

Consultation Document on Proposed Amendments to the Listing Policies

In 2010 the Listing Authority (the “LA”) issued a consultation document on a possible rethink of the policy relating to the requirement of setting up a sinking fund and adoption of a new policy requiring a financial assessment report to be submitted for admissibility to listing, in both cases in relation to corporate bonds to be marketed to local retail investors (the “Policies”). The Policies sought to establish conditions for admissibility to listing, which enhance retail investor protection, however did not seek not to guarantee the full repayment of the bond on maturity.

The realities and demands of the market have since spurred a drive to have the Policies amended.

Pre-Amendment Requirements of the Policies

The Policies required that an issuer, save for certain exemptions, set aside funds equivalent to at least 50% of the value of a maturing bond to be used for the purpose of repayment of (part of) the capital due at maturity, through pre-determined annual contributions calculated as a percentage of the Issuer’s profits after tax. Such requirement was applicable in relation to an issue which either had no minimum level of subscription or subsequent holding requirements or in relation to an issue which was subject to a minimum subscription and subsequent holding of between €10,000 and €50,000 per investor and where the bond issue was directed to investors having the necessary expertise, experience and knowledge to be in a position to make their own investment decisions and to understand the risks involved. The Policy provides for the term for funding of the sinking fund, the role of Sinking Fund Custodian and the Custodian’s permitted activities, as well as the investment parameters of the assets of such fund and the use they may be put to, including the ability of an issuer to buy back its own bonds.

The financial soundness report (the “FS Report”) is promoted as being necessary to demonstrate the financial soundness and strength of the Issuer to the LA and is a pre-condition for the admissibility to listing. It includes a Due Diligence Report prepared by an independent accountant and a Financial Analysis Summary drawn up by an independent stockbroker. The Financial Analysis Summary, a document available to investors which is attached to the Issuers Prospectus, is to be updated annual basis.

Consultation & Amendments

On the 25th October 2012 the LA issued a consultation paper on the subject, and further to review of the response generated, the LA has re-examined the role of the sinking fund and that of the financial soundness report.

The LA, in noting that the FS Report “is playing an important role in providing timely and accurate information to investors and is almost certainly a more effective tool for the protection of investors than the present Sinking Fund arrangement....”, is proposing to amend the Listing Policies so as to remove the necessity for the Issuer to set-up a sinking fund save in certain specified cases. Instead, issuers will be required to draw up a FS Report for all bonds listed with a minimum subscription of less than €50,000.

The proposed amendments provide for the validity of the due diligence report (required as part of the FS Report) as being of 12 months from the date of its publication. This timeframe allows for any new borrowing made by the same issuer during such period to be covered by the aforementioned report should the information contained therein be relevant to the new issue. Nonetheless a financial analysis summary will still be needed for each new issue. The LA is further proposing that an annual update of the financial analysis summary suffice where a company/group has multiple borrowings, where the information in such summary is drawn up to cover each of these borrowings.

Where the source of repayment of bonds in issue is to be mainly from the sale of the asset funded by the borrowing, the creation of a sinking fund would still be necessary. In this regard the amendments to the Policies require the creation of the sinking fund but do not prescribe the manner in which such should be provided for. The issuer would however be required to submit to the LA projections on provisions to the sinking fund. It will be up to the Issuer to propose to the LA the manner in which it intends to provide for a sinking fund and the acceptance/rejection of such proposal will be at the discretion of the LA.

The aforementioned amendments will not affect issues the prospectus relative to which provides for the creation of a sinking fund - such Issuers will be obliged to fulfil their commitment to set up and maintain a sinking fund in terms of their respective prospectus.

In relation to issues subject to, a minimum subscription and subsequent holding of €10,000 per individual investor or more but below €50,000 and where the bond issue is directed to investors having the necessary expertise, experience and knowledge to be in a position to make their own investment decisions and to

understand the risks involved, the Policies solely required the creation of a sinking fund. The amended Policies have done away with this but now require the Issuer to produce a FS Report. The obligations in relation to issues subject to a minimum subscription and subsequent holding of €50,000 per investor or more remain unchanged, that is, no FS Report or sinking fund are required.

The consultation paper further provides that issuers seeking admissibility to listing should demonstrate to the LA that they have in place the necessary risk management policies in the event which of any maturity/refinancing risks which may occur at maturity of their bonds. Moreover as a matter of further, where the LA deems that minimum subscription of an issuer's bond is unsuitable for the retail investor in relation to the purpose of the issuer, the LA may require the issuer to increase such level of minimum subscription.

The consultation period ran until the 5th March 2013 and the proposed changes have now been implemented into the Listing Policies bearing the aforementioned date. The revised Listing Policies can be accessed on

http://www.mfsa.com.mt/Files/Listing%20Authority/Listing%20Authority%20Policies/2013_03_05%20Published%20Listing%20Authority%20Policies.pdf

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