

L.N. 138 of 2009**FINANCIAL MARKETS ACT
(CAP. 345)****Central Securities Depository (Authorisation Requirements)
Regulations, 2009**

IN exercise of the powers conferred by article 30 of the Financial Markets Act, the Minister of Finance, the Economy and Investment after consultation with the Malta Financial Services Authority, has made the following regulations:

1. The title of these regulations is the Central Securities Depository (Authorisation Requirements) Regulations, 2009. Title.

2. (1) In these regulations unless the context otherwise requires: Interpretation.

“the Act” means the Financial Markets Act;

“applicant” means a person who has submitted an application to the competent authority to operate or provide the services of a central securities depository;

“market contract” means a contract entered into by a member or participant in a regulated market or a user in accordance with and subject to the bye-laws of such regulated market or guidelines of a central securities depository and which shall be brought into effect through the clearing and settlement systems provided by a central securities depository;

“users” means any person, body corporate or other entity who makes use of the services provided by a central securities depository, including members of a regulated market, companies, investors, and members of the general public.

(2) Words and expressions used in these regulations shall have the same meaning as is given to them in the Act, unless otherwise defined herein.

Authorisation
requirements.

3. (1) These regulations set out the authorisation requirements which shall be satisfied by an applicant requesting to qualify as a central securities depository and which shall be satisfied by any central securities depository on a continuing and ongoing basis if such depository is to remain a central securities depository.

(2) The burden of proving to the competent authority that the authorisation requirements have been or are being properly satisfied rests exclusively on the applicant or the central securities depository, as the case may be.

Suitability.

4. (1) The central securities depository must be fit and proper to perform its functions and it shall also be of good standing.

(2) The persons who:

(a) effectively direct the business and operations of a central securities depository; or

(b) are in a position to exercise, directly or indirectly, significant influence over the management of the central securities depository,

shall satisfy the fit and proper criterion by being of sufficient good repute and, where relevant, sufficiently experienced to ensure the sound and prudent management and operation of the central securities depository.

Constitution,
governance and
general organisational
requirements.

5. (1) The constitution, governance, organisational structure and management systems of the central securities depository shall be adequate and appropriate for the scale and nature of its business.

(2) The central securities depository shall have systems and controls in place ensuring that the performance of its functions are adequate and appropriate for the scale and nature of its business.

(3) Without prejudice to the generality of sub-regulations (1) and (2) of this regulation, the central securities depository shall:

(a) establish, implement and maintain decision-making procedures and an organisational structure which clearly

and in a documented manner specifies reporting lines and allocates functions and responsibilities;

(b) employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them and ensure that its officers are aware of the procedures which shall be followed for the proper discharge of their responsibilities;

(c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the central securities depository and to safeguard the security, integrity and confidentiality of information as appropriate;

(d) maintain adequate and orderly records of its business and internal organisation;

(e) ensure that the performance of multiple functions by its officers does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally;

(f) establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions, or, where that is not possible, the timely recovery of such data and functions.

(4) Without prejudice to regulation 16, the central securities depository shall ensure that it is able to control the performance and quality of any contractual commitments for any services or facilities that it outsources to third parties.

6. (1) The central securities depository shall ensure that its business is conducted in an orderly manner and affords proper and adequate protection to users of its services.

Safeguards for users of central securities depository's services.

(2) Without prejudice to the generality of sub-regulation (1) of this paragraph, the central securities depository shall, by virtue of appropriate procedures to the satisfaction of the competent authority, ensure that:

(a) satisfactory arrangements are made for securing the timely discharge of the rights and liabilities of the parties to

transactions in financial instruments in relation to which the central securities depository provides clearing and settlement services;

(b) appropriate measures are adopted to reduce the extent to which the facilities of the central securities depository can be used for an unlawful purpose;

(c) satisfactory arrangements are made for the safeguarding and administration of assets belonging to users of those facilities, where relevant; and

(d) the integrity and accuracy of its records pertaining to holders of financial instruments and transactions in financial instruments.

Compliance.

7. (1) The central securities depository shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the central securities depository to comply with its obligations under the Act, the regulations issued thereunder and the Financial Market Rules, as well as with its obligations under other applicable legislation, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimize such risk and to enable the competent authority to exercise its powers effectively.

(2) The central securities depository shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(a) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with the requirements of sub-regulation (1) of this regulation, and the actions taken to address any deficiencies in the central securities depository's compliance with its obligations;

(b) to advise and assist the relevant persons responsible for carrying out the functions of the central securities depository to comply with the central securities depository's legal and regulatory obligations;

(3) The central securities depository shall:

(a) keep a record of all of its breaches of the Act or the regulations arising therefrom or Financial Market Rules issued thereunder; and

(b) notify the competent authority of all such breaches as soon as the central securities depository becomes aware of the breach.

8. (1) The central securities depository shall take the following actions with a view to manage its risks: Risk management.

(a) establish, implement and maintain adequate risk management policies and procedures which identify the risks, including, particularly operational risk relating to the central securities depository's activities, processes and systems, and where appropriate, set the level of risk tolerated by the central securities depository;

(b) adopt effective arrangements, processes and mechanisms to manage the risks relating to the central securities depository's activities, processes and systems, within the context of that level of risk tolerance;

(c) monitor the following criteria:

(i) the adequacy and effectiveness of the central securities depository's risk management policies and procedures;

(ii) the level of compliance by the central securities depository and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with sub-paragraph (b) of this paragraph;

(iii) the adequacy and effectiveness of measures taken to address any deficiencies in those arrangements and procedures, including failures by the relevant persons to comply with such arrangements or follow such procedures.

(2) The central securities depository shall establish and maintain a risk management function that implements the policy and procedures referred to in sub-regulation (1) of this regulation.

9. (1) The central securities depository shall have financial resources sufficient for the proper performance of its functions. Financial resources.

(2) Without prejudice to the generality of the foregoing, each central securities depository shall satisfy at all times those minimum financial resources requirements and minimum financial reporting requirements that may be prescribed by the competent authority from time to time.

Accounting.

10. (1) The central securities depository shall maintain proper accounting records to show and explain its transactions, assets and liabilities.

(2) Without prejudice to the generality of the foregoing, the accounting records of a central securities depository shall:

(a) disclose with reasonable accuracy, at all times, the financial position of the central securities depository;

(b) enable the financial statements which may be required by the competent authority to be prepared within the time limits specified by the competent authority.

(3) This regulation shall apply in addition to other obligations regarding reporting and accounting as may be applicable under any other law.

Co-operation with the competent authority.

11. (1) The central securities depository shall cooperate, at all times and on an ongoing basis, by sharing of information or in any other manner, with the competent authority.

(2) For the purposes of the foregoing provision, the central securities depository shall have appropriate arrangements with its users enabling it to obtain confidential information from its users and disclose such information to the competent authority and in particular, to assist and collaborate with the competent authority without delay in response to a specific written request received from the competent authority in the performance of its functions according to law.

Guidelines to regulate the central securities depository's services.

12. (1) The central securities depository shall make guidelines to better regulate the use of its services and to regulate access to its systems and matters connected therewith.

(2) Without prejudice to the generality of sub-regulation (1) of this regulation, the central securities depository shall ensure that its guidelines adequately address each of the functions which it is authorised to perform.

(3) The central securities depository shall have effective arrangements for monitoring and enforcing compliance with its guidelines.

(4) Any guidelines or amendments made thereto shall be subject to the prior approval of the competent authority.

13. (1) The central securities depository shall have in place effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its functions. Complaints.

(2) The arrangements shall include arrangements for a complaint to be fairly and impartially investigated by a person independent of the central securities depository, and for such person to report on the result of his investigation to the central securities depository and to the complainant.

(3) The arrangements shall confer on the person mentioned in sub-regulation (2) hereof the power to recommend, if he thinks it appropriate, that the central securities depository:

(a) makes a compensatory payment to the complainant;

(b) remedies the matter complained of, or takes both of those steps.

(4) Sub-regulation (2) hereof is not to be construed as preventing the central securities depository from making arrangements for the initial investigation of a complaint to be conducted by the central securities depository.

14. (1) The central securities depository shall have rules to deal with any default which, in the event of a user of the central securities depository being or likely to become unable to meet his obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which he is a party. Default rules in respect of market contracts.

(2) The bye-laws may authorise the taking of the same or similar action in relation to a user who appears to be likely to become unable to meet his obligations in respect of one or more market contracts.

(3) The central securities depository shall have adequate arrangements for ensuring that parties to the contract are notified as soon as reasonably practicable of the default, the identity of the other parties to the contract and of any decision taken under the bye-laws in relation to contracts to which they are a party.

(4) The central securities depository shall cooperate, by the sharing of information or otherwise, with any other authority or body having responsibility for any matter arising out of, or connected with, the default of a user of the central securities depository.

Central securities
depository unable to
pay its debts.

15. (1) Where the board of directors or other similar governing body of a central securities depository becomes aware that the central securities depository is unable to pay its debts or is imminently likely to become unable to pay its debts or becomes aware of any other reason or circumstance which may lead to the central securities depository's suspension or cessation of its activities or of its winding up, it shall forthwith inform the competent authority in writing.

(2) In any such event, whether advised by the central securities depository or otherwise, the competent authority may issue such directives in writing as it may deem appropriate to the central securities depository, and its directives may include the appointment of a controller to take control of the central securities depository's operations and assets or the appointment of a liquidator as may be specified by the competent authority in such directives.

(3) The competent authority may issue Financial Market Rules for the better implementation of the provisions of this regulation.

Satisfaction of
authorisation
requirements.

16. In considering whether an applicant or a central securities depository satisfies the authorisation requirements applying to it under these regulations, the competent authority shall take into account all relevant circumstances.

Outsourcing.

17. An applicant or a central securities depository may be allowed to satisfy some of the authorisation requirements applying to it under these regulations by entering into an agreement to the satisfaction of the competent authority for any functions specified in the said agreement to be performed on its behalf by another person. The provisions of the Financial Market Rules may further regulate such agreements.

