



# SUMMARY REPORT - Benchmarking Malta's Capital Markets International Listings

Simmons and Simmons LLP



# Background to the Report

Simmons and Simmons LLP have prepared a long-form report (the “**Report**”) to support the Malta Financial Services Advisory Counsel (“**MFSAC**”) in their objective of further improving Malta’s competitiveness as a financial services centre, with a focus on capital markets and, specifically, international listings. The report has been prepared on the basis of consultation with local stakeholders – including the Malta Stock Exchange (the “**MSE**”), the Malta Financial Services Authority (the “**MFSA**”) and senior representatives of locally based brokers, lawyers and accountancy firms operating in the capital markets – as well as with stock exchanges, listing agents and practitioners in other international financial centres. By analysing and benchmarking against the key competitor international listing venues, this report seeks to establish the steps necessary for enhancing the appeal of Malta’s stock exchange offering.

## Overview

The Report describes the high level of competition among the key financial centres for market share of stock exchange listings. Competitive positioning of the various financial sectors is based on numerous factors, including regulation, taxation, valuation-related considerations, market breadth and depth, execution certainty, user-friendliness, public policy, investor requirements and market perception.

While the common assumption may be that stock exchanges serve the public good – at a basic level, being places for businesses to raise and manage capital in a fair and efficient way, while allowing investors to invest and trade their savings in a similarly fair and efficient way – stock exchanges are in fact highly competitive businesses which must continually adapt and develop in order to compete among their peers and win market share. This is particularly the case when it comes to international listings of securities sold to sophisticated international investors, where the location of the technical listing may not be important to either the issuers or the target investors. Here the fact of the technical listing may be very much a ‘tick the box’ exercise; either sought because the issuer requires the relevant securities to be ‘listed’ somewhere (for example, for tax reasons) or because target investors require it (for example, because their investment mandates require their portfolios to be invested in ‘listed’ securities).

Aside from their direct role in serving the specific needs of investors and issuers, stock exchanges are also viewed more generally as an integral part of any financial ecosystem and a standard bearer of the success of that system. In turn, a successful stock exchange relies on its home jurisdiction being perceived as an attractive financial centre.

While the scope of this report encompasses international listings in the capital markets generally – which includes equity listings – the focus of much of the report is the debt capital markets and related debt-like products. The Report explains the rationale for this in more detail; however, the key reason presented is that it will be far more difficult, and so less realistic, at least in the near- to medium-term, for Malta to compete for ‘international listings’ of initial public offers (IPOs) from businesses located outside the home

jurisdiction. As set out in more detail in the Report, the factors that prospective IPO candidates and their advisers look for in choosing an IPO venue are generally less related to the stock exchange admission process and relevant rulebook itself (although there are exceptions here, while noting that the EU derived legislation – notably the Prospectus Regulation and EU Listing Act – sets common parameters in which Malta would need to compete in this respect), but more focussed on: (i) access to a wide investor base with deep capital; (ii) related to the first point, local liquidity; (iii) valuation and research coverage; (iv) comparable companies on the same market (in terms of both sector and comparative size); and (v) ease and cost of being publicly traded going forward.

For some or all these reasons, businesses would generally favour an IPO in their home jurisdiction.

The debt capital markets are more “international”, in the sense of being less tied to any particular domestic investor base. Looking at how the key competitor jurisdictions have succeeded in creating and promoting successful listing venues, and considering Malta’s own strengths and limitations, the report concludes that the objective of attracting international listings in the near-term is most likely to be achieved by creating a highly competitive ‘unregulated’ (also known as exchange-regulated) market. By which we mean, a market which is not regulated by the MFSA, but simply by the MSE itself.

The Report discusses, in some detail, the strengths and shortcomings of the competitor listing venues as against Malta’s offering, and distils the findings into a matrix of features which would create a truly internationally competitive ‘Malta MTF’.

This matrix of features is set out in summary below, and described in more detail within the Report.

This competitive new market, taken together with Malta’s fundamental strengths in its geographic centre to Europe, Africa, Turkey and the Middle East, timezone, attractive tax regime, language, notably skilled labour force (and specifically at the advanced end of financial services and fintech), a progressive regulator (particularly in areas of crypto-regulation and fintech) and enviable climate, will be a highly compelling venue. Once in place, the venue needs to be marketed. This must be done broadly across international practitioners, and also in a targeted way at specific sectors and issuers. In the longer term, a wider objective will be to attract target industries to Malta and thereby curate a nexus for local listings, but that is a longer term and potentially more costly undertaking.

## Regulatory Back-Drop and Market Practice

On the regulatory side, the European capital markets are in a time of flux. Policy makers conclude that fragmentation of the market has hampered the growth that the eurozone should have exhibited, with issuers continuing to find pricing and sizing advantages when tapping the U.S. market.

In order to understand why issuers and their advisers choose to structure deals in the way that they do, to offer and sell particular securities to the types of investors that they do, and to list on the relevant stock exchanges (and relevant markets or segments of relevant stock exchanges) that they do, the Report explains that is vital to first

understand the legal background to the decision making process. At the same time, it is important to consider the reasons why certain securities are listed on a stock exchange in the first place – noting that many transferable securities are not.

In understanding the reason why the Maltese capital markets currently operate in the way that they do, and why the European competitor markets have evolved to operate in the way that they do, the most important piece of legislation to consider is the EU Prospectus Regulation and its delegated regulations (the “**Prospectus Regulation**”). As the Report illustrates, despite being subject to the same body of relevant legislation, Malta's capital markets currently operate in a vastly different way to the key international listing markets in the EU (e.g. Ireland, Luxembourg and Vienna). The reason for this can be found in the Prospectus Regulation and the needs of the distinct types of investors that the respective markets serve. The Report seeks to explain the Prospectus Regulation and other/ancillary rules and regulations which are central to the capital markets in Europe, thereby describing the regulatory perimeter in which market participants need to operate and need to take into account in choosing a listing venue for any specific product.

Following an analysis of the regulatory perimeter, the Report goes on to a detailed assessment of how this translates into market practice, analysing some of the key competitor markets for international listings, looking at their ownership structure, strengths, strategies and limitations. The Report broadly divides the competitor markets into those markets that are subject to a harmonised set of securities laws within the European Union – including Luxembourg, Dublin and Vienna – and those outside it – including the Channel Islands and, in many respects now, London.

Further on the regulatory side, the Report points out that there are live debates around centralising supervision within Europe – including of market infrastructure and trading platforms – and ‘simplifying’ Europe's legislative framework; not by de-regulating, but by speeding up the integration process and removing inconsistencies – especially gold-plating – as between Member States. At the same time, policy makers work towards a fully integrated EU market for savings and investments, harmonising listing regimes, pension/savings products and even the means of withholding taxes throughout the bloc. It is hard to know how quickly change will play out and what impact all of this will have on international and domestic capital markets; but in the meantime, the Report's key finding is that a competitive MTF will provide important flexibility to Malta's Stock Exchange and financial ecosystem going forward.

Our Report seeks to illustrate the extent to which efficient un-regulated market listings have, in recent years, almost completely outcompeted the EEA and UK regulated markets in terms of attracting new listings of international debt securities. Against this backdrop, a central finding of the Report is that the MSE's current listing venue offerings (currently comprising the Main Market, the IFSM and the Prospects MTF) are not currently competitive in this international market. Accordingly, if to position itself to compete for market share in international listings, Malta needs to create a competitive MTF market. Then, it needs to successfully market the offering.

## Specific Targets and Steps

Following an assessment of the relevant regulatory perimeter and market practice, the Report looks at a selection of specific capital market products with a view to taking a more focussed approach to competing for international listings. When selecting a stock exchange, the factors that issuers and their advisers take into account will vary from product to product, generally either because stock exchange rules and processes are more or less tailored to the features of the product and transaction structure, or simply because one market has the most recent credentials for a similar product. Execution certainty within the required timeframe is of paramount importance to issuers and their advisers, so – all other things being equal - a recent credential of a similar product can give considerable comfort on this to the deal team.

Apart from the core focus on vanilla capital markets products, the Report specifically discusses relevant differences and distinctions as relating to listings of (i) crypto assets and tokenisation; (ii) sukuk and Islamic finance products; (iii) securitisations and structured products; and (iv) convertible/equity-linked bonds.

## Framework for a Competitive Malta MTF and Steps to Implementation

Based on a review of the key features of each of the competitor markets as described in the Report, the Report goes on to specifically analyse the main factors which an issuer and its advisers will consider in deciding where to list. The key considerations that the Report rounds on including (i) decision as to Regulated or Non-Regulated (i.e. ‘Exchange-Regulated’) Markets; (ii) segments on offer within the relevant markets; (iii) on-going disclosure obligations that apply to the relevant market and segments; (iv) any requirement for third-party listing agent appointments; (v) user-friendliness, responsiveness and product credentials; (vi) admission document turn-around times; and (vii) issuer and investor post-issuance solutions/post issuance performance.

The Report concludes with a focus on the steps required to implement a truly competitive MTF market into Malta's financial ecosystem - discussing the necessary buy-in by relevant players, decisions (i.e. as between MSE, MFSA and other interested parties) as to scope and responsibilities, drafting of the rulebook, other necessary market infrastructure and, finally, pro-active marketing initiatives with respect to Malta's offering once implemented – and, finally, the investment considerations and milestones to guide the direction of the project.

In summary of the abovementioned features of a competitive market, and presented by way of a table illustrating the key variables across all the competitor markets and how the Report suggests that they would be best positioned for attracting international debt listings, the Report rounds on a matrix of features as set out below:

## Key features of a competitive 'Malta MTF'

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| <b>Regulatory status</b>  | <ul style="list-style-type: none"> <li>- Un-regulated market (regulated only by the rules of the MSE).</li> <li>- In the short-term, the focus is on marketing a fully light-touch rulebook (no public admission particulars required).</li> <li>- In the medium- to longer-term, the expectation is to build-out a rulebook for a full public admission particulars.</li> <li>- From a legislative perspective, while MAR and other EU derived legislation can not be avoided, the Prospectus Regulation is not implicated.</li> <li>- The MSE's Regulated Market continues to perform a vital role in the functioning of Malta's domestic market and does not necessarily need to change if the political imperative is to protect Maltese retail investors in the way that it currently seeks to. While we note that Malta's regime remains a relatively onerous regime when compared to competitor Regulated Markets, this is not necessarily surprising or inappropriate given the credit profile and type of issuer coming to market in Malta.</li> </ul> |
| <b>Availability/publication of disclosure document</b>          | <ul style="list-style-type: none"> <li>- At the option of the issuer.</li> <li>- Short-form 'key information' template available from the MSE website.</li> </ul>   |
| <b>Segments</b>   | <ul style="list-style-type: none"> <li>- Within the MTF the default position is for full investor access (including retail investors in the secondary market), while there are sub-segments for "qualified investor" only designation and green/blue/ESG labelled securities.</li> <li>- As a second step, or medium-term objective, establishing separate segments or markets specifically for certain products.</li> </ul>  |
| <b>Target investors</b>   | <ul style="list-style-type: none"> <li>- Default position is that retail investors are permitted to be members of and trade on market, it being understood that securities can not be 'publicly offered' to retail in the primary distribution (so issuers will need to avail of exemptions under Articles 1(4) and 3(1) of the Prospectus Regulation (such as offers addressed solely to 'qualified investors' in the primary distribution; total consideration/denomination size of at least €100,000, offered to less than 150 persons per member state, etc.)).</li> <li>- Dedicated segment for "qualified investors" only.</li> </ul>   |
| <b>Minimum denominations</b>                                    | <ul style="list-style-type: none"> <li>- None.</li> </ul>   |
| <b>Tax/quoted eurobond exemption</b>                            | <ul style="list-style-type: none"> <li>- Yes, as an MTF operated by the MSE (being a recognised stock exchange within the EU).</li> </ul>   |
| <b>Listing agent</b>  | <ul style="list-style-type: none"> <li>- Not required. However, issuers and international transaction counsel are free to appoint local Maltese practitioners as technical listing agents if helpful.</li> <li>- MSE may decide to mandate compulsory registered Maltese listing agents if this is a way of relieving administrative/staffing costs to the MSE; however, we would see this as undermining competitiveness, so a balance needs to be struck.</li> </ul>  |
| <b>Application process for Listing and Admission to trading</b> | <ul style="list-style-type: none"> <li>- Applications can be made by an issuer or its advisers by email, directly to a dedicated MSE email address or individual MSE team members.</li> <li>- Current applications form(s) are made available, in editable Word/Excel or similarly accessible format, on dedicated MSE webpage alongside clear application process instructions and fee schedule.</li> <li>- Application form(s) (optimally there is only one of them) are as concise and clear as possible, limited to only strictly necessary items (i.e. for MSE to understand the product and ensure compliance with CSDR, MiFID or other regulatory obligations applicable to MSE).</li> </ul>   |
| <b>Continuing obligations</b>                                   | <ul style="list-style-type: none"> <li>- EU MAR applies; but no additional public announcements required.</li> <li>- Minimal additional disclosure obligations contained in MTF rulebook (and these are non-public notifications to MSE only).</li> <li>- No requirement to publish annual reports as can rely on MAR to regulate this.</li> </ul>  |

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| <b>Admission review times</b>                    | <ul style="list-style-type: none"><li>- Initial submission: 1 to 2 business days.</li><li>- Subsequent submission: 1 business day.</li></ul>  |
| <b>Listing fees</b>                              | <ul style="list-style-type: none"><li>- Customary upfront fixed application fee and annual fee. Option of paying the full annual fee upfront.</li><li>- Reduced upfront application fee (e.g. 25% discount) for small issue size (e.g. sub-€100m equivalent).</li><li>- Part of the annual fee may or may not be payable to the MFSA, subject to MFSA/MSE agreement. Clearly investors will not have a view on any split of that sort.</li><li>- To be highly competitive, total fees payable (covering all annual instalments) for a €200m 10-yr bond will be no more than €5,000.</li><li>- Option of waiving fees for certain key target issuers, e.g. sovereign issuers, at least in the short-term (acknowledging that significant demand from sovereign issuers is unlikely in the short-term); and/or reducing fees for frequent issuers and/or specific products (e.g. green/ESG, sukuk or crypto exchange traded products).</li></ul>  |
| <b>Clearing</b>                                  | <ul style="list-style-type: none"><li>- Option for Malta CSD; ICSDs (Euroclear and Clearstream, Luxembourg); DTC or other international clearing systems.</li></ul>   |
| <b>Disclosure of Regulated Information</b>       | <ul style="list-style-type: none"><li>- Information coming into the possession of the issuer which is 'inside information' (for the purposes of MAR) is required to be disclosed on MSE.</li><li>- MSE maintains a cheap and efficient means for issuers directly, or their appointed advisers, to disseminate information immediately on a dedicated webpage on MSE website.</li><li>- MFSA is responsible for publishing interpretive guidance relating to MAR from time to time, including (a) defining 'inside information'; (b) as to acceptable means of disclosing and safekeeping 'inside information' in compliance with MAR; and (c) as to obligations relating to insider lists.</li></ul>   |
| <b>Publication of other documentation</b>        | <ul style="list-style-type: none"><li>- MSE website to provide functionality for issuers to upload all issuance documentation (e.g. disclosure documents, historic financial statements, auditor reports, green/ESG frameworks, second-party/ESG opinions, allocation/impact reporting), free of charge, to be displayed on dedicated public issuer/security webpage on MSE website.</li></ul>  |
| <b>Support and engagement with the market</b>    | <ul style="list-style-type: none"><li>- MSE webpage displays relevant team contact details; email and telephone. Photographs of relevant team members in order to personalise application process and queries.</li><li>- MSE visibility at capital markets/industry wide meetings.</li><li>- MSE visibility in London and other financial centres, including for one-to-one meetings.</li><li>- Pro-active, user-friendly and solution-orientated messaging.</li></ul>  |
| <b>Targeted engagement and marketing efforts</b> | <ul style="list-style-type: none"><li>- Once a competitive market infrastructure is in place and the advisor community is aware of Malta's offering, then Malta will be in a position to direct more targeted promotion of its markets at specific issuers, products and jurisdictions.</li><li>- For example, specifically targeting Asia and with respect to specific products – such as equity-linked securities. In Europe, primary issuance of convertible and exchangeable securities has been subdued for a number of years; while in Asia, this market has recently seen significant deal flows. By way of example, we are aware that teams from the competitor jurisdictions have toured financial centres in Asia, meeting advisors and marketing the competitiveness of their markets and relevant segments. MSE should plan to do similarly in the medium term as it reacts to market developments; however, clearly a competitive market needs to be created before this can happen.</li></ul> |



## Get in touch

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