L.N. 530 of 2010

FINANCIAL MARKETS ACT
(CAP. 345)

Financial Markets Act (Credit Rating Agencies) Regulations, 2010

IN exercise of the powers conferred by article 49 of the Financial Markets Act, the Minister of Finance, the Economy and Investment acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Title, commencement and scope.

1. (1) The title of these regulations is the Financial Markets Act (Credit Rating Agencies) Regulations, 2010.

(2) The purpose of these regulations is to implement the relevant provisions of the EU Regulation on credit rating agencies as herein defined, and they shall be interpreted and applied accordingly.

(3) These regulations shall be deemed to have come into force on the 7th June, 2010.

Interpretation.

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

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"the Act" means the Financial Markets Act;

"EU Regulation" means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of the 16 September 2009 on credit rating agencies, and words and expressions used in these Regulations shall have the same meaning as is given to them in the said EU Regulation unless otherwise defined herein; and

Cap. 330.

"Financial Services Tribunal" means the Tribunal established in terms of article 21 of the Malta Financial Services Authority Act.

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

Competent authority. Cap. 330.

3. The Malta Financial Services Authority established by the Malta Financial Services Authority Act shall be the designated competent authority in Malta for the purposes of implementing the relevant provisions of the EU Regulation, and any reference in these regulations to the competent authority shall be deemed and construed accordingly.

Applicability of the EU Regulations to the competent authority.

4. (1) The competent authority shall exercise all the functions, obligations and powers and shall satisfy all the requirements imposed on competent authorities by the EU Regulation.

(2) Without prejudice to sub-regulation (1), the competent authority may, for the better implementation of the EU Regulation, exercise any of the powers assigned to it under the Act in relation to credit rating agencies, persons involved in credit rating activities, rated entities and related third parties, third parties to whom the credit rating agencies have outsourced certain functions or activities, and persons otherwise related or connected to credit rating agencies or credit rating activities.

Financial Markets Rules.

5. For the better carrying out of the provisions of the EU Regulation or these regulations, the competent authority may, from time to time, issue and publish Financial Market Rules which shall be binding on all credit rating agencies and others as may be specified therein. Such rules may lay down additional requirements and conditions in relation to activities of credit rating agencies, the conduct of their business, their relations to customers, the public and other parties, their responsibilities to the competent authority, reporting requirements, financial resources, capital adequacy and related requirements, and any other matters as the competent authority may consider appropriate including:

(a) the operation of the EU Regulation or these regulations;

(b) any matter relating to the functions, obligations and powers of the competent authority under the EU Regulation; and

(c) any other matter arising in connection with the EU Regulation or these regulations.

Applicability of the EU Regulations to credit rating agencies.

6. The provisions of the EU Regulation shall apply to credit rating agencies based in or operating from Malta and such credit rating agencies shall exercise all the obligations and satisfy all the requirements imposed on credit rating agencies by the said EU Regulation.

Language for applications.

7. (1) Where a credit rating agency submits an application for certification in terms of article 5 of the EU Regulation and Malta is the facilitator, the application shall be drawn up in the English language.

(2) Where a credit rating agency submits an application for

registration in terms of article 15 of the EU Regulation and Malta is the home member state of that agency, the application shall be drawn up in the English language.

Fees.

8. (1) An applicant for registration as a credit rating agency which has its registered office in Malta in terms of the EU Regulation shall pay to the competent authority an application fee of five thousand euro (€5,000).

(2) The fee mentioned in sub-regulation (1) shall be due upon submission of an application for registration, irrespective of whether registration is eventually issued or not.

(3) A credit rating agency registered in Malta shall pay to the competent authority an annual supervisory fee of fifteen thousand euro (€15,000) for the continuance of that registration. The fee shall be due to the competent authority on the 1st January of each year following registration.

Auditor's duty to report.

9. (1) An auditor of a credit rating agency shall have the duty to report immediately to the competent authority any fact or decision of which he becomes aware in his capacity as auditor of such credit rating agency which –

(a) is likely to lead to a serious qualification or refusal of the auditor's report on the accounts of such credit rating agency; or

(b) constitutes or is likely to constitute a material breach of the EU Regulation or other regulatory requirements applicable to the credit rating agency in or under the Act; or

(c) gravely impairs the credit rating agency's ability to continue as a going concern; or

(d) relates to any other matter which may be prescribed.

(2) No duty, including the duty of professional secrecy, to which an auditor of a credit rating agency may be subject, shall be regarded as contravened by reason of his communicating in good faith to the competent authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that credit rating agency and which is relevant to any functions of the competent authority under the provisions of the EU Regulation or the Act or is required to be communicated by virtue of sub-regulation (1).

Supervisory measures.

10. (1) Where the competent authority has established that a credit rating agency has contravened or has failed to comply with any provisions of the EU Regulation, these regulations and any Financial Markets Rules issued by the competent authority in terms of these regulations, it shall proceed to consider the taking of measures envisaged in articles 20, 24 or 25 of the EU Regulation as necessary or appropriate in the circumstances.

(2) The competent authority shall disclose to the public any penalty imposed in terms of sub-regulation (1) unless the competent authority deems that such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Administrative penalties.

11. (1) Where a credit rating agency contravenes or fails to comply with any provisions of the EU Regulation, these regulations and any Financial Markets Rules issued by the competent authority in terms of these regulations, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such credit rating agency an administrative penalty not exceeding ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (€ 93,174.94).

(2) The competent authority shall disclose to the public any penalty imposed in terms of sub-regulation (1), unless the competent authority deems that such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Appeals.

12. (1) A right of appeal to the Financial Services Tribunal shall lie from a decision of the competent authority–

(a) to refuse registration in terms of article 15 of the EU Regulation;

(b) to apply the provisions of article 20 of the EU Regulation, or otherwise take action against a credit rating agency in terms of paragraphs (a) to (c) of article 24(1) of the EU Regulation or in terms of paragraphs (a) to (c) of article 25(1) of the EU Regulation in accordance with regulation 10;

(c) to apply the provisions of regulation 11,

and the provisions of articles 43 and 44 of the Act shall *mutatis mutandis* apply to these regulations.

Confidentiality Cap. 345.

13. The provisions of article 38 of the Act shall apply *mutatis mutandis* to credit rating agencies.

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