L.N. 389 of 2005

COMPANIES ACT
(CAP. 386)

Companies Act (The Prospectus) Regulations, 2005

IN exercise of the powers conferred by Article 425(1)(l) of the Companies Act, the Prime Minister and Minister of Finance, has made the following regulations:-

Title and commencement.

1. (1) The title of these regulations is the Companies Act (The Prospectus) Regulations, 2005.

(2) These regulations shall come into force immediately upon publication provided however that where any of the provisions thereof relate to offers of securities and to prospectuses delivered or given to or served on the Registrar on or after the 15th December, 2005, such provisions shall come into force on the 15th December, 2005.

Interpretation. Cap. 386.

2. Any reference in these regulations to "the Act" is a reference to the Companies Act.

Central Competent Administrative Authority.

3. For the purposes of implementing the relevant provisions of the Prospectus Directive, the "central competent administrative authority" within the meaning of this Directive responsible for carrying out the obligations provided for therein shall be the Malta Financial Services Authority established by the Malta Financial Services Authority Act, acting through the Registrar.

Cap. 330.

Powers of the Registrar.

4. Without prejudice to the powers of the Registrar under the Act and to better implement the provisions of the Prospectus Directive, the Registrar shall have the power to:

(a) require the inclusion in the prospectus of supplementary information necessary for investor protection as the Registrar may specify;

(b) require issuers or offerors or persons that control them or are controlled by them to provide specified information and documents;

(c) require auditors and managers of the issuer or offeror as well as any financial intermediaries involved in the offer to the public to provide specified information;

(d) suspend an offer to the public for a period not exceeding ten working days or prohibit or suspend advertisements up to the said maximum period if the Registrar has reasonable grounds for suspecting that a provision of these regulations have been infringed;

(e) prohibit an offer to the public if the provisions of these regulations have been infringed or if the Registrar has reasonable grounds for suspecting that they would be infringed; and

(f) make public the fact that an issuer or offeror is failing to comply with his obligations under any provision of the Act and may disclose measures or sanctions imposed on any person responsible for the issue, circulation or distribution of a prospectus, unless such disclosure would cause disproportionate damage to the persons involved.

Advertisements.

5. (1) Any type of advertisements relating to an offer to the public of securities shall satisfy the following requirements:

(a) advertisements shall be clearly recognisable as such. The information contained in the advertisement shall not be inaccurate or misleading. This information shall also be consistent with the information contained in the prospectus, if already published, or with the information required to be in the prospectus, if the prospectus is to be published afterwards;

(b) an advertisement shall contain a statement that a prospectus has been or will be published and the addresses and times at which copies of the prospectus are or will be available to the public; and

(c) all information concerning the offer to the public disclosed in an oral or written form, even if not for advertising purposes, shall be consistent with that contained in the prospectus.

(2) Any advertisement or other document issued for the purpose of publicising an offer to the public shall require the consent of the Registrar prior to its publication.

(3) When no prospectus is required, material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors, including information disclosed in

the context of meetings relating to offers of securities, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed. Where a prospectus is required to be published, such information shall be included in the prospectus or in a supplement to the prospectus in accordance with paragraph 26 of Part A of the Second Schedule to the Act.

Right of Appeal.

6. Any decision taken by the Registrar in respect of any matter concerning the prospectus or an offer to the public, shall be subject to a right to appeal to the Financial Services Tribunal within the meaning of the Malta Financial Services Authority Act, as if a decision of the Registrar were a decision of the Authority, and the provisions of article 21 thereof shall apply *mutatis mutandis*.

Cap. 330.

Cooperation with other regulatory authorities.

7. The Registrar shall cooperate with other regulatory authorities for the purpose of assisting them in carrying out their duties and making use of their powers, particularly for the following purposes:

(1) exchange of information and cooperation when an issuer has more than one home regulatory authority;

(2) transfer of the approval of a prospectus to the regulatory authority of another Member State or EEA State.

Precautionary Measures.

8. (1) Where Malta is the host Member State and the Registrar finds that irregularities have been committed by the issuer or offeror or by the financial institutions in charge of the offer to the public, he shall refer those findings to the regulatory authority of the home Member State or EEA State.

(2) If measures taken by the regulatory authority of the home Member State or EEA State do not prevent the issuer or offeror or the financial institutions in charge of the offer to the public, from breaching the relevant provisions of this Act or these regulations, the Registrar shall, after informing the regulatory authority of the home Member State or EEA State, take any appropriate measures in order to protect investors.

Interpretation.

9. (1) The objective of these regulations is partly to implement the relevant provisions of the Prospectus Directive and shall be interpreted and applied accordingly.

(2) In the event that any of these regulations conflict with the provisions of the Prospectus Directive, the latter shall prevail.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Prezz 8ċ – *Price 8c*