of non-executive directors and a majority of independent directors.
d. Related Party Transactions: safeguards need to be in place with respect to transactions and arrangements between an Issuer and a Related Party, which transactions must be entered into at arm's length and on a normal, commercial basis. This need not be followed by Issuers which only have debt securities listed.
e. Acquisitions and Realisations: using the same class tests referred to in our reply to question 12, the size of the transaction may require disclosure by way of announcement and circular and shareholder approval at the general meeting.
f. Transactions Involving Substantial Shareholdings: the Issuer has the obligation to ensure that, when it is aware or advised of a negotiation or transaction involving Substantial Shareholdings (please see our reply to question 13 for definition), to (i) use every endeavour to prevent the creation of a false market in the securities of the Issuer and

(ii) issue company announcements in certain instances.

g. Corporate Governance: Issuers are expected to comply with the code of principles of good corporate governance and, in the case of non-compliance, provide shareholders with an explanation.

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