
L.N. 139 of 2009**FINANCIAL MARKETS ACT
(CAP. 345)****Central Securities Depository (Control of Assets) 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:-

Part 1**Preliminary**

1. (1) The title of these regulations is the Central Securities Depository (Control of Assets) Regulations, 2009. Citation and scope.

(2) These regulations regulate the control of assets by a person authorised to operate as a central securities depository.

2. (1) Any reference in these regulations to the Act is a reference to the Financial Markets Act, and subject to the provisions of sub-regulation (2) of this regulation, the provisions of article 2 of the said Act shall also apply to these regulations. Interpretation.

(2) In these regulations, unless the context otherwise requires-

“assets” means movable property of any kind;

“control of assets” means the holding or control of assets belonging to, or on behalf of a customer, by a person hereinafter referred to as the subject person;

“customer” means any person whose assets are held under the control of a subject person;

“subject person” means a person who is in possession of

an authorisation to operate as a central securities depository under the Act.

Part 2

General

Assets held under control constitute a distinct patrimony.

3. (1) A subject person having the control of assets belonging to a customer in the course of rendering a service to such customer, shall hold such assets solely for and on behalf of, and in the interest of, the customer.

(2) Notwithstanding anything otherwise stated in article 1894 of the Civil Code, or in the agreement entered into between the subject person and the customer, or the fact that a customer's assets held under the control of a subject person are registered in the name and title of, or are otherwise vested in the subject person, such assets shall be deemed to constitute a distinct patrimony, separate from that belonging to the subject person and from that of other customers whose assets are also held under the control of the subject person.

(3) Except as expressly provided in the agreement entered into between the subject person and the customer and notwithstanding the provisions of the Civil Code, the control of assets belonging to a customer by a subject person shall not give or be deemed or construed to give to the subject person any rights over such assets nor shall it create any form of loan between the subject person and the customer and, this notwithstanding, the nature of the assets or the rights or obligations of the subject person in relation to the assets.

Customer enjoys right of ownership in assets.

4. (1) A customer whose assets are held under the control of a subject person enjoys a right of ownership in such assets notwithstanding that they may be registered in the name and title of, or are otherwise vested in, the subject person. Where such assets are held by the subject person as part of a common pool of identical assets or are otherwise held in a clients' or common account, the customer enjoys an undivided share in ownership of all the assets held collectively by the subject person in such a pool or account.

(2) The records, accounts and other statements held or issued by the subject person in terms of sub-regulation (3) of regulation 7 of these regulations shall, saving any proof to the

contrary, constitute evidence of their contents and of the right of ownership of the customer as provided in sub-regulation (1) of this regulation.

5. (1) The creditors of a subject person shall have no claim or right of action on or against the assets held under the control of the subject person for and on behalf of, and in the interest of, any customer and such assets shall not be affected in any manner by the provisions of laws and regulations in force regulating the insolvency or bankruptcy of the subject person.

Assets held under control not subject to the rights of creditors of the subject person.

(2) In the event of any such insolvency or bankruptcy or related order or resolution, or in the event that the competent authority so requires, the subject person or any administrator or receiver or other officer appointed to represent it by any court or otherwise shall, on demand of any customer or of the competent authority, immediately transfer the control, possession and title to all assets held by or in the name of the subject person on behalf of the customer to another subject person or to such other person as may be instructed by the customer or by the competent authority.

(3) In the event that any assets held under the control of the subject person are, at the request of any creditor of the subject person, made subject to any precautionary or executive act or warrant granted by any Court in terms of the Code of Organization and Civil Procedure, the customer on whose behalf such assets are being held or the competent authority may, by application to the Court, request the release of the assets from such act or warrant and the Court shall, on production of evidence, as it may deem fit, accede to the application without undue delay.

Cap. 12.

6. (1) The delivery of the assets of a customer to a subject person and from a subject person to a customer or another subject person for the purpose of the control of assets in terms of these regulations shall not be deemed to constitute a chargeable transfer for the purposes of the Duty on Documents and Transfers Act, and for the purposes of subsection (1) of section 5 of the Income Tax Act, where the delivery of such assets does not constitute a change in the beneficial owner of the assets.

Applicability of Duty on Documents and Transfer Act, 1993 and Income Tax Act.

Act XVII of 1993.

Cap. 123.

(2) For the purpose of this regulation, “beneficial owner” means a person who is the real owner of, or who is otherwise beneficially entitled to the assets held under control by the subject person, as provided in regulation 4 of these regulations.

Part 3**Control of Assets**

Functions and duties
of subject person.

7. (1) A subject person having the control of assets belonging to a customer shall safeguard such assets and the interest of the customer therein.

(2) The subject person shall carry out such functions and duties as shall be required according to these regulations, the terms and conditions of the agreement entered into with the customer, the conditions of any authorisation to operate as a central securities depository and such other requirements as may be laid down by the competent authority.

(3) The subject person shall maintain proper and adequate records and accounts of all customers' assets held under control. The records and accounts shall identify the customers to whom such assets belong and shall clearly indicate that the assets of every customer are separate and distinct from the assets belonging to the subject person and from other customers' assets held by the subject person. The records and accounts shall, upon due notice being given to the subject person, indicate where any pledge or other right over assets held under the control of the subject person has been given by the customers to any third party and where any order by any Court has been made in connection with such assets.

(4) The subject person entrusted with the control of assets belonging to customers shall, to every extent reasonably possible, segregate in a proper manner the assets of every customer from the assets belonging to the subject person and from the assets of other customers:

Provided that the subject person may, with the written consent of the customer and in accordance with the terms and conditions of the agreement entered into with the customer, the conditions of any authorisation to operate a central securities depository and such other requirements as may be laid down by the competent authority, and without prejudice to the customer's right of ownership over the assets held under control, place and keep such assets in a common pool of identical assets or otherwise deposit them in a clients' account or a common account.

(5) The subject person shall make appropriate

arrangements for the protection of customers' assets held under control and shall ensure that such assets are placed under adequate systems to safeguard such assets from damage, misappropriation or other loss and which permit the delivery of such assets only in accordance with the terms and conditions of the agreement entered into with the customer.

(6) Where it is not reasonably possible for the subject person to carry out any of the duties specified in this regulation due to the nature of the assets and of the arrangements whereby control is exercised, the said duties may be varied with the written consent of the customer and in accordance with the terms and conditions of the agreement entered into with the customer, the conditions of any authorisation to operate a central securities depository and such other requirements as may be laid down by the competent authority.

8. (1) A subject person having the control of assets belonging to customers shall be liable for any loss or prejudice suffered by the customers due to the subject person's fraud, willful default or negligence, including the unjustifiable failure to perform in whole or in part the subject person's obligations arising under these regulations, the terms and conditions of the agreement entered into with the customers, the conditions of any investment services licence or such other requirements as may be laid down by the competent authority.

Liability of the subject person.

(2) For the purposes of this regulation, "subject person" includes such other subject person to whom functions, duties or assets may be delegated or entrusted in terms of regulation 9 of these regulations.

9. (1) Where reasonably required by the nature of the assets and of the arrangements whereby control is to be exercised, a subject person may, with the written consent of the customer and in accordance with the terms and conditions of the agreement entered into with the customer, the conditions of any authorisation to operate a central securities depository and such other requirements as may be laid down by the competent authority, make use of any market clearing system, settlement system, de-materialised book entry system, centralised custodial depository or similar system for the purpose of the control of assets in terms of these regulations.

Systems which may be used by subject persons.

(2) Such systems as are provided for in sub-regulation (1) of this regulation may also be used to effect all transactions

including conveyance, assignment, transfer, transmission and pledging of assets held under the control of the subject person, and the law of the country in which the system is maintained shall apply to the validity of such transactions notwithstanding the provisions of any other law.

(3) The agreement with the customer shall clearly define the extent of liability of the subject person for any losses that may be incurred by the customer as a result of the use of such systems.

Subject person's fees.

10. The subject person shall have the right to charge fees to the customer and to be reimbursed for expenses in accordance with the terms and conditions of the agreement entered into with the customer. The subject person may, if authorised to do so by the terms and conditions of the said agreement, exercise a right of retention over the customer's assets held under control, to the extent of any lawfully due but unpaid fees and expenses, until such fees and expenses are paid.

Termination of the control of assets.

11. (1) Without prejudice to any requirements as may be laid down by the competent authority, an agreement for the control of assets belonging to a customer may be terminated by the customer, by the subject person or by order of the competent authority.

(2) Upon the termination of an agreement for the control of assets, the subject person shall convey for no consideration the assets held for the customer, as instructed by the customer or by the competent authority, without prejudice to the subject person's right to payment of any lawfully due fees or expenses in terms of the agreement entered into with the customer and to any obligations arising in favour of the customer thereunder.

