CHAPTER 370

INVESTMENT SERVICES ACT

To regulate the carrying on of investment business and to make provision for matters ancillary thereto or connected therewith.

19th September, 1994;
23rd September, 1994;
30th December, 1994;
8th July, 1995

ACT XIV of 1994 as amended by Acts: XXIV, XXV of 1995; Legal Notices 191 of 1998 and 46 of 1999; Acts XVII of 2002, IV of 2003, XIII of 2004, XII of 2006; Legal Notice 318 of 2006; Act XX of 2007; Legal Notice 425 of 2007; Acts XVII of 2009, XIX of 2010, X of 2011; Legal Notice 251 of 2013; Act XX of 2013; Legal Notice 147 of 2014; Acts XXII of 2014, XXI of 2015, XIX of 2016 and XXXI of 2017, XLIV of 2018, V of 2020, Act XLVI, LXXI of 2021 and LXXII of 2021 , XXV of 2023 , XXXII of 2024, XI and XXIX of 2025 and XIX of 2026.

PRELIMINARY

Short title.

1. The short title of this Act is the Investment Services Act.

Interpretation.
Amended by: XVII. 2002.136; XX. 2007.61; XVII. 2009.3; X. 2011.23; L.N. 251 of 2013; XX. 2013.35; XXII. 2014.2; XXI. 2015.11; XXXI. 2017.44; XLIV.2018.5; LXXII.2021.5; XXV.2023.39; XXIX.2025.15; XIX.2026.17.

2. (1) In this Act, unless the context otherwise requires -

"agricultural commodity derivatives" means derivative contracts relating to products listed in Article 1 and Annex I of Parts I to XX and XXIV/1, to Regulation (EU) No. 1308/2013, as well as to products listed in Annex I to Regulation (EU) No. 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No. 1184/2006 and (EC) No. 1224/2009 and repealing Council Regulation (EC) No. 104/2000, as amended from time to time;

"AIFM Directive" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"ancillary services" means any of the services listed within the Third Schedule;

"ancillary services undertaking" means an undertaking, the principal activity of which consists of owning or managing property, managing data processing services, or a similar activity which is ancillary to the principal activity of one or more investment firms;

"Alternative Investment Fund or AIF" means a collective investment scheme, including subfunds thereof, which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not qualify as a UCITS Scheme in terms of the UCITS Directive;

"binding legal instrument" means any directly applicable measures, including, but not limited to, any implementing technical standards, any regulatory technical standards or any similar measures, issued under European Union legislation;

"Alternative Investment Fund Manager or AIFM" means a legal person whose regular business is the management of one or more AIFs;

"certificates" means those securities which are negotiable on the capital market and which in case of a repayment of investment by the issuer are ranked above shares but below unsecured bond instruments and other similar instruments;

"client" means any natural or legal person to whom an investment services licence holder provides investment or ancillary services;

"close links" means a situation in which two or more natural or legal persons are linked by:

(i) participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

(ii) "control" which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 22(1) and (2) of Directive 2013/34/EU, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;

(iii) a permanent link of both or all of them to the same person by a control relationship;

"the BRRD" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012, of the European Parliament and of the Council, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"collection body" shall have the same meaning as assigned to it in Article 2 of the ESAP Regulation;

"collective investment scheme" means any scheme or arrangement which has as its object or as one of its objects the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange and which has the following characteristics:

(*a*) the scheme or arrangement operates according to the

principle of risk spreading; and either

(*b*) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or

(*c*) at the request of the holders, units are or are to be re-purchased or redeemed out of the assets of the scheme or arrangement, continuously or in blocks at short intervals; or

(*d*) units are, or have been, or will be issued continuously or in blocks at short intervals:

Provided that an alternative investment fund that is not promoted to retail investors and that does not have the characteristic listed in paragraph (*a*) hereof shall only be deemed to be a collective investment scheme if the scheme, in specific circumstances as established by regulations under this Act, is exempt from such requirement and satisfies any conditions that may be prescribed;

"collective investment scheme licence" means a licence for the issue or creation of units or the carrying on of an activity by a collective investment scheme issued under article 6;

"commodity derivatives" shall have the same meaning as that given to the term by Article 2 of the MiFIR;

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act; Cap. 330.

"compliance with the group capital test" means compliance by a parent undertaking in an investment firm group with the requirements of Article 8 of the IFR;

"Conduct of Business Rules" refers to Rules issued by the competent authority under various articles of this Act;

consolidated basis" means the same as the meaning assigned to it in point (48) of Article 4(1) of the CRR;

"consolidating supervisor" means the same as the meaning assigned to it in point (41) of Article 4(1) of the CRR;

"the CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"credit institution" means a credit institution as defined in point (1) of Article 4(1) of the CRR;

"the CRR," means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as amended from time to

time, and includes any implementing measures that have been or may be issued thereunder;

"data extractable format" shall have the same meaning as assigned to it in Article 2 of the ESAP Regulation;

"data reporting services provider" shall have the same meaning as that assigned to it in point (36a) of Article 2(1) of MiFIR;

"depositary receipts" means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;

"derivatives" means those securities giving the right to acquire or sell any transferable security or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures; and referred to in paragraphs 4 to 10 of the Second Schedule;

"Directive 2002/87/EC" means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC

"Directive 2013/34/EU" means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, as may be amended from time to time;

"distributed ledger technology" shall have the same meaning as that assigned to it in point (1) of Article 2 of the DLT Pilot Regime Regulation;

"DLT Pilot Regime Regulation" means Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"document" or "documentation" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"EBA" means the European Banking Authority established by Regulation (EU) No. 1093/2010;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on

the 17th March, 1993 and as amended by any subsequent acts;

"ESAP" means the European single access point in accordance with the ESAP Regulation;

"ESAP Regulation" means Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, as amended from time to time, and includes any implementing measures that have been, or may be issued thereunder;

"ESMA" means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;

"EU parent financial holding company" means the same as the meaning assigned to it in point (31) of Article 4(1) of the CRR;

"EU parent institution" means the same as the meaning assigned to it in point (29) of Article 4(1) of the CRR;

"EU parent investment firm" shall have the same meaning as that assigned to "Union parent investment firm" in point (56) of Article 4(1) of the IFR

"EU parent investment holding company" shall have the same meaning as that assigned to "Union parent investment holding company" in point (57) of Article 4(1) of the IFR;

"EU parent mixed financial holding company" means the same as the meaning assigned to it in point (33) of Article 4(1) of the CRR;

"European investment firm" means an investment firm as defined in Article 4(1) of the MIFID and as authorized by its European regulatory authority within the meaning of Article 5 of the Directive or authorized by a European regulatory authority in an EEA State;

"European management company" has the same meaning assigned to it in regulations made under this Act;

"European regulatory authority" means the body or bodies designated by a Member State or EEA State other than Malta in accordance with Article 44 of the AIFM Directive, Article 67 of the MIFID, Article 97 of the UCITS Directive and Article 4 of the CRD to carry out each of the duties provided for under the different provisions of the said Directives;

"exempted person" means a person who for any reason is

exempted from any or all of the provisions of article 3;

"financial holding company" means the same as the meaning assigned to it in point (20) of Article 4(1) of the CRR;

"financial institution" means a financial institution as defined in point (14) of Article 4(1) of the IFR;

"group supervisor" means the supervisory authority of a Member State or an EEA State, competent and responsible for the supervision of compliance with the group capital test of EU parent investment firms and investment firms controlled by EU parent investment holding companies or EU parent mixed financial holding companies:

Provided that, for the purposes of this definition, "EU parent mixed financial holding companies" shall have the same meaning as that assigned to "Union parent mixed financial holding company" in point (58) of Article 4(1) of the IFR;

"home Member State or EEA State" means:

(*a*) where the European investment firm is a natural person, the Member State or EEA State in which the head office of that person is situated; or

(*b*) where the European investment firm is a legal person, the Member State or EEA State in which its registered office is situated; or

(*c*) where the European investment firm has, under its national law no registered office, the Member State or EEA State in which its head office is situated;

"host Member State or EEA State" means the Member State or EEA State, other than the home Member State or EEA State, in which an investment services licence holder has a branch or provides investment services and, or activities;

"the IFD" means Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"the IFR" means Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No. 1093/2010, (EU) No. 575/2013, (EU) No. 600/2014 and (EU) No. 806/2014, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"instrument" means any instrument, contract or right falling within the Second Schedule and whether or otherwise issued in Malta, including such instruments issued by means of distributed ledger technology;

"investment advertisement" means any form or medium of marketing activity or communication disseminated to the public by means of all types of media, other than a prospectus, which promotes the purchase or procurement of an investment service or instrument;

"investment agreement" means any agreement the making or performance of which by either party constitutes an investment service;

"investment firm" means an investment firm as defined in Article 4(1) of the MiFID;

"investment firm group" means an investment firm group as defined in point (25) of Article 4(1) of the IFR;

"investment holding company" means an investment holding company as defined in point (23) of Article 4(1) of the IFR;

"investment service" means any service and activity falling within the First Schedule when provided in relation to an instrument:

Provided that the service of Management of Investments in terms of the First Schedule shall also include the collective portfolio management of assets of a collective investment scheme when provided in relation to an asset that is not an instrument within the meaning of the Second Schedule;

"investment services licence" means a licence to provide an investment service under article 6;

"Investment Services Rules" refers to Rules issued by the competent authority under various articles of this Act;

"licence" means a collective investment scheme licence or an investment services licence;

"licence holder" means a person who holds a licence;

"machine-readable format" shall have the same meaning as assigned to it in Article 2 of the ESAP Regulation;

"Malta's international commitments" means Malta's commitments, responsibilities and obligations arising out of membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international agreement, however called, whether bilateral, multilateral, to which Malta is a party;

"management body" means the body or bodies of a licence holder, including of an investment firm, a market operator or a data reporting services provider, which are appointed in accordance with national law and are empowered to set the strategy, objectives and overall direction of the licence holder, and oversee and monitor

management decision making, and includes the persons who effectively direct the business of the licence holder;

"market operator" means a person or persons who manages and, or operates the business of a regulated market and may be the regulated market itself;

"Member State" means a Member State of the European Communities;

"metadata" shall have the same meaning as assigned to it in article 2 of the ESAP Regulation;

" MIFID" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"MiFIR" means Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"Minister" means the Minister responsible for the regulation of Financial Services;

"mixed-activity holding company" means a parent undertaking other than a financial holding company, an investment holding company, a credit institution, an investment firm, or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one investment firm;

S.L. 330.06.

"mixed financial holding company" means the same as the meaning assigned to it in regulation 2 of the Financial Conglomerates Regulations;

"multilateral system" means a multilateral system as defined in point (11) of Article 2(1) of MiFIR;

"multilateral trading facility" or "MTF" means a multilateral system, operated by an investment services licence holder or a market operator, which brings together multiple third-party buying and selling interests in instruments - in the system and in accordance with non-discretionary rules - in a way that results in a contract in accordance with Title II of MIFID;

"organised trading facility" or "OTF" means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of MIFID.

"overseas regulatory authority" means an authority in a country or territory outside Malta that is not a Member State or EEA State which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act; Cap. 330.

"parent financial holding company" means the same as the meaning assigned to the term "parent financial holding company in a Member State" in point (30) of Article 4(1) of the CRR;

"parent institution" means the same as the meaning assigned to the term "parent institution in a Member State" in point (28) of Article 4(1) of the CRR;

"parent mixed financial holding company" means the same as the meaning assigned to the term "parent mixed financial holding company in a Member State" in point (32) of Article 4(1) of the CRR;

"parent undertaking" means a parent undertaking within the meaning of Article 2(9) and 22 of Directive 2013/34/EU;

"participants" means the persons who participate in or receive, or are to participate in or receive, profits or income arising from the acquisition, holding, management or disposal of the property comprised in a collective investment scheme or sums paid out of such profits or income;

"personal data" shall have the same meaning as assigned to it in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

"prescribed" means prescribed by regulations made under this Act;

"prospectus" has the meaning assigned to it in article 2 of the Companies Act, and the word "shares" therein shall be read as including a reference to the word "unit"; Cap. 386.

"qualifying shareholding" means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of the 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading and amending Directive 2001/34/EC taking into account the conditions regarding the aggregation thereof laid in that Directive, or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists, and "qualifying shareholder" shall be construed accordingly:

Provided that in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment

services licence holders, European Investment Firms or credit institutions may hold as a result of providing the service of underwriting or placing of financial instruments on a firm commitment basis in terms of point 6 of Section A to Annex 1 to the MIFID, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition;

"regulated market" has the meaning assigned to it under the Financial Markets Act; Cap. 345.

"Regulation (EU) No. 1092/2010" means Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"Regulation (EU) No. 1093/2010" means Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"Regulation (EU) No. 1094/2010" means Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/79/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"Regulation (EU) No 1095/2010" refers to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;

"Regulation (EU) No. 1227/2011" means Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency;

"Regulation (EU) No. 648/2012" means Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"Regulation (EU) No. 1308/2013" means Regulation (EU) No.

1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No. 1234/2007;

"resolution entity" means the same as the meaning assigned to it in sub-regulation (1) of regulation 2 of the Recovery and Resolution Regulations; S.L. 330.09.

"resolution group" means the same as the meaning assigned to it in sub-regulation (1) of regulation 2 of the Recovery and Resolution Regulations; S.L. 330.09.

"Solvency II Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"structured finance products" means those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets;

"sub-consolidated basis" means the same as the meaning assigned to it in point (49) of Article 4(1) of the CRR;

"subsidiary" has the same meaning as that given to the term by article 2 of the Companies Act; Cap. 386.

"systemic risk" means systemic risk as defined in point (10) of Article 3(1) of the CRD;

"third country" means a country which is not a Member State or an EEA State;

"trading venue" means a regulated market, an MTF or an OTF;

"UCITS" means undertakings for collective investment in transferable securities in terms of the UCITS Directive as defined herein;

"UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"UCITS management company" means a management company as defined in point (b) of Article 2(1) of the UCITS Directive;

"unit" means any representation of the rights and interests of participants in a collective investment scheme;

"wholesale energy product" means wholesale energy products as defined in point (4) of Article 2 of Regulation (EU) No. 1227/2011;

"working days" shall not include Saturdays and the days referred Cap. 252.

to in the National Holidays and Other Public Holidays Act.

(1A) For the purposes of applying the requirements and supervisory powers laid down in this Act and any regulations and Investment Services Rules made or issued thereunder transposing the CRD, in any binding legal instruments issued under the CRD, or in the CRR, on a consolidated or sub-consolidated basis in accordance with this Act and any regulations and Investment Services Rules made or issued thereunder transposing the CRD, any binding legal instruments issued under the CRD, and in accordance with the CRR, the terms "institution", "parent institution", "EU parent institution" and "parent undertaking" shall also include:

(a) financial holding companies and mixed financial holding companies that have been granted approval in accordance with article 10CA of this Act and, or Article 21a of the CRD;

(b) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted in accordance with article 10CA(5) of this Act and, or Article 21a(4) of the CRD

(c) financial holding companies, mixed financial holding companies or institutions designated pursuant to article 16AA(1)(f) of this Act and, or Article 21a(6)(d) of the CRD:

Provided that for the purposes of this sub-article:

(i) the term "control" means the same as the meaning assigned to it in point (37) of Article 4(1) of the CRR, and the term "controlled" shall be construed accordingly

(ii) the term "institution" means the same as the meaning assigned to it in point (3) of Article 4(1) of the CRR.

(1B) Reference to the "approval" of financial holding companies or mixed financial holding companies in this Act and any regulations and, or Investment Services Rules issued thereunder, means an approval granted by the competent authority in terms of article 10CA of this Act or an approval granted through the joint decision of the competent authority and any European regulatory authority in terms of article 10CA of this Act and Article 21a of the CRD as the case may be.

(1C) Reference to the "exemption" of financial holding companies or mixed financial holding companies in this Act and any

regulations and, or Investment Services Rules issued thereunder, means an exemption granted by the competent authority in terms of article 10CA of this Act or an exemption granted through the joint decision of the competent authority and any European regulatory authority in terms of article 10CA of this Act and Article 21a of the CRD, as the case may be.

(2) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail.

(3) The objective of this Act is, in part, to transpose and implement the provisions of the AIFM Directive, the BRRD, the CRD, the MIFID, the MiFIR and the UCITS Directive, and any EU Regulations or Directives on financial services and consequently this Act and any regulations adopted thereunder shall be interpreted and applied accordingly.

Competent authority. *Added by: XVII. 2002.137. Substituted by: X. 2011.24. Amended by: XX. 2013.36; XXII. 2014.3; XXI. 2015.12; XXXI. 2017.45; LXXII.2021.6; XXV.2023.40; XIX.2026.18.*

2A. (1) The competent authority shall carry out its functions under this Act and, in particular, shall ensure compliance with the provisions of this Act.

(2) The competent authority shall also carry out the functions and duties as competent authority for all purposes of the AIFM Directive, the CRD, the CRR, the DLT Pilot Regime Regulation, the MIFID, the MiFIR, the UCITS Directive, the IFD and the IFR, and the Commission of the European Union, ESMA, the EBA and European regulatory authorities shall be informed accordingly.

(2A) The competent authority shall have the expertise, resources, operational capacity, powers and independence necessary to carry out its functions and exercise its powers at law.

(3) Without prejudice to any other duty arising from this Act, the AIFM Directive, the DLT Pilot Regime Regulation, the MIFID the MiFIR, the UCITS Directive, the IFD or the IFR, the competent authority shall:

(*a*) notify ESMA of the complaint and redress procedures which are available in Malta;

(*b*) notify the Commission of the European Union, ESMA and the other European regulatory authorities that it is the contact point in terms of article 17(1) and that it is the authority designated to receive requests for exchange of information or cooperation in terms of this Act;

(*c*) send to ESMA and to the Commission of the European Union, a list of the categories of bonds referred to in Article 54(1) of the UCITS Directive together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that sub-paragraph, to issue bonds complying with the criteria set out in Article 54 of the UCITS Directive. A notice specifying the status of the guarantees offered

shall be attached to those lists;

(*d*) ensure that all information received under the third paragraph of Article 51 of the UCITS Directive aggregated in respect of all the management or investment companies they supervise is accessible to ESMA in accordance with Article 35 of Regulation (EU) No 1095/2010, and ESRB in accordance with Article 15 of Regulation (EU) No 1092/2010 for the purpose of monitoring systemic risks at European Union level;

(*e*) subject to the conditions laid down in Article 35 of Regulation (EU) No 1095/2010, provide ESMA and the ESRB with aggregated information relating to the activities of AIFMs under their responsibility;

(*f*) provide ESMA and other European regulatory authorities with any information required for the purposes of carrying out its duties under the AIFM Directive.

(4) Without prejudice to the functions, powers and duties assigned to the competent authority by means of this Act, the competent authority shall also have the functions, powers and duties assigned to it under the Malta Financial Services Authority Act and under any regulations made thereunder for the purposes of transposing the provisions of the BRRD.

Cap. 330.

(5) The competent authority shall carry out the functions and duties of the collection body in terms of the ESAP Regulation, when it is designated as such under this Act or any regulations made thereunder.

LICENSING REQUIREMENTS

Requirement of licence for investment services. *Amended by: XVII. 2002.138; XXXI. 2017.46.*

3. (1) No person shall provide, or hold himself out as providing, an investment service in or from within Malta unless he is in possession of a valid investment services licence.

(2) No body corporate, unincorporated body or association formed in accordance with or existing under the laws of Malta, shall provide or hold itself out as providing an investment service in or from within a country, territory or other place outside Malta unless it is in possession of a valid investment services licence.

(3) The competent authority may by notice in writing to any person determine that -

(*a*) a service falls within the First Schedule when provided in relation to an instrument;

(*b*) an instrument, contract or right falls within the Second Schedule and whether or not issued in Malta; or

(*c*) a service falls within the Third Schedule;

and subject to any appeal under article 19 with respect to such person the determination by the Competent Authority unless over ruled by the Tribunal shall be conclusive for all purposes of this

Act.

Requirement of licence for collective investment scheme.

4. (1) Subject to the provisions of sub-article (3), no collective investment scheme shall issue or create any units or carry on any activity in or from within Malta unless there is in respect of it a valid collective investment scheme licence.

(2) Subject to the provisions of sub-article (3), no collective investment scheme formed in accordance with or existing under the laws of Malta shall issue or create any units or carry on any activity in or from within a country, territory or other place outside Malta unless there is in respect of it a valid collective investment scheme licence.

(3) No collective investment scheme shall be precluded by the provisions of sub-article (1) from issuing or creating such units or from taking such steps as may be necessary for the incorporation or, as the case may be, the establishment of the scheme or from taking such steps as may be necessary for securing the authorisation of the scheme by the competent authority.

APPLICATION, GRANT, REVOCATION, ETC., OF LICENCES

Application for a licence.

5. An application for a licence shall be made in the form and manner required by the competent authority and shall furthermore -

(*a*) contain or be accompanied by such information and particulars, in addition to those required by this article, as the competent authority may require or as may be prescribed;

(*b*) be verified in the manner and to the extent required by the competent authority, or as may be prescribed;

(*c*) contain the address in Malta for service on the applicant of any notice or other document required or authorised to be served on him by or under this Act;

(*d*) in the case of an investment services licence, be accompanied by a programme of operations setting out such matters as may be required to be set out by the competent authority from time to time;

(*e*) in the case of a collective investment scheme licence, specify the nature of the collective investment scheme concerned; and

(*f*) be accompanied by such fee as may be prescribed in respect of the licence applied for.

Power of competent authority to refuse or grant licence.
Amended by: XVII. 2002.139; IV. 2003.174; XX. 2007.62; XIX. 2010.52; XX. 2013.36; XXXI. 2017.47; LXXII.2021.7; XIX.2026.19.

6. (1) The competent authority may grant or refuse to grant a licence applied for under this Act:

Provided that the competent authority shall not -

(*a*) (i) grant an investment services licence unless it is satisfied that the applicant is a fit and proper person to provide the investment services concerned and that the applicant will comply with and observe regulations made under this Act as well as any Investment Services Rules and any Conduct of Business Rules issued by the competent authority made under this Act and which are applicable to him;

(ii) grant an investment services licence for the provision of any investment service other than acting as trustee or custodian in relation to a collective investment scheme:

(*a*) if the applicant is a body corporate, unless it has both its head office and registered office in Malta;

(*b*) if the applicant is a body corporate with no registered office under its national law, unless it has its head office in Malta; or

(*c*) if the applicant is not a body corporate unless the applicant's head office is in Malta;

(iii) grant an investment services licence solely for the provision of an ancillary service;

(*b*) grant a collective investment scheme licence unless it is satisfied that the scheme will comply in all respects with any Investment Services Rules and regulations made under this Act and applicable to it and that its directors, and officers, or in the case of a trust, its trustees, are fit and proper persons to carry out the functions required of them in connection with the scheme;

(*c*) grant a licence to an applicant unless the relevant European regulatory authorities have been consulted in the instances referred to in article 17C;

Added by: XXXI. 2017.47.

(*d*) grant a licence to an applicant if there are objective and demonstrable grounds for believing that the management body of the applicant may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market;

Added by: XXXI. 2017.47.

(*e*) grant a licence to an applicant unless it is satisfied that the members of the management body of the applicant are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their functions with the applicant;

(*f*) grant a licence to an applicant which has an investment

holding company or a mixed financial holding company as its parent undertaking unless it is satisfied that the members of the management body of such parent undertaking are of sufficiently good repute and possess sufficient knowledge, skills and experience to effectively perform their duties, taking into account the specific role of an investment holding company or mixed financial holding company.

(2) (*a*) In granting a licence the competent authority may subject it to such conditions as it may deem appropriate, and having granted a licence it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(*b*) For the better carrying out of the provisions of this Act, and to transpose, implement and give effect to the provisions and requirements of Directives, Regulations and other legislative matters of the European Union requiring transposition or implementation, the competent authority may, from time to time, issue and publish Investment Services Rules and Conduct of Business Rules which shall be binding on licence holders and others as may be specified therein. Such Investment Service Rules and Conduct of Business Rules may lay down additional requirements and conditions in relation to activities of licence holders, the conduct of their business, their relations with 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.

(3) When considering whether to grant or refuse to grant a licence the competent authority shall, in particular, have regard to -

(*a*) the protection of investors and the general public;

(*b*) the protection of the reputation of Malta taking into account Malta's international commitments;

(*c*) the promotion of competition and choice; and

(*d*) in the case of a collective investment scheme licence, the reputation and suitability of the applicant and all other parties connected with the scheme.

Substituted by: XXXI. 2017.47.

(4) (*a*) Every investment services licence shall specify the investment service which the holder thereof has been authorised to provide, and shall, where applicable, cover one or more of the ancillary services set out in the Third Schedule;

(*b*) Every collective investment scheme licence shall specify the class of collective investment scheme to which the licence relates.

(5) Without prejudice to the generality of sub-article (2), the conditions to which the competent authority shall subject a licence

may be made applicable, or be prescribed to be applicable, to -

(*a*) all investment services licences or all collective investment scheme licences, as the case may be;

(*b*) certain types of licences;

(*c*) all licences granted to certain types of licence holders;

(*d*) all licences in relation to particular services or schemes, as the case may be.

Substituted by: XXXI. 2017.47.

(6) Within six months from the date of the submission of a properly completed application form together with the requisite documentation, the competent authority shall inform an applicant in writing of its decision whether or not to grant a licence:

Provided that, the competent authority shall inform a UCITS management company which has submitted an application for authorisation of a UCITS or where applicable a self-managed UCITS, in writing, within two months of the submission of a complete application whether or not the collective investment scheme has been authorised. Where an investment company has not designated a management company, this proviso shall not apply and the first paragraph of this sub-article shall apply:

Provided further that the competent authority shall inform an AIFM in writing within three months of the submission of a complete application whether or not authorisation has been granted. The competent authority may prolong this period for up to three additional months where it considers it necessary due to the specific circumstances of the case and after having notified the AIFM accordingly.

(7) Any requirement in this Act that a person be a fit and proper person to carry out certain activities or functions shall be interpreted as a requirement not only that such person be a fit and proper person to carry out such activities or functions, but also that any qualifying shareholder or members, director of officer of such person, and, in the case of a trust, each one of its trustees, be a fit and proper person to carry out such activities or functions.

(8) (*a*) Where close links exist between an applicant and any other person the competent authority shall:

(i) only grant a licence if it considers that such close links do not prevent it from exercising effectively its supervisory functions; and

(ii) refuse to grant such a licence if it considers that the laws, regulations or administrative provisions of any country outside Malta governing one or more persons with whom the applicant has close links, or their enforcement, prevent the effective exercise of its supervisory functions.

(*b*) The competent authority may from time to time, by means of Investment Service Rules under this Act define the circumstances in which "close links" are to be regarded as existing between any two or more

persons.

(9) The competent authority shall establish a register of all holders of an investment services licence. This register, which shall be publicly available, shall also indicate the services in relation to which each investment services licence was issued and shall be updated on a regular basis.

(10) The competent authority shall notify ESMA whenever an investment services licence has been granted by the competent authority in terms of this article, including for the purpose of making it accessible on ESAP:

Provided that for the purpose of making such information accessible on ESAP, it shall be in a data extractable format and accompanied by the following metadata:

(*a*) all the names of the investment firm to which the information relates;

(*b*) where available, the legal entity identifier of the investment firm, as specified in accordance with point (b) of Article 7(4) of the ESAP Regulation;

(*c*) the type of information, as classified in accordance with point (c) of Article 7(4) of the ESAP Regulation;

(*d*) an indication of whether the information contains personal data:

Provided further that such obligation shall apply with effect from 10 January 2030:

Provided further that to the extent that the authorisation concerns a UCITS management company, such information shall be made accessible on ESAP in accordance with article 35.".

Power of competent authority to cancel or suspend licences. *Amended by: XVII. 2002.140; XX. 2007.63; XX. 2013.38; XXXI. 2017.48; LXXII.2021.8; XI.2025.21.*

7. (1) The competent authority may at any time cancel or suspend a licence in accordance with the provisions of this Act.

(2) In the case of an investment services licence, the competent authority may cancel or suspend a licence -

(*a*) if it considers that the holder thereof is not a fit and proper person to provide the investment service he is authorised to provide; or

(*b*) if it considers that the holder thereof does not fulfil the requirements of, or has contravened, any of the provisions of this Act or regulations made thereunder or of any applicable Investment Services Rules or Conduct of Business Rules issued by the competent authority, or has failed to satisfy or comply with any obligation or condition to which he or the licence is subject by virtue of or under this Act; or

(*c*) if the competent authority has been furnished by or on behalf of the licence holder with information which is false, inaccurate or misleading, or if the licence holder

has obtained the licence by making false statements or by any other irregular means; or

(*d*) if the licence holder has not commenced to provide the service he has been authorised to provide within the time provided for in the licence or has ceased to provide such service; or

(*e*) if it considers it desirable to cancel or suspend the licence for the protection of investors and the general public, and the reputation of Malta taking into account Malta's international commitments; or

(*f*) at the request of the licence holder; or

(*g*) in any of the circumstances under which the competent authority would have been precluded from issuing the licence under this Act or where under this Act it would have been entitled to refuse the grant of such licence; or

(*h*) if the licence holder is declared bankrupt, or goes into liquidation, or makes a composition with its creditors, or is otherwise dissolved.

(3) In the case of a collective investment scheme licence, the competent authority may cancel or suspend a licence -

(*a*) if it considers that the directors, officers or trustees of the scheme are not fit and proper persons to carry out the functions required of them in connection with the scheme; or

(*b*) if it considers that the scheme to which the licence refers does not fulfil the requirements of any provision of this Act or of any Investment Services Rules or regulations made thereunder, or there has been a contravention of any such provision as aforesaid, or an obligation or condition to which the scheme or the licence is subject by virtue of or under this Act has not been satisfied or complied with; or

(*c*) if information has been furnished to the competent authority by or on behalf of or in relation to the scheme which is false, inaccurate or misleading; or

(*d*) if the scheme has not commenced the activities which it was authorised to carry on within the time provided for in the licence or has ceased to carry on such activities; or

(*e*) if it considers it desirable to cancel or suspend the licence for the protection of investors and the general public and the reputation of Malta taking into account Malta's international commitments; or

(*f*) at the request of the manager or trustee or custodian of the scheme, or their equivalent; or

(*g*) if the scheme is declared bankrupt, or goes into liquidation, or makes a composition with its creditors, or is otherwise dissolved.

(4) The competent authority shall notify ESMA of any cancellation of an investment services licence in terms of sub-article (2).

Notification of proposed refusal, variation, cancellation or suspension of a licence. *Amended by: XVII. 2002.141.*

8. (1) Where the competent authority proposes -

(*a*) to vary any condition to which the licence is subject or to impose a condition thereon; or

(*b*) to refuse an application for a licence or to cancel or suspend a licence,

it shall give the applicant or, as the case may be, the licence holder or the manager and trustee or custodian of a collective investment scheme, or their equivalent, notice in writing of its intention to do so, setting out the reasons for the decision it proposes to take.

(2) Every notice given under sub-article (1) shall state that the recipient of the notice may, within such reasonable period after the service thereof as may be stated in the notice (being a period of not less than forty-eight hours and not longer than thirty days), make representations in writing to the competent authority giving reasons why the proposed decision should not be taken, and the competent authority shall consider any representation so made before arriving at a final decision.

(3) The competent authority shall as soon as practicable notify its final decision in writing to any of the persons to whom notice is to be given under sub-article (1).

Application of CRR to certain investment firms. *Added by: LXXII.2021.3. Amended by: XXV.2023.41.*

8A. (1) The competent authority may decide to apply the requirements of the CRR pursuant to point (c) of the first sub-paragraph of Article 1(2) of the IFR to an investment firm to carry out any of the activities listed in points (3) and (6) of Section A of Annex I to MiFID, where the total value of the consolidated assets of such investment firm is equal to or exceeds five billion euro (€5,000,000,000), calculated as an average of the previous twelve (12) months, and one or more of the following criteria apply:

(a) such investment firm carries out those activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk;

(b) the investment firm is a clearing member as defined in point (3) of Article 4(1) of the IFR, or

(c) the competent authority considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors:

(i) the importance of the investment firm for the economy of Malta or of the European Union;

(ii) the significance of the investment firm's cross-border activities;

(iii) the interconnectedness of the investment firm

with the financial system.

(2) Sub-article (1) shall not apply to commodity and emission allowance dealers, collective investment undertakings or insurance undertakings.

(3) Where the competent authority decides to apply the requirements of the CRR to an investment firm in accordance with sub-article (1), that investment firm shall be supervised for compliance with prudential requirements under Titles VII and VIII of the CRD as transposed in national law.

(4) Where the competent authority decides to revoke a decision taken in accordance with sub-article (1), it shall inform the investment firm without delay:

Provided that, any decision taken by the competent authority under sub-article (1) shall cease to apply where an investment firm no longer meets the threshold referred to in that sub-article, calculated over a period of twelve consecutive months.

(5) For the purposes of this article, the term "investment firm" means an investment firm licensed under this Act.

(6) The competent authority shall inform the EBA without delay of any decision taken pursuant to sub-articles (1), (3) and (4).

OBLIGATIONS OF LICENCE HOLDERS AND OTHERS

Changes in information; payment of fees. *Amended by: XVII. 2002.142; LXXII.2021.10.*

9. (1) The holder of an investment services licence, an investment holding company or mixed financial holding company and the manager of a collective investment scheme which has been licensed under this Act, or any other person having responsibility for the day to day administration or management of such a scheme, shall provide the competent authority with particulars of any changes in the information provided under this Act as soon as such holder, manager or person becomes aware of such changes and shall notify the competent authority, on a continuous basis, of any changes or circumstances which give rise to the existence of close links within the meaning in article 6.

(2) Every holder of a licence shall pay to the competent authority such periodic fee, and within such time, as may from time to time be prescribed.

Persons providing administrative services. *Added by: XVII. 2002.143. Amended by: XX. 2007.62; XVII. 2009.4.*

9A. (1) Any person who in Malta or from Malta provides to licence holders in Malta, or to equivalent authorised persons and schemes overseas, administrative services which do not themselves constitute licensable activity under this Act, shall be required to apply for recognition by the competent authority under this article, and no person shall provide such services unless he is so recognised.

(2) The competent authority may from time to time, issue

Investment Service Rules laying down the requirements and conditions for granting recognition, providing for the refusal of recognition and for the variation, cancellation and supervision of recognition and generally regulating the provision of such administrative services. Such Investment Service Rules may in particular include provision for the following matters:

(i) establishing which activities constitute administrative services for the purposes of this article;

(ii) the form and the content of applications to the competent authority for recognition;

(iii) the application, annual and other fees payable in respect of recognition;

(iv) the obligation to supply documentation and other information to the competent authority;

(v) measures to allow the competent authority to ensure compliance by recognised administrators with this Act and Investment Service Rules issued thereunder;

(vi) arrangements for the exchange of information with other regulatory bodies both in Malta and overseas;

(vii) providing for the mutual recognition of persons recognised as fit to provide such services outside Malta;

(viii) to provide for the imposition of administrative penalties up to a maximum of forty-five thousand euro (€45,000) or for other administrative sanctions in case of any breach of the provisions of this article or of the applicable Investment Services Rules or of any of the conditions attached to a recognition certificate, where any;

(ix) generally any other matter ancillary or connected with the above.

(3) Where the competent authority refuses, varies, cancels or suspends a recognition issued in terms of this article or imposes an administrative penalty in terms of the applicable Investment Services Rules, an appeal shall lie to the Financial Services Tribunal and the provisions of article19(3) shall apply to such appeal.

Participation in an investment services licence holder.
Amended by: XVII. 2002.144.
Substituted by: XVII. 2009.5.

10. (1) Notwithstanding anything contained in an any other law, any person or persons acting in concert (hereinafter referred to in this Act as the "proposed licence acquirer") who have taken a decision either to -

(*a*) acquire, directly or indirectly, a qualifying shareholding in an investment services licence holder;

(*b*) increase, directly or indirectly, an existing shareholding which is not a qualifying shareholding so

as to cause it to become a qualifying shareholding in an investment services licence holder; or

(*c*) further increase, directly or indirectly, such qualifying shareholding in an investment services licence holder as a result of which the proportion of the voting rights or of the capital held would reach or exceed twenty *per centum*, thirty *per centum* or fifty *per centum* or so that the investment services licence holder would become its subsidiary,

(hereinafter referred to in this Act as the "proposed acquisition"), shall notify the competent authority in writing of any such decision, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by Investment Services Rules require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a fit and proper person.

(2) Notwithstanding anything contained in any other law, any person who has taken a decision either to -

(*a*) dispose, directly or indirectly, of a qualifying shareholding in an investment services licence holder;

(*b*) reduce, directly or indirectly, a qualifying shareholding so as to cause it to cease to be a qualifying shareholding; or

(*c*) reduce, directly or indirectly, a qualifying shareholding so that the proportion of the voting rights or of the capital held would fall below twenty *per centum*, thirty *per centum* or fifty *per centum* or so that the investment services licence holder would cease to be its subsidiary,

shall notify the competent authority in writing of any such decision indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may, by Investment Services Rules require.

(3) Sub-articles (1) and (2) shall apply irrespective of whether or not any of the relevancy shares listed on a regulated market within the meaning of the Financial Markets Act or on an equivalent market which is not situated in a Member State or an EEA State.

(4) It shall be the duty of an investment services licence holder to notify the competent authority forthwith upon becoming aware that any person has taken any action set out in sub-articles (1) or (2).

(5) If any person or any investment services licence holder takes or decides to take any action set out in sub-articles (1) or (2) without notifying the competent authority or obtaining its approval in terms of article 10A, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order:

(*a*) restraining such person or investment services licence holder from taking, or continuing with, such action;

(*b*) declaring such action to be void and of no effect;

(*c*) requiring such person or investment services licence holder to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(*d*) restraining such person or investment services licence holder from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired; or

(*e*) restraining such person or investment services licence holder from taking any similar action or any other action within the categories set out in sub-articles (1) and (2).

(6) Without prejudice to any other provision of this Act, where the influence exercised by any person acquiring or proposing to acquire a qualifying shareholding is, or is likely to, operate against the sound and prudent management of an investment services licence holder, the competent authority may issue a notice of objection and exercise any of the powers assigned to it under this Act to put an end to such situation, including the power to issue directives as it may deem reasonable and appropriate in the circumstances.

(7) A copy of any notice served on the person concerned in terms of sub-article (6) shall be served on the company to whose shares it relates.

(8) The competent authority, may, by means of Investment Services Rules issued under this Act, indicate the circumstances when persons are to be regarded as "acting in concert".

Assessment procedure. *Added by: XVII. 2009.6. Amended by: X. 2011.25; XXII. 2014.4; XXXI. 2017.49; LXXII.2021.11.*

10A. (1) The competent authority shall, promptly and in any event within two working days following receipt of the notification required under article 10(1),as well as following the possible subsequent receipt of the information referred to in sub-article (4), acknowledge receipt thereof in writing to the proposed acquirer.

(2) The competent authority shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification required under article 10(1) and all documents required by the competent authority to be attached to such notification (hereinafter referred to in this Act as the "assessment period") to carry out an assessment on the basis of such information as may be determined by Investment Services Rules issued for this purpose.

(3) The competent authority shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

(4) The competent authority may, during the assessment period and no later than the fiftieth working day of such period, request

any further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

(5) During the period between the date of request for additional information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption period shall not exceed twenty working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in an interruption of such period.

(6) The competent authority may extend the interruption referred to in sub-article (5) up to thirty working days if the proposed acquirer is:

(*a*) a natural or legal person situated or regulated in countries that are not Member States or EEA States; or

(*b*) a natural or legal person not subject to supervision under the MIFID, the UCITS Directive, the CRD, the IFD, or the Solvency Directive.

(7) The competent authority shall, upon completion of the assessment referred to in sub-article (2) and not later than the date of the expiry of the assessment period, issue a notice:

(*a*) granting unconditional approval to the proposed acquisition;

(*b*) granting approval to the proposed acquisition subject to such conditions as the competent authority may deem appropriate; or

(*c*) refusing the proposed acquisition.

(8) In making the assessment referred to in sub-article (2), the competent authority shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(9) The competent authority may refuse the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in the Investment Services Rules referred to in article 10(1) or if the information provided by the proposed acquirer is incomplete.

(10) If the competent authority decides to refuse the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing specifying the reasons for such decision. The competent authority may, whether at the request of such proposed acquirer or not, issue a public statement indicating such reasons.

(11) If the competent authority does not refuse the proposed acquisition in writing within the assessment period, such proposed acquisition shall be deemed to be approved.

(12) Without prejudice to the provisions of article 22, where a

qualifying shareholding in an investment services licence holder is acquired notwithstanding the refusal of the competent authority, the exercise of the corresponding voting rights shall be suspended and any of the votes cast in contravention of this sub-article shall be null and void.

(13) The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(14) Notwithstanding the provisions of sub-articles (1) to (6), where two or more proposals to acquire or increase qualifying shareholdings in the same investment services licence holder have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Co-operation with European regulatory authorities and overseas regulatory authorities in case of acquisitions. *Added by: XVII. 2009.7. Amended by: XXII. 2014.5.*

10B. (1) The competent authority shall work in full consultation with the European regulatory authorities or overseas regulatory authorities when carrying out the assessment referred to in article 10A(2) if the proposed acquirer is one of the following:

(*a*) a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed;

(*b*) the parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed;

(*c*) a person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed.

(2) The competent authority shall, without undue delay, provide any information which is essential or relevant for the assessment referred to in article 10A(2) to the European regulatory authority or overseas regulatory authority requesting such information. Upon request, the competent authority shall communicate to the European regulatory authority or overseas regulatory authority all relevant information and shall communicate on its own initiative all essential information. A decision by the competent authority in terms of article 10A shall indicate any views or reservations expressed by the European regulatory authority or overseas regulatory authority responsible for the proposed acquirer.

Mergers, reconstructions, divisions and changes in share capital or voting rights.
Added by: XVII. 2009.8.

10C. (1) Notwithstanding anything contained in any other law, and without prejudice to article 10(1) and (2), the consent of the competent authority given in writing shall be required before an investment services licence holder may lawfully:

(*a*) sell or dispose of its business or any significant part thereof;

(*b*) merge with any other company, whether licensed under this Act or not;

(*c*) undergo any reconstruction or division; or

(*d*) increase or reduce its nominal or issued share capital or effect any material change in voting rights.

(2) It shall be the duty of all directors and qualifying shareholders of an investment services licence holder to notify the competent authority forthwith in writing, upon becoming aware that such investment services licence holder intends to take any of the actions set out in sub-article (1).

(3) Within three months of receipt of such notification or receipt of such information as the competent authority may lawfully require, whichever is the later, the competent authority shall issue a notice -

(*a*) granting unconditional consent to the taking of the action;

(*b*) granting consent to the taking of the action subject to such conditions as the competent authority may deem appropriate; or

(*c*) refusing consent to the taking of the action,

and if it refuses to grant consent, it shall inform the person or the investment services licence holder concerned in writing for the reason for its refusal.

(4) If any person or any investment services licence holder takes or decides to take any action set out in sub-article (1) without obtaining the consent of the competent authority, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order:

(*a*) restraining such person or investment services licence holder from taking, or continuing with, such action;

(*b*) declaring such action to be void and of no effect;

(*c*) requiring such person or investment service licence holder to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(*d*) restraining such person or investment services licence holder from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(*e*) restraining such person or investment services licence holder from taking any similar action or any other action within the categories set out in sub-article (1).

Approval of financial holding companies and mixed financial holding companies. *Added by: LXXII.2021.12.*

10CA. (1) Parent financial holding companies, parent mixed financial holding companies, EU parent financial holding companies and EU parent mixed financial holding companies, which are established in Malta or in another Member State or EEA State and which have an investment firm as a subsidiary, shall seek the approval or exemption, as the case may be, of the competent authority acting, as the consolidating supervisor, in accordance with this article. Other financial holding companies or mixed financial holding companies, established in Malta or in another Member State or EEA State and which have an investment firm as a subsidiary, shall seek the approval or exemption, as the case may be, of the competent authority, acting as the consolidating supervisor, in accordance with this article where they are required to comply with the CRD or the CRR on a sub-consolidated basis:

Provided that in accordance with article 10D where the competent authority is not the consolidating supervisor, financial holding companies and mixed financial holding companies established in Malta and which have an investment firm as a subsidiary, shall seek the approval or exemption, as the case may be, of the consolidating supervisor determined in accordance with Article 111 of the CRD.

(2) For the purposes of seeking an approval or exemption, as the case may be, in terms of sub-article (1), financial holding companies and mixed financial holding companies referred to therein shall, where:

(a) the competent authority is not the consolidating supervisor but the financial holding company or the mixed financial holding company is established in Malta; or

(b) the financial holding company or the mixed financial holding company is established in a Member State or an EEA State other than Malta and the competent authority is the consolidating supervisor,

provide the competent authority with the following information:

(a) the structural organisation of the group of which the financial holding company or the mixed financial holding company, as the case may be, forms part, with a clear indication of its subsidiaries and, where applicable, parent undertakings, and the location and type of activity undertaken by each of the entities within the group;

(b) information regarding the nomination of at least two persons effectively directing the financial holding

company or mixed financial holding company, as the case may be, and compliance with the requirements on the qualification of directors set out in Investment Services Rules;

(c) the internal organisation and distribution of tasks within the group;

(d) any other information that may be necessary to carry out the assessments referred to in sub-articles (3) and (4) as may be requested by the competent authority.

(3) All applications for an approval or exemption, as the case may be, in terms of this article shall be in such form and accompanied by such information and shall conform with any such requirements as may be established, from time to time, by Investment Services Rules.

(4) Approval may be granted to a financial holding company or a mixed financial holding company, as the case may be, pursuant to this article only where all of the following conditions are fulfilled:

(a) the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with the requirements imposed by this Act and any regulations made and Investment Services Rules issued thereunder transposing the CRD and by the CRR on a consolidated or sub-consolidated basis and, in particular, are effective to:

(i) coordinate all the subsidiaries of the financial holding company or mixed financial holding company, as the case may be, including, where necessary, through an adequate distribution of tasks among subsidiary institutions;

(ii) prevent or manage intra-group conflicts

(iii) enforce the group-wide policies set by the parent financial holding company or parent mixed financial holding company throughout the group;

(b) the structural organisation of the group of which the financial holding company or mixed financial holding company, as the case may be, is part does not obstruct or otherwise prevent the effective supervision of the subsidiary institutions or parent institutions as concerns the individual, the consolidated and, where appropriate the sub-consolidated obligations to which they are subject:

Provided that the assessment of this criterion shall take into account, in particular:

(i) the position of the financial holding company or the mixed financial holding company, as the case may be, in a multi-layered group;

(ii) the shareholding structure

(iii) the role of the financial holding company or mixed financial holding company, as the case may be, within the group;

(c) the requirements on the qualification of directors laid down in Investment Services Rules, are complied with.

(5) An exemption may be granted to a financial holding company or mixed financial holding company, as the case may be, pursuant to this article only where all of the following conditions are met:

(a) the financial holding company's principal activity is to acquire holdings in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to institutions or financial institutions is to acquire holdings in subsidiaries;

(b) the financial holding company or mixed financial holding company, as the case may be, has not been designated as a resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by the relevant resolution authority pursuant to the BRRD;

(c) a subsidiary credit institution is designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis and is given all the necessary means and legal authority to discharge those obligations in an effective manner;

(d) the financial holding company or mixed financial holding company, as the case may be, does not engage in taking management, operational or financial decisions affecting the group or its subsidiaries that are institutions or financial institutions;

(e) there is no impediment to the effective supervision of the group on a consolidated basis:

Provided that where financial holding companies or mixed financial holding companies are exempted from approval in accordance with this sub-article, they shall not be excluded from the perimeter of consolidation as laid down in the provisions of this Act and any regulations made and Investment Services Rules issued thereunder transposing the CRD and in the CRR.

(6) Where the competent authority is the consolidating supervisor, it shall monitor compliance with the conditions referred to in sub-article (4) or, where applicable, sub-article (5) on an ongoing basis.

(7) (a) Financial holding companies and mixed financial holding companies shall provide the competent authority, where it is

acting as the consolidating supervisor, with the information required to monitor on an ongoing basis the structural organisation of the group and compliance with the conditions referred to in sub-article (4).

(b) Financial holding companies and mixed financial holding companies exempted in terms of sub-article (5) shall provide the competent authority, where it is acting as the consolidating supervisor, with the information required to monitor on an ongoing basis the structural organisation of the group and compliance with the conditions referred to in sub-article (5).

(c) The competent authority shall share the information received in terms of this sub-article with the European regulatory authority where the financial holding company or the mixed financial holding company, as the case may be, is established.

(8) Where the competent authority is the consolidating supervisor and has established that the conditions set out in sub-article (5) are no longer met, the financial holding company or mixed financial holding company, as the case may be, shall seek approval in accordance with this article.

(9) For the purpose of taking decisions on the approval or the exemption from approval, as the case may be, referred to in sub-articles (4), (5) and (8) and, or in sub-articles (3), (4) or (7) of Article 21a of the CRD, where:

(i) the competent authority is not the consolidating supervisor but the financial holding company or the mixed financial holding company, as the case may be, is established in Malta; or

(ii) the financial holding company or the mixed financial holding company, as the case may be, is established in a Member State or an EEA State other than Malta and the competent authority is the consolidating supervisor,

the competent authority shall work together with the European regulatory authority acting as the consolidating supervisor or with the European regulatory authority in the Member State or EEA State where the financial holding company or the mixed financial holding company is established, as the case may be, in full consultation.

(10) Where the competent authority is the consolidating supervisor, it shall prepare an assessment on the matters referred to in sub-articles (4), (5) and (8), as applicable, and shall forward that assessment to the European regulatory authority in the Member State or EEA State where the financial holding company or the mixed financial holding company is established, as the case may be.

(11) The competent authority, whether acting as the

consolidating supervisor or whether it is in receipt of an assessment referred to in Article 21a(8) of the CRD from the European regulatory authority acting as the consolidating supervisor, shall do everything within its power to reach a joint decision on the approval or the exemption from approval, as the case may be, referred to in sub-articles (4), (5) and (8) and, or in sub-articles (3), (4) and (7) of Article 21a of the CRD, with the European regulatory authority in the Member State or EEA State where the financial holding company or the mixed financial holding company is established or with the European regulatory authority acting as the consolidating supervisor, as the case may be, within two months of receipt of that assessment:

Provided that the joint decision shall be duly documented and reasoned and where the competent authority is the consolidating supervisor, it shall communicate the joint decision to the financial holding company or the mixed financial holding company, as the case may be.

(12) In the event of a disagreement between the competent authority and the European regulatory authority acting as the consolidating supervisor or the European regulatory authority in the Member State or EEA State where the financial holding company or the mixed financial holding company is established, as the case may be, the competent authority shall refrain from taking the joint decision referred to in sub-article (11) and shall refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No. 1093/2010. In such cases, the competent authority shall adopt a joint decision with the European regulatory authority acting as the consolidating supervisor or with the European regulatory authority in the Member State or EEA State where the financial holding company or the mixed financial holding company is established, as the case may be, in conformity with the decision of the EBA:

Provided that the matter shall not be referred to the EBA after the end of the two-month period referred to in sub-article (11) or after a joint decision has been reached.

(13) In the case of mixed financial holding companies, where the coordinator appointed in terms of Article 10 of Directive 2002/87/EC is neither the competent authority, nor the European regulatory authority acting as the consolidating supervisor, nor the European regulatory authority in the Member State or EEA State where the mixed financial holding company is established, the agreement of the said coordinator shall be required for the purposes of the decisions or joint decisions referred to in sub-articles (4), (5) and (8) and, or sub-articles (3), (4) and (7) of Article 21a of the CRD, as applicable. Where the agreement of the coordinator is required, the competent authority shall refer any disagreements to the relevant European Supervisory Authority, namely, to the EBA or the European Supervisory Authority (European Insurance and Occupational

Pensions Authority) (EIOPA), established by Regulation (EU) No. 1094/2010, which shall take its decision within one month of receipt of the referral. Any decision taken in accordance with this paragraph shall be without prejudice to the obligations under Directive 2002/87/EC or the Solvency II Directive.

(14) Where approval of a financial holding company or mixed financial holding company, as the case may be, pursuant to this article is refused and the competent authority is the consolidating supervisor, the competent authority shall notify the applicant of the decision and the reasons therefor within four months of receipt of the application, or where the application is incomplete, within four months of receipt of the complete information required for the decision. Refusal may be accompanied, where necessary, by any of the measures referred to in article 16AA:

Provided that a decision to grant or refuse approval shall, in any event, be taken within six months of receipt of the application.

(15) For the purposes of this article:

(a) the term "financial institution" means the same as the meaning assigned to it in point (26) of Article 4(1) of the CRR;

(b) the term "group" means a group as defined in point (138) of Article 4(1) of the CRR;

(c) the term "institution" means an institution as defined in point (3) of Article 4(1) of the CRR;

(d) the term "investment firm" means an investment firm as defined in point (2) of Article 4(1) of the CRR;

(e) the term "parent undertaking" means a parent undertaking as defined in point (15) of Article 4(1) of the CRR;

(f) the term "resolution authority" means an authority designated by a Member State or an EEA State in accordance with Article 3 of the BRRD;

(g) the term "subsidiary" means a subsidiary as defined in point (16) of Article 4(1) of the CRR.

(16) The provisions of this article shall be without prejudice to the provisions of article 10.

Intermediate European Union parent undertaking. *Added by: LXXI.2021.16.*

10D. (1) An investment firm established in Malta which is part of a third-country group having as part of the same group one or more credit institution or one or more other investment firm in Malta or in another Member State or in an EEA State, shall have a single intermediate EU parent undertaking that is established in Malta or in another Member State or in an EEA State.

(2) The competent authority may allow an investment firm

referred to in sub-article (1) to have two intermediate EU parent undertakings where it determines that the establishment of a single intermediate EU parent undertaking would:

(a) be incompatible with a mandatory requirement for separation of activities imposed by the rules or the overseas regulatory authority of the third country where the ultimate parent undertaking of the third-country group has its head office; or

(b) render resolvability less efficient than in the case of two intermediate EU parent undertakings according to an assessment carried out by the relevant resolution authority of the intermediate EU parent undertaking.

(3) An intermediate EU parent undertaking shall be a credit institution licensed in terms of article 7 of the Banking Act or authorised in accordance with Article 8 of the CRD, or a financial holding company or mixed financial holding company that has been granted approval in accordance with article 11B of the Banking Act and, or Article 21a of the CRD: Cap. 371.

Provided that, where the third-country group referred to in sub-article (1) does not have a credit institution within the same group or where a second intermediate EU parent undertaking must be set up in connection with investment activities to comply with a mandatory requirement as referred to in sub-article (2), the intermediate EU parent undertaking or the second intermediate EU parent undertaking may be an investment firm which holds an investment services licence or an investment firm authorised in accordance with Article 5(1) of the MIFID, that is subject to the BRRD.

(4) Sub-articles (1), (2) and (3) shall not apply where the total value of assets in the European Union of the third-country group is less than forty billion euro (€40,000,000,000).

(5) For the purposes of this article, the total value of assets in the European Union of the third-country group shall be the sum of the following:

(a) the total value of assets of each investment firm and credit institution in the European Union forming part of the third-country group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheet, where their balance sheet is not consolidated

(b) the total value of assets of each branch of the third-country group authorised in the European Union in accordance with the CRD, MIFID or MiFIR.

(6) The competent authority shall notify the EBA with the

following information in respect of each third-country group operating in Malta:

(a) the names and the total value of assets of the credit institutions and investment firms belonging to a third-country group;

(b) the names and the total value of assets corresponding to branches authorised in Malta in accordance with the provisions of national law transposing the CRD, MIFID or MiFIR, and the types of activities that they are licensed to carry out;

(c) the name and the type as referred to in sub-article (3) of any intermediate EU parent undertaking set up in Malta and the name of the third-country group of which it is part.

(7) An investment firm established in Malta forming part of a third-country group shall meet at least one of the following conditions:

(a) it has an intermediate EU parent undertaking;

(b) it is an intermediate EU parent undertaking;

(c) it is the only investment firm in the European Union of the third-country group and the third-country group does not have any credit institutions in the European Union; or

(d) it is part of a third-country group with a total value of assets in the European Union of less than forty billion euro (€40,000,000,000).

(8) By way of derogation from sub-article (1), where a third-country group operates through an investment firm established in Malta and through one or more credit institutions or one or more other investment firms in the European Union and with a total value of assets equal to or greater than forty billion euro (€40,000,000,000) on 27 June 2019, the investment firm established in Malta shall ensure that the intermediate EU parent undertaking referred to in sub-article (1) or the two intermediate EU parent undertakings referred to in sub-article (2), as the case may be, shall be established by 30 December 2023.

(9) For the purposes of this article:

(a) the term "branch" means a branch as defined in point (17) of Article 4(1) of the CRR;

(b) the term "group" means a group as defined in point (138) of Article 4(1) of the CRR;

(c) the term "investment firm" means an investment firm as defined in point (2) of Article 4(1) of the CRR;

(d) the term "parent undertaking" means a parent undertaking as defined in point (15) of Article 4(1) of the CRR;

(e) the term "resolution authority" means an authority designated by a Member State or an EEA State in accordance with Article 3 of the BRRD

(f) the term "third-country group" means a group of which the parent undertaking is established in a third country.

Prospectus and investment advertisements. *Substituted by: XVII. 2002.145. Amended by: XX. 2007.62;*

11.(1)(*a*) No collective investment scheme, whether licensed or not, shall issue or cause to be issued a prospectus in or from within Malta unless the prospectus has been approved by the Competent Authority.

(*b*) No person, other than licence holders, may issue or cause to be issued an investment advertisement in or from within Malta unless its contents have been approved by a licence holder.

(2) The competent authority may, from time to time, issue such Conduct of Business Rules or directives to licence holders as it may consider appropriate in order to set minimum standards and requirements which are to be observed by licence holders when issuing or approving investment advertisements or issuing a prospectus in accordance with sub-article (1). Such Conduct of Business Rules or directives may also include provision for such exemptions or conditions as may be specified therein and may make different provision for different cases or classes of cases, under such terms and conditions as may be prescribed.

(3) The competent authority may impose such conditions, limitations and restrictions on a licence holder with respect to the issue or approval of investment advertisements, as it may consider appropriate.

REGULATORY AND INVESTIGATORY POWERS

Minister's power to make regulations. *Amended by: XXV.1995.432; XVII. 2002.146; IV. 2003.175; XIII. 2004.79; XII. 2006.62; XX. 2007.64; L.N. 425 of 2007; XIX. 2010.53; X. 2011.26; XX. 2013.39; XXII. 2014.6; XXI. 2015.13; XXXI. 2017.51; LXXII.2021.13; XXXII.2024.42; XI.2025.22.*

12. (1) The Minister, acting on the advice of the competent authority, may make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, in particular, do any of the following:

(*a*) amend the definitions of "ancillary services", "collective investment scheme" and "investment service" in article 2, as well as the provisions of the First, Second and Third Schedules;

(*b*) regulate investment services and collective investment schemes, as well as services provided and activities carried on in conjunction therewith or in relation thereto; providing for any matter he may deem expedient including the creation and exercise of rights by or for the benefit of the public, the imposition of

duties and obligations on the holders of a licence or persons responsible for the management or administration thereof and the regulation of any fees and, or any other charges imposed directly or indirectly on investors; provide for the safekeeping and custody of the property of collective investment schemes and for the requirement to appoint a custodian, and prescribe and regulate in the most extensive manner the functions, duties, responsibilities and obligations of the custodian; establish the qualifications and other eligibility criteria necessary to act as custodian, including residence qualifications; provide for the protection of the property of the schemes in the event of the insolvency of the custodian, and for the purpose of this paragraph "custodian" shall include a sub-custodian; require the keeping of records with respect to the transactions and financial position of collective investment schemes and for the inspection of those records, and prescribe reporting and disclosure requirements, including the preparation of periodical reports with respect to the schemes and the furnishing of those reports to the shareholders, unit-holders or other participants in the said schemes, and to others; and provide for the regulation of the free circulation of units of collective investment schemes and to regulate the management companies of such schemes;

(*c*) establish schemes or other arrangements for the compensation of investors in cases where licence holders or any types thereof as may be specified, are unable to satisfy their obligations towards investors or claims in respect of any liability incurred by them in connection with the carrying out of any activity in regard to which they are licensed, and to regulate the management and the financing of any such schemes or arrangements and, the contributions and levies to be paid thereto, to set the minimum and maximum levels of compensation payable thereunder and may under such schemes and arrangements distinguish between different classes of investors and, exclude certain classes from compensation, and to make provision for the regulation of and for other aspect related to such schemes or arrangements and may moreover provide that such schemes or arrangements as may be prescribed shall have a legal personality distinct from that of the contributors thereto and of the competent authority and provide for the judicial and legal representation thereof; and such schemes shall be exempt from the payment of income tax as from the date of establishment of such schemes;

(*d*) define the criteria for determining whether a holding is an indirect holding for the purposes of determining whether a qualifying shareholding exists;

(*e*) regulate the promotion or sale by or on behalf of any person, and by any means, of an investment service or of a collective investment scheme or of any instrument, including the criteria and procedures for the granting or refusing of consent by the competent authority pursuant to the provisions of article 11 of this Act;

(*f*) amend the provisions of article 18 on the circumstances in which auditors are obliged to communicate information to the competent authority, to prescribe regulations governing the disclosure by auditors of information pursuant to article 18 and to establish supervisory and disciplinary procedures for auditors in respect of their duties under the provisions of article 18;

(*g*) regulate the drawing-up, approval, publication and distribution in Malta of prospectuses relating to the offer of transferable securities authorised or otherwise approved, in a country or countries outside Malta and to make provision for the recognition of such prospectuses taking into account Malta's international commitments;

(*h*) provide for and regulate the payment by any person, body or scheme, as the case may be, of licence or other fees and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article, including the fees and charges in respect of any permission, licence, authorisation, registration, exemption or other benefit, as well as any fees and charges in respect of the competent authority's regulatory, supervisory or investigative functions under this Act and any regulations made or Rules issued thereunder, as may be prescribed.

(*i*) exempt any person, service, instrument, collective investment scheme, or advertisement from any one or more of the provisions of this Act subject to such variations, additions, adaptations and modifications as may be prescribed and subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed;

(*j*) (*deleted by Act XXII. 2014.6.*)

(*k*) transpose, implement and give effect to the provisions and requirements of the AIFM Directive, the BRRD, the CRR, the CRD, the MiFID, the MiFIR, the UCITS Directive, the IFD, and the IFR;

(*l*) establish financial resources requirements for licence holders and to transpose, implement and give effect to the provisions of the CRD and the CRR, as may be amended from time to time, including the provision of

implementing technical standards as specified therein; regulate the supervision on a consolidated basis, provide for the consultation, co-ordination, co-operation and the sharing and exchange of information with European regulatory authorities and other third country regulatory authorities as may be necessary; provide for the exchange of information with the European Systemic Risk Board, central banks which are members of the European System of Central Banks, including the Central Bank of Malta, exchange of information with the European Banking Authority and the European Securities and Markets Authority, and exchange of information with other departments of government administrations in other Member States responsible for law on the supervision of institutions, financial institutions and insurance undertakings and with inspectors acting on behalf of those departments; provide for the establishment of colleges of supervisors; provide for the exercise of powers by the competent authority on investment services licence holders, credit institutions, financial holding companies, mixed financial holding companies and mixed activity holding companies, or their effective managers, as may be defined in the said regulations; provide for the establishment and imposition of administrative penalties on licence holders or others as specified therein or other measures for the contravention of any of the regulations, and to provide for appeals therefrom to the Financial Services Tribunal; provide for the obligations of the competent authority to report to the European Banking Authority, the European Commission and the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority as may be specified in the said regulations;

(*m*) provide for reporting and other requirements and conditions which a person operating a multilateral trading facility must satisfy, on a continuing and ongoing basis and to establish the circumstances and the manner in which requirements and conditions may be varied, suspended or revoked, and to transpose the requirements of the MIFID and the MiFIR thereon;

(*n*) transpose, implement and give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder and relating to licence holders and others as may be specified therein; regulations made under this paragraph, and strictly related to transposition or implementation as aforesaid, may provide that any provision of this Act or of any other law shall not apply to matters falling under the regulations, and that in so far as any of the provisions of the regulations are

inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;

(*o*) provide that any one or more of the bodies mentioned in Article 107(3) of the UCITS Directive may, in the interests of consumers, and in accordance with the applicable laws of Malta, take action before the courts or administrative bodies of Malta, to ensure that the provisions of this Act and the Investment Services Rules and regulations issued hereunder transposing the UCITS Directive are implemented;

(*oa*) establish and regulate limited partnerships not having legal personality, and which the deed of partnership thereof expressly limits their object either to the collective investment of their funds in securities and in other movable and immovable property, or in any of them, with the aim of giving the partners the benefit of the results of the management of their funds, and to matters ancillary or incidental thereto, and which qualifies as a collective investment scheme and is duly licensed, recognised, exempted or otherwise regulated in terms of this Act; and shall be distinct from limited partnerships as set out within the provisions of the Companies Act. Regulations made under this paragraph may provide that any provision of this Act or of any other law shall not apply to matters falling under the regulations, and that insofar as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail; Cap. 386.

(*p*) prescribe anything that is to be or which may be prescribed;

(*q*) provide for any matter incidental to or connected with any of the above.

(2A) Regulations made under this article may also contain provision for enabling a person who has entered, or offered to enter, into an investment agreement with the holder of a licence to rescind the agreement or withdraw the offer within such period and in such manner as may be prescribed, and in particular, but without prejudice to the generality of the foregoing, may make provision -

(*a*) for requiring the service of notice with respect to the rights exercisable under the regulations;

(*b*) for the restitution of property and the making or recovery of payments where those rights are exercised;

(*c*) for such other matters as are incidental to or connected with any of the above.

(2B) Regulations made under this article may make provision for the constitution of common funds for investment purposes in the form of a collective investment scheme by contract or other arrangement in writing and may exempt such funds from the application of any article or provision of the Civil Code under Title Cap. 16.

V of Part I of Book Second with such modifications and variations as may be established.

(2C) Regulations made under this article may also make provision for the re-organisation and winding-up of those investment services licence holders to which such re-organisation and winding-up is, or may be rendered, applicable in terms of the BRRD.

(3) Regulations made under this article, may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different cases, circumstances or purposes and may give to the competent authority such powers of adaptation of the regulations as may also be so specified.

(4) Where regulations have been issued in terms of this article, the competent authority may issue Investment Services Rules and, or Conduct of Business Rules within the meaning of article 6 of this Act for the better carrying out and to better implement the provisions of the regulations.

(5) Regulations made under this article may impose:

(*a*) administrative penalties which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be;

(*b*) punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (multa) of one hundred and fifty thousand euro (€150,000) or imprisonment for a term not exceeding one year, or both such fine and imprisonment; and

(*c*) administrative penalties and fines higher than one hundred and fifty thousand euro (€150,000), where deemed necessary or appropriate for any contravention of or failure of compliance with any EU Directive or EU Regulation or of any regulations made under this article to transpose or to give effect to any EU Directive or EU Regulation.

Added by: XXXI. 2017.51.

(5A) Regulations made under this article may prescribe administrative penalties and fines as provided for in sub-article (5)(*c*), for any breach of any provision of this Act or for any breach of any Investment Services Rules or Conduct of Business Rules, transposing and, or implementing any EU Directive or EU Regulation.

(6) Regulations made under this Act and any amendment or revocation of such regulations, may be published in the English language only.

(7) The exercise of any of the powers assigned under this article shall be subject to any obligations or rights arising from Malta's international commitments.

Power of competent authority to require information. *Amended by: XVII. 2002.147; XX. 2007.65; XX. 2013.40; LXXII.2021.14.*

13. (1) Without prejudice to any powers of the competent authority arising under any other law, the competent authority shall have the power to require information from:

(a) any person who is or was providing, or who appears to be or to have been providing, an investment service;

(b) a collective investment scheme;

(c) any person who is or was carrying on, or who appears to be or has been carrying on activities in connection with such a scheme;

(d) any person who has issued, or appears to have issued an advertisement falling within the provisions of article 11(1);

(e) an auditor of a licence holder; or

(f) any other person who appears to be in possession of relevant information.

(1A) Without prejudice to sub-article (1), the competent authority shall have the power to require information from:

(a) investment firms established in Malta;

(b) investment holding companies established in Malta;

(c) mixed financial holding companies established in Malta and their subsidiaries;

(d) mixed-activity holding companies established in Malta;

(e) persons belonging to the entities referred to in points (a) to (d);

(f) third parties to whom the entities referred to in points (a) to (d) have outsourced operational functions or activities.

(1B) Without prejudice to the generality of sub-articles (1) and (1A), the competent authority may, by notice in writing, require any person referred to in the said sub-articles to do all or any of the following:

(a) to furnish to the competent authority, at such time and place and in such form as it may specify, such information and documentation as it may require, including the power to require existing telephone and existing data traffic records, with respect to any such service, scheme or advertisement as aforesaid, or with respect to any person with whom the licence holder has close links within the meaning of article 6;

(b) to furnish to the competent authority any information or documentation aforesaid verified in such manner as it may specify;

(c) to attend before the competent authority, or before a

person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation with respect to any such service, scheme or advertisement as aforesaid."

(2) The competent authority may examine and make copies or extracts of any documents furnished or provided under this article.

(3) Where the person required to provide information or documentation under this article does not have the relevant information or documentation, he shall disclose to the competent authority where, to the best of his knowledge, that information or documentation is, and the competent authority may require any person, whether indicated as aforesaid or not, who appears to it to be in possession of that information or documentation, to provide it.

(4) A statement made and documentation provided in pursuance of any requirement under this article may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

(5) The provisions of this article shall not apply to information or documentation which is privileged in accordance with the provisions of article 642(1) of the Criminal Code.

Cap. 9.

(6) The power to require the production of documentation under the provisions of this article shall be without prejudice to any lien or charge claimed by any person in relation to such documentation.

(7) Where the competent authority has appointed a person under sub-article (1)(*c*), such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the competent authority by this article and a requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority.

(8) Without prejudice to the other provisions of this article, a licence holder may be required to submit to the Central Bank of Malta such information as the Bank may reasonably require for the discharge of its duties under the Central Bank of Malta Act.

Cap. 204.

Appointment of inspectors. *Amended by: XX. 2007.66; LXXII.2021.15.*

14. (1) The competent authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of any persons or scheme referred to in article 13(1)(a) to (d) and (1A).

(2) An inspector appointed under sub-article (1) -

(*a*) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any person or scheme mentioned in sub-article (1);

(*b*) shall have and may exercise all the powers conferred on the competent authority by article 13, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority;

(*c*) may, and if so directed by the competent authority shall, make interim reports and on the conclusion of his investigation shall make a final report to the said authority.

(3) The competent authority shall have power to order that all expenses of, and incidental to, an investigation pursuant to this article be paid by the persons or scheme concerned.

(4) For the purposes of this article inspectors may include an advocate, a person authorised to carry on the profession of accountant or auditor in terms of the Accountancy Profession Act, or a person considered by the competent authority as possessing suitable expertise to exercise such function.

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Power to issue directives.
Amended by: XVII. 2002.148; XX. 2007.67; X. 2011.27; XX. 2013.41; XXII. 2014.7; XXI. 2015.14; XXXI. 2017.52; XLIV.2018.6; LXXII.2021.16.

15. (1) Without prejudice to any of the powers conferred on it by articles 13 and 14, the competent authority may, whenever it deems it necessary, and whether upon a report by an inspector appointed under article 14 or not, give, by notice in writing, such directives as it may deem appropriate in the circumstances; and any person to whom or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive or further directive.

Provided that the competent authority may give any such directive even where a licence holder, for whatever reason, ceases to hold a licence granted in terms of this Act:

Provided further that any directive given in terms of this article shall, unless the competent authority otherwise directs, continue to apply even when a licence holder, for whatever reason, ceases to hold a licence granted in terms of this Act.

(2) Without prejudice to the generality of the foregoing provisions of this article, a directive under this article may -

(*a*) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, including any requirement emanating from European Union legislation, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(*b*) require a collective investment scheme and the manager of such a scheme, or his equivalent, and any other person who may issue, redeem, sell or purchase units in the scheme, to cease the issue, redemption, sale, or purchase of units or all or any combination of those activities, as may be specified in the directive or further directive;

(*c*) require that any person having functions in relation to the holder of a licence be prohibited, temporarily or otherwise, suspended from carrying out activities licensable under the Act, or removed or removed and replaced by another person acceptable to the competent authority;

(*d*) require a collective investment scheme or its directors and shareholders, or the manager or trustee or custodian of a scheme, or their equivalent, to wind it up by such date and in accordance with such procedure and other provisions as may be specified in the directive or further directive;

(*e*) require a licence holder or any person who is or was providing, or who appears to be or to have been providing an investment service to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the directive, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the licence holder or such other person;

(*f*) require a licence holder to submit a financial recovery plan, as may be determined in the Investment Services Rules, if it considers that the interest of investors, consumers, creditors or other interested persons are likely to be prejudiced owing to a deterioration in the financial position of the licence holder;

(*g*) require the cessation of any practice that is contrary to the provisions adopted in the implementation of the AIFM Directive, the BRRD, the CRD, the MiFID, the UCITS Directive, and the IFD;

(*h*) require the removal of a financial instrument from trading, on trading arrangements within the meaning of the MIFID, the MiFIR other than on regulated markets in terms of the Financial Markets Act;

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(*i*) require the suspension of trading in a financial instrument;

(*j*) request any person to take steps to reduce the size of the position or exposure;

(*k*) limit the ability of any person from entering into a commodity derivative, including by introducing limits on the size of a position any person can hold at all times in accordance with Article 57 of MIFID:

Provided that in applying paragraphs (*d*) and (*e*), the competent authority may also appoint a competent person to act as liquidator for the purposes of winding up the affairs of a licence holder under this Act; and such person shall be the liquidator of the licence holder for all purposes of law to the exclusion of any other person.

(3) The power to give directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

(4) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.

Power of the competent authority to protect the public interest.
Added by: XX. 2013.42.
Amended by: XLIV.2018.7.

15A. (1) Without prejudice to the powers conferred to the competent authority under this Act, the competent authority may, where it is satisfied that sufficient circumstances exist, proceed to take any one or more of the following measures:

(*a*) appoint a person to advise the licence holder in the proper conduct of its business;

(*b*) appoint a person to take charge of the assets of the licence holder, or any portion of them, for the purposes of safeguarding the interests of investors, consumers, creditors or, if any, shareholders, of the licence holder;

(*c*) appoint a person to assume control of the business of the licence holder, either to carry on that business or to carry out such other function or functions in respect of such business, or part thereof, including to take the necessary action for the licence holder to be dissolved and wound up, as the competent authority may direct;

(*d*) fix the remuneration to be paid by the licence holder to any person appointed under article 15 or under this article;

(*e*) do such other act as it may deem appropriate in the circumstances to give better effect to the implementation of the provisions of this article,

and having adopted any one or more of the measures aforesaid, the competent authority may further proceed in any one or more such measures, whether in addition thereto or in substitution therefor.

(2) Where a person is appointed by the competent authority -

(*a*) under sub-article (1)(*a*), it shall be the duty of the licence holder to act in accordance with the advice given by such person unless and until the competent authority, on representation made to it, directs otherwise;

(*b*) under sub-article (1)(*b*), the licence holder shall deliver to such person all the assets, whether movable or immovable, of which he is placed in charge, and all the powers, functions and duties of the licence holder in respect of those assets, including, if such licence holder is a legal person, those exercisable by the legal person in a general meeting, or by the directors, or by any other person, including the legal and judicial representation of such legal person, shall be exercisable by and vest in the person appointed under the said paragraph to the exclusion of any other person;

(*c*) under sub-article (1)(*c*), the licence holder shall submit its business to the control of such person and shall provide such person with such facilities as may be required to carry on that business or to carry out the functions assigned to such person under the said paragraph; and all the powers, functions and duties of the licence holder, including, if such licence holder is

a legal person, those exercisable by the legal person in a general meeting, or by the directors, or by any other person, including for the purpose of the dissolution and winding up of the licence holder as well as the legal and judicial representation of such legal person in all matters, shall be exercisable by and vest in such person to the exclusion of any other person:

Provided that the competent person shall not take any decision for the purpose of the dissolution and winding up of the licence holder unless the competent authority issues a directive to that effect in terms of article 15, and any such directive may contain such instructions, requirements and conditions as the competent authority may consider necessary, including with regard to the mode of winding up.

(2A) Without prejudice to the powers of the competent authority in terms of sub-article (1), the competent authority may also make an application to the court for the dissolution and winding up by the court of a licence holder where it appears to the competent authority that a licence holder should be dissolved and wound up by the court for the reason set out in article 214(2)(b)(iii) of the Companies Act, and where the court accedes to the application the relevant provisions of the Companies Act in relation to the dissolution and winding up by the court and any other applicable provisions of any other law shall apply.

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(3) The competent authority may, where it feels it is in the best interest of the public so to do, make or issue public statements or notices giving warnings or information about any measure taken in terms of this article.

(4) The competent authority may require the licence holder concerned to pay all the expenses of, and incidental to, the publication or issue of public statements or notices pursuant to this article, or such part thereof as it may deem appropriate; and any sum so due shall be recoverable by the competent authority in the same manner as an administrative penalty imposed under this Act.

(5) Any measure adopted in terms of sub-article (1) shall remain in force notwithstanding that a licence holder ceases to hold a licence for whatever reason, unless the competent authority otherwise directs.

Right of entry. *Amended by: LXXII.2021.17.*

16. (1) Any officer, employee or agent of the competent authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under article 13 or whose affairs are being investigated under article 14, for the purpose of obtaining and, or verifying there the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said articles.

(2) Where any officer, employee or agent of the competent authority has reasonable cause to believe that if such notice as is referred to in sub-article (1) were served it would not be complied with or that any documents to which it could relate would be

removed, tampered with or destroyed, such person may, on producing, if required, evidence of his authority, enter any premises referred to in sub-article (1) for the purpose of obtaining there any information or documents specified in the authority, being information or documents that could have been required under such notice as is referred to in sub-article (1).

(2A) Without prejudice to sub-articles (1) and (2), any officer, employee or agent of the competent authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under article 13 and by any other person included in the supervision of compliance with the group capital test, where the competent authority is the group supervisor, in order to conduct an inspection:

Provided that the exercise of the right of entry under this sub-article in relation to any person included in the supervision of compliance with the group capital test where the competent authority is the group supervisor, shall be subject to the prior notification of other competent authorities concerned.

(3) For the purposes of any action taken under the provisions of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him for the prevention of offences and the enforcement of law and order.

Administrative penalties and other measures.
Added by: XX. 2007.68.
Amended by: L.N. 425 of 2007; X. 2011.28; XX. 2013.43; XXXI. 2017.53; V.2020.14; XIX.2026.20.

16A. (1) Without prejudice to any other powers assigned to the competent authority in terms of this Act, where a licence holder or the manager, secretary, director or any other person responsible for a licence holder contravenes or fails to comply with any of the conditions imposed in a licence, and, or where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act, regulations, Investment Services Rules or Conduct of Business Rules issued thereunder, including failure to cooperate in an investigation, the competent authority may by notice in writing and without recourse to a court hearing impose on the licence holder, manager, secretary, director, and, or

any other person as the case may be, an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be.The provisions of article 16 (4) of the Malta Financial Services Authority Act shall apply *mutatis mutandis*.

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(2) Administrative penalties or other measures that may be imposed by the competent authority on licence holders or others, as may be specified, may be imposed in the form of a fixed penalty, a daily penalty, or both.

(3) The imposition by the competent authority of an administrative penalty in terms of this article shall be without prejudice to any other consequence of the act or omission of the offender under civil or criminal law:

Provided that in all cases where the competent authority imposes an administrative penalty in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

(4) The competent authority may, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of this Act, regulations, Investment Services Rules or Conduct of Business Rules issued thereunder, and the penalty or administrative measure imposed. The competent authority shall withhold such public disclosure where it deems that such disclosure would seriously jeopardise the financial markets, be detrimental to the interests of investors or cause disproportionate damage to the parties involved:

Provided that to the extent that such disclosure concerns breaches relating to the UCITS Directive, such information shall also be made accessible on ESAP in accordance with the provisions of article 35.

(5) Where the competent authority has made a public statement in terms of sub-article (4), it shall simultaneously report that fact to ESMA.

(6) The competent authority shall annually provide ESMA with aggregated information about all the administrative measures and sanctions imposed in accordance with this article and shall upon request provide the necessary information on the application of administrative measures and imposition of penalties in the case of breaches of the provisions adopted in the implementation of the AIFM Directive.

Supervisory measures related to financial holding companies and mixed financial holding companies. *Added by: LXXII.2021.18.*

16AA. (1) Without prejudice to any other power of the competent authority under this Act or any other law, where the competent authority is the consolidating supervisor and has established that the conditions set out in article 10D(4) are not met or have ceased to be met, the competent authority shall take the appropriate supervisory measures to ensure or restore, as the case may be, continuity and integrity of consolidated supervision and ensure compliance with the requirements laid down in this Act and any regulations made and Investment Services Rules issued thereunder transposing the CRD, in any binding legal instruments issued under the CRD, and in the CRR, on a consolidated basis. In the case of a mixed financial holding company, the supervisory measures applied by the competent authority as the consolidating supervisor shall, in particular, take into account the effects on the financial conglomerate. The supervisory measures referred to in this sub-article shall include:

(a) withdrawing the approval granted to a financial holding company or mixed financial holding company in terms of article 10D;

(b) suspending the exercise of voting rights attached to the

shares of the subsidiary institutions held by the financial holding company or mixed financial holding company;

(c) issuing administrative measures or administrative penalties, in terms of this Act and any regulations made or Investment Services Rules issued thereunder, against the financial holding company, the mixed financial holding company or the directors and managers, subject to the provisions of national law transposing Articles 65 to 72 of the CRD;

(d) issuing instructions or directions to the financial holding company or mixed financial holding company to transfer to its shareholders the participations in its subsidiary institutions;

(e) issuing a directive to the financial holding company or mixed financial holding company in terms of article 15;

(f) designating on a temporary basis another financial holding company, mixed financial holding company or institution within the group as responsible for ensuring compliance with the requirements laid down in this Act and, or any regulations made and, or Investment Services Rules issued thereunder transposing the CRD, in the CRD and, or in the CRR on a consolidated basis;

(g) restricting or prohibiting distributions or interest payments to shareholders;

(h) requiring financial holding companies or mixed financial holding companies to divest themselves from, or reduce, holdings in institutions or other financial sector entities;

(i) requiring financial holding companies or mixed financial holding companies to submit a plan on return, without delay, to compliance;

(j) restraining any person within financial holding companies or mixed financial holding companies and, or financial holding companies or mixed financial holding companies from taking, or continuing to take, any action as a result of which the conditions set out in article 10D(4) are not met or have ceased to be met;

(k) requiring any person within financial holding companies or mixed financial holding companies and, or financial holding companies or mixed financial holding companies to take such steps as may be necessary to restore the position existing immediately before any action, as a result of which the conditions set out in article 10D(4) are not met or have ceased to be met, was taken;

(l) restraining any person within financial holding companies or mixed financial holding companies and, or financial holding companies or mixed financial

holding companies from exercising any rights which a lawful action, as a result of which the conditions set out in article 10D(4) are not met or have ceased to be met, would have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(m) any measure under article 15A:

Provided that in exercising any of its powers under article 15A, the provisions of the said article shall apply *mutatis mutandis*, and provided further that any reference to "the licence holder" shall be deemed to be reference to "the financial holding company" and, or "the mixed financial holding company", as applicable.

(2) Where the competent authority intends to withdraw an approval in accordance with sub-article (1)(a), it shall serve written notice of its intention on the financial holding company or mixed financial holding company; such notice shall specify the grounds upon which the competent authority intends to take such action and shall specify a period, being a period not less than forty-eight hours and not more than thirty calendar days, in which the financial holding company or mixed financial holding company shall be entitled to make representations to the competent authority as to why such action should not be taken. Unless the competent authority decides that the matter is urgent, it shall not withdraw an approval before the expiry of such period.

(3) For the purpose of taking decisions on the supervisory measures referred to in sub-article (1), where the financial holding company or the mixed financial holding company is established in a Member State or in an EEA State other than Malta and the competent authority is the consolidating supervisor, the competent authority shall work together with the European regulatory authority in the Member State or EEA State where the financial holding company or the mixed financial holding company is established, as the case may be, in full consultation.

(4) Where the competent authority is not the consolidating supervisor but the financial holding company or the mixed financial holding company is established in Malta, the competent authority shall, for the purposes of taking decisions on the supervisory measures referred to in Article 21a(6) of the CRD, work together with the European regulatory authority acting as the consolidating supervisor, in full consultation.

(5) Where the competent authority is the consolidating supervisor and where the financial holding company or the mixed financial holding company is not established in Malta, the competent authority shall prepare an assessment on the matters referred to in sub-article (1), and shall forward that assessment to the European

regulatory authority in the Member State or EEA State where the financial holding company or the mixed financial holding company is established.

(6) The competent authority, whether acting as the consolidating supervisor or whether it is in receipt of an assessment referred to in Article 21a(8) of the CRD from the European regulatory authority acting as the consolidating supervisor, shall do everything within its powers to reach a joint decision on the measures referred to in sub-article (1) of this article and, or in Article 21a(6) of the CRD, with the European regulatory authority in the Member State or EEA State where the financial holding company or the mixed financial holding company is established or with the European regulatory authority acting as the consolidating supervisor, as the case may be, within two months of receipt of that assessment:

Provided that the joint decision shall be duly documented and reasoned and where the competent authority is the consolidating supervisor, it shall communicate the joint decision to the financial holding company or the mixed financial holding company.

(7) In the event of a disagreement between the competent authority and the European regulatory authority acting as the consolidating supervisor or with the European regulatory authority in the Member State or EEA State where the financial holding company or the mixed financial holding company is established, as the case may be, the competent authority shall refrain from taking the joint decision referred to in sub-article (6) and shall refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No. 1093/2010. In such cases, the competent authority shall adopt a joint decision with the European regulatory authority acting as the consolidating supervisor or with the European regulatory authority in the Member State or EEA State where the financial holding company or the mixed financial holding company is established, as the case may be, in conformity with the decision of the EBA:

Provided that the matter shall not be referred to the EBA after the end of the two month period referred to in sub-article (6) or after a joint decision has been reached.

(8) In the case of mixed financial holding companies, where the coordinator appointed in terms of Article 10 of Directive 2002/87/EC is neither the competent authority, nor the European regulatory authority acting as the consolidating supervisor, nor the European regulatory authority in the Member State or EEA State where the mixed financial holding company is established, the agreement of the said coordinator shall be required for the purposes of the decisions or joint decisions referred to in sub-article (1) of this article and, or in Article 21a(6) of the CRD, as applicable. Where the agreement of the coordinator is required, the competent authority shall refer any

disagreements to the relevant European Supervisory Authority, namely, to the EBA or to the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No. 1094/2010, which shall take its decision within one month of receipt of the referral. Any decision taken in accordance with this sub-article shall be without prejudice to the obligations under Directive 2002/87/EC or the Solvency II Directive.

(9) For the purposes of this article:

(a) the term "group" means a group as defined in point (138) of Article 4(1) of the CRR;

(b) the term "institution" means an institution as defined in point (3) of Article 4(1) of the CRR;

(c) the term "participation" means the same as the meaning assigned to in point (35) of Article 4(1) of the CRR; and

(d) the term "subsidiary" means a subsidiary as defined in point (16) of Article 4(1) of the CRR.

Obligation to state grounds for decisions. *Added by: XX. 2007.68. Amended by: X. 2011.29; XX. 2013.44; XXII. 2014.8; XXI. 2015.15; XXXI. 2017.54; LXXII.2021.19.*

16B. Any decision taken under this Act by the competent authority in terms of any provisions which transpose the AIFM Directive, the BRRD, the CRD, the MiFID, the UCITS Directive, and the IFD, including any regulations, regulations, Investment Services Rules or Conduct of Business Rules issued thereunder, made thereunder for the said transposition, shall state the grounds on which such a decision has been based.

Substituted by: XX. 2007.69; LXXII.2021.20.

CO-OPERATION WITH REGULATORY AUTHORITIES AND OTHER BODIES

Powers exercisable. *Amended by: XVII. 2002.149; XX. 2007.70; X. 2011.30; XX. 2013.45; XXII. 2014.9; XXI. 2015.16; XIX. 2016.21; XXXI. 2017.55; LXXII.2021.21.*

17. (1) The competent authority shall act as the contact point in terms of and for the purposes of Article 79(1) of the MIFID, and it shall also exercise its powers and duties as provided for in the UCITS Directive.

(1A) The competent authority shall cooperate with other local regulatory authorities or bodies which are also responsible for the supervision of credit institutions and financial institutions and shall exchange with such local regulatory authorities or bodies, without delay, any information which is essential or relevant to the exercise of their functions.

(2) The competent authority shall cooperate with other European regulatory authorities whenever necessary for the purpose of carrying out its duties and exercising its powers under the AIFM Directive, the BRRD, the CRD, the CRR, the MIFID, the MiFIR, the UCITS Directive, the IFD and the IFR. It shall render the necessary assistance to other European regulatory authorities, in particular by exchanging information and cooperating in any

investigatory or supervisory function. In terms of the AIFM Directive, the BRRD, the CRD, the MiFID, the UCITS Directive and the IFD, the competent authority may use its powers for the purposes of cooperation even in cases where the conduct under investigation does not constitute an infringement of any provisions of this Act, regulations, Investment Services Rules or Conduct of Business Rules issued thereunder:

Provided that the competent authority shall communicate information to other European regulatory authorities where this is relevant for monitoring and responding to the potential implications of the activities of an individual AIFM or AIFMs collectively, for the stability of systemically relevant investment services licence holders and the orderly functioning of markets on which AIFMs are active. ESMA and the ESRB shall be informed accordingly.

(2A) Without prejudice to the generality of sub-article (2), the competent authority shall, for the purposes of its duties pursuant to the IFR and the IFD as transposed in national law, exchange information about investment firms with European regulatory authorities without delay, including the following:

(a) information about the management and ownership structure of the investment firm;

(b) information about compliance with own funds requirements by the investment firm;

(c) information about compliance with the concentration risk requirements and liquidity requirements of the investment firm;

(d) information about the administrative and accounting procedures and internal control mechanisms of the investment firm

(e) any other relevant factors that may influence the risk posed by the investment firm:

Provided that for the purposes of this sub-article the term "investment firm" means an investment firm licensed under this Act.

(3) Upon receipt of a request from European regulatory authorities designated as contact points within the individual Member States or EEA States under Article 79(1) of the MIFID, the competent authority shall immediately take the necessary measures in order to gather the information required for the carrying out of its duties pursuant to the MIFID and the MiFIR. If the competent authority is not able to supply the required information immediately, it shall notify the requesting European regulatory authority of the reasons.

(4) At the time of communicating information to the European regulatory authorities, whether designated as contact points or not, the competent authority may stipulate that the information must not be disclosed without its express agreement, in which case such information may be exchanged solely for the purposes for which

the competent authority had given its agreement.

(5) Where a European regulatory authority exchanging information with the competent authority stipulates at the time of communication of the information that such information must not be disclosed without its express agreement, such information may be used by the competent authority solely for the purposes for which the European regulatory authority would have given its agreement.

(6) Information received by the competent authority from contact points in the other Member States or EEA States may be transmitted to other bodies or natural or legal persons, provided that:

(*a*) the express agreement of the contact points which disclosed the information is obtained; and

(*b*) the information is used solely for the purposes for which the contact points gave their agreement:

Provided that in duly justified circumstances the competent authority can transmit information to other bodies or natural or legal persons without satisfying the conditions in paragraphs (*a*) and (*b*), in which case the competent authority shall immediately inform the contact point that sent the information.

(7) Where the competent authority receives confidential information from contact points in the other Member States or EEA States or from overseas regulatory authorities or auditors under articles 17D and 18, or when other bodies or natural or legal persons receive confidential information from the competent authority, they may only use such confidential information in the course of their duties, in particular:

(*a*) to check that the conditions governing the taking-up of the business of licence holders, including undertakings contributing towards the business activity of UCITS are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the financial resources requirements;

(*b*) to monitor the proper functioning of trading venues within the meaning of the MIFID and the MiFIR;

(*c*) to impose penalties or adopt other administrative measures and to consider representations received in their regard;

(*d*) in appeals under article 19;

(*e*) to investigate complaints received from consumers in terms of article 20 of the Malta Financial Services Authority Act; or

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(*f*) in taking any decision in the implementation of the UCITS Directive and the MIFID and the MiFIR; or

(g) to monitor the prudential rules set out in the IFD and the IFR.

(8) Sub-article (7) of this article and article 26 shall not preclude the competent authority from exchanging information, in terms of the UCITS Directive, with European regulatory authorities, where that information is to be divulged to:

(*a*) authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings or other financial organisations, or authorities responsible for the supervision of financial markets;

(*b*) bodies involved in the liquidation or bankruptcy of UCITS or undertakings contributing towards their business activity, or bodies involved in similar procedures; or

(*c*) persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment services licence holders or other financial institutions.

(9) Sub-article (7) of this article and article 26 shall not preclude the competent authority from exchanging information with European regulatory authorities, or other overseas regulatory authorities or other bodies and entities in pursuance of the requirements and terms of the BRRD, CRD, the CRR, the IFD and the IFR, as may be prescribed.

(10) Without prejudice to the powers of the competent authority under this Act or any other law, where the competent authority has good reason to suspect that acts contrary to the provisions of the AIFM Directive, the CRD, the CRR, the MiFID, the MiFIR, the UCITS Directive, the IFD and the IFR are being or have been carried out on the territory of another Member State or EEA State by entities not subject to its supervision, it shall notify this in as specific a manner as possible to the contact point in the other Member State or EEA State and to ESMA:

Provided that where the said suspected acts have been or are suspected to have been committed by an AIFM in breach of the AIFM Directive, the competent authority shall also inform the home Member State and the host Member State of the AIFM, as the case may be, in as specific a manner as possible.

(11) Where the information in the possession of the competent authority had originated from a European regulatory authority or an overseas regulatory authority, it may not be disclosed to a European regulatory authority or to any other third party without the express agreement of the European regulatory authority or the overseas regulatory authority which had transmitted it and, where appropriate, solely for the purposes for which that authority had given its agreement.

(12) Where a European regulatory authority suspects that acts carried out by entities not subject to its supervision and which are contrary to the provisions of the AIFM Directive, the CRD, the CRR, the MiFID, the MiFIR, the UCITS Directive, the IFD or the IFR are being or have been carried out in Malta and notifies the competent authority to this effect, the competent authority shall take

appropriate action. The competent authority shall inform the notifying European regulatory authority and ESMA of the outcome of any such action and, to the extent possible, of significant interim developments:

Provided that any such action taken by the competent authority shall be without prejudice to the powers and functions of the European regulatory authority that has forwarded the information.

(13) Without prejudice to the foregoing provisions of this article, the competent authority may exercise the following powers at the request of or for the purpose of assisting a European regulatory authority:

(*a*) the power to impose, revoke or vary conditions on the grant of a licence pursuant to the provisions of article 6(2);

(*b*) the power to cancel or suspend a licence under article 7(1);

(*c*) the powers of inquiry under article 13;

(*d*) the power to appoint inspectors under article 14;

(*e*) the powers of intervention under article 15;

(*f*) the powers of entry under article 16;

(*g*) the power to communicate to the European regulatory authority information which is in the possession of the competent authority, whether or not as a result of the exercise of any of the above powers.

(14) The competent authority shall have the powers conferred upon it by Article 101(8) of the UCITS Directive.

(15) The competent authority may also cooperate with European regulatory authorities with respect to facilitating the recovery of administrative penalties.

Co-operation in supervisory functions, verifications, on-site checks, inspections and investigations. *Added by: XX. 2007.71. Amended by: X. 2011.31; XX. 2013.46; XXII. 2014.10; XXXI. 2017.56; LXXII.2021.22; XXIX.2025.16.* Cap. 345.

17A. (1) The competent authority may request the cooperation of a European regulatory authority in carrying out its supervisory functions or for an on-site verification or in an investigation in the territory of the latter within the framework of their powers:

Provided that in the case of a person holding a licence or other equivalent authorisation from a European Regulatory Authority and who is a remote member within the meaning of the MIFID of a regulated market authorised in terms of the Financial Markets Act, the competent authority may communicate with such person directly, in which case the competent authority shall inform the contact point of the home Member State of such person accordingly.

(2) If, upon the request for cooperation by the competent authority in terms of Article 54(2) of the AIFM Directive, Articles 52 and 118 of the CRD and Article 101(5) of the UCITS Directive, a verification or an investigation is carried out in a Member State by a European regulatory authority, the competent authority may request that its own

officers, employees or agents accompany the officials carrying out the verification or investigation, and such officers, employees or agents shall, however, be subject to the overall control of such Member State on whose territory the said verification or investigation is being conducted.

(3) A European regulatory authority may request the cooperation of the competent authority in carrying out its supervisory functions or for an on-site verification or in an investigation, in which case the competent authority shall, within the framework of its powers:

(*a*) carry out the verifications or the investigation itself, and in respect of requests pursuant to Article 118 of the CRD with the participation of the requesting authority; or

(*b*) allow the requesting authority to carry out the verification or investigation, and, it may also, in terms of Article 54(2) of the AIFM Directive and Article 101(5) of the UCITS Directive, request that its own officers, employees or agents accompany the European regulatory authority in carrying out the verification or investigation; or

(*c*) allow inspectors or experts within the meaning of article 14 and auditors within the meaning of article 18 to carry out the verification or investigation.

(4) Without prejudice to any other provision of this Act, the competent authority may request the cooperation of a European regulatory authority to verify information about investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings, mixed-activity holding companies or subsidiaries, including subsidiaries which are insurance companies, that are located in the territory of the European regulatory authority concerned, and such request shall be verified in accordance with sub-article (6).

(5) Without prejudice to any other provision of this Act, a European regulatory authority may request the cooperation of the competent authority to verify information about investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings, mixed-activity holding companies or subsidiaries, including subsidiaries which are insurance companies, that are located in Malta, and such request shall be verified in accordance with sub-article (6).

(6) Where a European regulatory authority makes a request in terms of sub-articles (4) and (5), the competent authority shall, within the framework of its powers:

(a) carry out the verification itself;

(b) allow the European regulatory authority who made

that request to carry out such verification;

(c) request an auditor or expert to carry out the verification impartially and to report the results promptly:

Provided that for the purposes of paragraphs (a) and (c), the European regulatory authority that made the request shall be allowed to participate in the verification.

(7) Where a European investment firm carries out its activities through a branch in Malta, the European regulatory authority of the home Member State may, after having informed the competent authority, carry out, itself or through intermediaries that it appoints for that purpose, inspections of such a branch and on-site checks of the information referred to in article 17(2A).

(8) Without prejudice to sub-article (7), where Malta is the host Member State, the competent authority shall, for supervisory purposes and where the competent authority considers it to be relevant for reasons of stability of the financial system in Malta, have the power to carry out, on a case-by-case basis, on-site checks and inspections of the activities carried out by branches of European investment firms on its territory and require information from a branch about its activities:

Provided that, before carrying out such checks and inspections, the competent authority shall, without delay, consult the European regulatory authority of the home Member State:

Provided further that, as soon as possible following the completion of those on-site checks and inspections, the competent authority shall communicate to the European regulatory authority of the home Member State the information obtained and findings that are relevant for the risk assessment of the European investment firm concerned.

Refusal to co-operate. *Added by: XX. 2007.71. Amended by: X. 2011.32; XX. 2013.47; XIX. 2016.22; XXXI. 2017.57.*

17B. The competent authority may refuse to act on a request for cooperation in carrying out an investigation, onsite verification or supervisory function under article 17A of this Act or to exchange information with European regulatory authorities designated as contact points under Article 44 of the AIFM Directive, or with European regulatory authorities designated as contact points under Article 79(1) of the MIFID, or with European regulatory authorities designated under Article 101(1) of the UCITS Directive for the purpose of carrying out duties and exercising powers thereunder only where:

(*a*) such an investigation, on-site verification, supervisory function or exchange of information might adversely affect the sovereignty, security or public policy of Malta;

(*b*) compliance with the request is likely to affect adversely its own investigation, enforcement activities

or, where applicable, any criminal investigation;

(*c*) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the courts of Malta; or

(*d*) a final judgment has already been delivered in relation to such persons for the same actions in Malta:

In the case of such a refusal, the competent authority shall notify the European regulatory authority and ESMA accordingly, providing as detailed information as possible for such refusal.

Inter-authority consultation prior to granting of a licence. *Added by: XX. 2007.71. Amended by: XXXI. 2017.58.*

17C. (1) Prior to granting a licence to an applicant which is -

(*a*) a subsidiary of a person holding an investment services licence or equivalent authorisation or of a market operator or of a credit institution authorised in another Member State or EEA State; or

(*b*) a subsidiary of the parent undertaking of a person holding an investment services licence or an equivalent authorisation or of a credit institution authorised in another Member State or EEA State; or

(*c*) controlled by the same natural or legal persons which control a holder of an investment services licence or the holder of an equivalent authorisation or a credit institution authorised in another Member State or EEA State,

the competent authority shall consult with the relevant European regulatory authorities.

(2) Prior to granting a licence to an applicant which is -

(*a*) a subsidiary of a credit institution or insurance undertaking authorised in another Member State or EEA State; or

(*b*) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in another Member State or EEA State; or

(*c*) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in another Member State or EEA State,

the competent authority shall consult with the European regulatory authority responsible for the supervision of credit institutions or insurance undertakings.

(3) Consultation between the competent authority and the European regulatory authorities shall in particular take place when assessing the suitability of the shareholders or members and the reputation and experience of persons who effectively direct the business involved in the management of another entity of the same group. The competent authority shall exchange all information that is of relevance to the other European regulatory authorities involved regarding the suitability of shareholders or members and the reputation and experience of persons who effectively direct the

business, both for the granting of a licence as well as for the ongoing assessment of compliance with operating conditions.

Referral to ESMA. *Added by: XX. 2013.49.*

17D. The competent authority may refer to ESMA, situations where a request relating to one of the following has been rejected or has not been acted upon within a reasonable time:

(*a*) to exchange information as provided for in article 17;

(*b*) to carry out a supervisory activity, an on-site verification or an investigation, as provided for in article 17A; and

(*c*) to seek authorisation for its officials to accompany those of the European regulatory authority as provided for in article 17A.

Cooperation with ESMA. *Added by: XX. 2013.49. Amended by: XXXI. 2017.59.*

17E. (1) The competent authority shall cooperate with ESMA for the purposes of the AIFM Directive, the MIFID, the MiFIR and the UCITS Directive in accordance with Regulation (EU) No 1095/2010.

(2) In the case of a disagreement between the competent authority and a European regulatory authority on an assessment, action or omission pertaining to either authority, in areas where the AIFM Directive requires cooperation or coordination between authorities from more than one Member State, the competent authority may refer the matter to ESMA.

(3) The competent authority shall, without delay, provide ESMA with all information necessary to carry out its duties under the AIFM Directive, the MIFID, the MiFIR and the UCITS Directive in accordance with Article 35 of Regulation (EU) No 1095/2010.

Added by: XX. 2007.72.

CO-OPERATION WITH OVERSEAS REGULATORY AUTHORITIES AND OTHER BODIES

Co-operation with overseas regulatory authorities. *Added by: XX. 2007.72. Re-numbered by: XX. 2013.48. Amended by: XXXI. 2017.60; V.2020.15; LXXII.2021.23.*

17F. (1) Co-operation agreements with overseas regulatory authorities or other authorities, bodies and natural or legal persons in countries that are not Member States or EEA States may be entered into only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under article 26. Such exchange of information must be intended for the performance of the functions of those overseas regulatory authorities or other authorities, bodies and natural or legal persons:

Provided that the transfer of personal data to countries that are not Member States or EEA States shall be in accordance with the provisions of Chapter IV of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

(2) The competent authority may conclude cooperation agreements providing for the exchange of information with overseas regulatory authorities, other authorities or with bodies and natural or legal persons in countries that are not Member States or EEA States responsible for:

(i) the supervision of credit institutions, other financial organisations, persons holding a licence, insurance undertakings, financial institutions and financial markets, including financial entities licensed to operate as central counterparties where central counterparties have been recognised under Article 25 of Regulation (EU) No. 648/2012;

(ii) the liquidation and bankruptcy of persons holding a licence or an equivalent authorisation and other similar procedures;

(iii) carrying out statutory audits of the accounts of persons holding a licence or an equivalent authorisation and other financial institutions, credit institutions and insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;

(iv) overseeing the bodies involved in the liquidation and bankruptcy of persons holding a licence or an equivalent authorisation and other similar procedures;

(v) overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, persons holding a licence or an equivalent authorisation, credit institutions and other financial institutions:

Provided that, for the purposes of this paragraph, the term "financial insitutions" means both financial institutions as defined in point (26) of Article 4(1) of the CRR and as defined in point (14) of Article 4(1) of the IFR;

(vi) overseeing persons active on emission allowance markets for the purpose of ensuring a consolidated overview of financial and spot markets;

(vii) overseeing persons active on agricultural commodity derivatives markets for the purpose of ensuring a consolidated overview of financial and spot markets.

(3) Where the information in the possession of the competent authority had originated from a European regulatory authority or an overseas regulatory authority, it may not be disclosed to an overseas regulatory authority or to any other third party without the express agreement of the European regulatory authority or the overseas regulatory authority which had transmitted it and, where appropriate, solely for the purposes for which that authority had given its agreement.

(4) Without prejudice to the foregoing provisions of this article, at the request of, or for the purposes of assisting an overseas regulatory authority, the competent authority may exercise

the powers listed in article 17(13), and for the purposes of this sub-article the words "European regulatory authority" shall be read as "overseas regulatory authority".

Competent authority to inform the Commission and ESMA of general difficulties. *Added by: XX. 2013.50.*

17G. The competent authority shall inform the Commission of the European Union and ESMA of any general difficulties which:

(*a*) an investment services licence holder encounters in establishing itself or providing investment services and, or performing investment activities in any overseas country or territory; and

(*b*) UCITS encounter in marketing their units in any overseas country or territory.

DUTY OF AUDITORS

Auditor's duty to report. *Amended by: XVII. 2002.150; XXII. 2014.11; LXXII.2021.24.*

18. (1) An auditor of the holder of a licence shall have the duty to report immediately to the competent authority any fact or decision concerning that licence holder of which he becomes aware in his capacity as auditor of such licence holder which –

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

(b) constitutes or is likely to constitute a material breach of this Act or any regulations or Rules issued thereunder, including the legal or regulatory requirements applicable to the licence holders in or under this Act;

(c) may affect the continuous functioning of the licence holder;

(d) may lead to the refusal to certify the licence holder's accounts or to the expression of reservations; or

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

(2) An auditor of the licence holder shall report to the competent authority any facts or decision as specified in sub-article (1) of any person having close links with such licence holder within the meaning in article 6, of which he becomes aware in his capacity as auditor of the licence holder or of the person having such close links.

(3) No duty (including the duty of professional secrecy) to which an auditor of the holder of a licence 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 licence holder and which is relevant to any functions of the competent authority under the provisions of this Act or is required to be communicated by virtue of sub-article (1).

(4) The matters prescribed for the purposes of sub-article (1)(*d*) may include matters related to persons other than the licence

holder.

(5) An auditor of a licence holder shall, in the absence of compelling reasons not to do so, simultaneously report the information specified in sub-articles (1) and (2), in accordance with the provisions of sub-articles (3) and (4), to the management body of the licence holder.

(6) The competent authority may require the replacement of a person referred to in sub-article (1) if that person acts in breach of his obligations under paragraphs (a) to (d) of sub-article (1).

APPEALS, REMEDIES, SANCTIONS AND CONFIDENTIALITY

Appeals.
Amended by: XVII. 2002.151; XII. 2006.63; XX. 2007.73; XVII. 2009.9; X. 2011.33; XX. 2013.51; LXXII.2021.25.

19. (1) In this article the Financial Services Tribunal means the Tribunal established under article 21 of the Malta Financial Services Authority Act. Cap. 330.

(2) Subject to the provisions of this article, an appeal shall lie to the Tribunal with respect to:

(*a*) any notice in terms of article 3(3);

(*b*) any failure to inform an applicant within the terms of article 6(6);

(*c*) any administrative penalty imposed under article 16A;

(*d*) any refusal, variation, cancellation or suspension of a licence under article 8(3);

(*e*) any notice issued or any order made in terms of articles 10, 10A and 10C;

(*f*) any decision concerning an advertisement under article 11;

(*g*) any punishment or penalty imposed under article 12(5);

(*h*) any directive given under article 15; or

(*i*) any measure taken in terms of article 15A(1), (2) and (4);

(*j*) any measure taken in terms of paragraphs (a) to (l) of article 16AA(1).

(3) The provisions of article 21 of the Malta Financial Services Authority Actshall apply *mutatis mutandis* to appeals that may be brought before the Tribunal under this article. Cap. 330.

(4) In pursuance of the UCITS Directive, the Tribunal referred to in this article shall also have the competence to hear appeals by European management companies, exercising a freedom of establishment or a freedom to provide services in Malta, from decisions of the competent authority to take measures for breaches incurred by European management companies and the phrases "aggrieved person" and "appellant" in article 21 of the Malta Financial Services Authority Act shall include European management companies. Cap. 330.

Unenforceability of certain agreements.

20. An investment agreement which is entered into -

(*a*) by a person in the course of providing an investment service in contravention of the provisions of article 3 of this Act; or

(*b*) by the holder of an investment services licence or by an exempted person in consequence of anything said or done by a person in the course of providing an investment service in contravention of the provisions of article 3,

shall be unenforceable against the other party; and such other party shall be entitled to recover any money paid, or other property transferred by him under the agreement, or where such property cannot be so recovered, such party shall be entitled to have it replaced by its value at the time of the agreement, together with compensation for any loss sustained by him in consequence of such payment or transfer or the non-recovery of the property transferred and any profits that may have accrued as a result of that money or other property having been transferred by him:

Provided that where on demand for a recovery under this article, the court is satisfied that -

(i) in a case falling under paragraph (*a*), the person therein mentioned reasonably believed he was not contravening the provisions of the said article 3; or

(ii) in a case falling under paragraph (*b*), the licence holder or exempted person neither knew nor ought to have known that the agreement was entered into as mentioned in that paragraph,

it may allow an investment agreement to which this article applies to be enforced and the money or property paid or transferred thereunder to be retained.

Powers of the court in the case of a likely contravention. *Amended by: XXIV.1995.362; XX. 2007.74; XXXI. 2017.61..*

21. (1) If, on an application by the competent authority made to the Civil Court, First Hall, the said court is satisfied -

(*a*) that there is reasonable likelihood that a person will contravene any of the provisions of articles 3, 4 or 11 or of any regulations, Investment Services Rules and Conduct of Business Rules issued under it, or will contravene or fail to comply with any condition, obligation, requirement, Investment Services Rules, directive, or order made or given under any of the provisions of this Act; or

(*b*) that a person has contravened any such provision or has contravened or failed to comply with any such condition, obligation, requirement, Investment Services Rules, Conduct of Business Rules, directive, or order and that steps could be taken to remedy the contravention or failure,

the court may give such orders as it may deem appropriate to restrain the contravention or, as the case may be, to require the

person referred to in paragraph (*a*) or (*b*), or any other person who appears to the court to have been knowingly concerned in the contravention, to take such steps as the court may direct.

(2) If, on an application made under sub-article (1), the court is satisfied that a person has entered into any transaction in contravention of any of the provisions of articles 3, 4 or 11, the court may order that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the transaction was entered into.

(3) If, on an application made under sub-article (1), the court is further satisfied that -

(*a*) profits have accrued to any person as a result of the contravention; or

(*b*) an investor has suffered loss or been otherwise adversely affected as a result of that contravention,

the court may order the person responsible for the contravention to pay into court such sum as appears to it to be just having regard to the extent of the profit, loss or adverse effect as aforesaid, and order such sum to be paid out as the court may direct to the persons who have entered into transactions as a result of which profits have accrued or losses or adverse effects have been suffered as aforesaid.

(4) For the purposes of this article the court may order the production by any person of such accounts and the provision of such information, and verified in such manner, as the court may deem appropriate.

(5) The provisions of this article shall be without prejudice to any right of any aggrieved person to bring proceedings directly in respect of any right such person may otherwise have independently of the competent authority.

Offences. *Amended by: XX. 2007.75.*

22. (1) Any person who contravenes or fails to comply with any of the provisions of articles 3, 4, 9, 10, 11, 13, 15 or 26 or of article 13 as applied by article 14, or of articles 13, 14 or 15 as applied by articles 17 and 17D, or of any court order made under article 21 or of any regulations made under articles 12 or 31, or contravenes or fails to comply with any condition, obligation, requirement, directive or order made or given under any of the provisions of this Act, shall be guilty of an offence.

(2) Any person who for the purposes of, or pursuant to, any of the provisions of this Act or of any regulations made thereunder, or any condition, obligation, requirement, directive or order made or given as aforesaid, furnishes information or makes a statement which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall be guilty of an offence.

(3) Any person who is knowingly a party to the carrying on of

any investment service or of any activity by a collective investment scheme with a fraudulent intent or for a fraudulent purpose, shall be guilty of an offence.

(4) Any person who by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (whether dishonest or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into an investment agreement, shall be guilty of an offence.

(5) Any person who with intent to avoid detection of the commission of an offence under this Act removes, destroys, conceals or fraudulently alters any book, document or other paper, shall be guilty of an offence.

(6) Any person who intentionally obstructs a person exercising rights conferred by this Act shall be guilty of an offence.

Penalties.
Amended by: XX. 2007.76; L.N. 425 of 2007; X. 2011.34.

23. A person guilty of an offence under the provisions of article 22 shall be liable on conviction to a fine (*multa*) not exceeding four hundred and sixty-six thousand euro (€466,000) or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment, unless such fine or term of imprisonment is otherwise imposed under article 12(5).

Criminal proceedings.

24. (1) No proceedings for an offence under this Act shall be commenced without the consent of the Attorney General.

(2) The provisions of this Act shall not affect any criminal proceedings that may be competent under any other law.

Public statement as to person's misconduct.
Amended by: XII. 2006.64; XX. 2007.77; XXXI. 2017.62.

25. (1) If it appears to the competent authority that a person who holds or who held a licence, or any other person, has contravened any of the provisions of this Act or of any regulations made under this Act or has contravened or failed to comply with any condition, obligation, requirement, Investment Services Rules, Conduct of Business Rules, directive, or order made or given under any of the provisions of this Act, the competent authority may publish a statement to that effect.

(2) Nothing in this article shall restrict or otherwise prejudice the powers of the competent authority under article 15(4).

Confidentiality.
Amended by: XVII. 2002.152. Substituted by: IV. 2003.176; XII. 2006.65. Amended by: XX. 2007.78; X. 2011.35; XX. 2013.52; XXII. 2014.12; XXXI. 2017.63; V.2020.16; XLVI.2021.58; LXXII.2021.26.

26. (1) Other than for the proper discharge of their duties or functions under this Act or any other Act, or as may be otherwise provided in any other law, information obtained by the competent authority or by its officers, employees or agents, as well as by inspectors, auditors and experts engaged by the competent authority for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations, Investment Services Rules or Conduct of Business Rules made thereunder, or in the discharge of their duties or any functions, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases:

(*a*) where the disclosure is required for the detection,

prevention or prosecution of criminal offences under the criminal provisions of this Act or any other Act;

(*b*) where the information is disclosed by the competent authority with a view to the institution of, or otherwise for the purposes of any proceedings before any court or tribunal;

(*c*) where the information is disclosed in civil or commercial proceedings in relation to the bankruptcy or dissolution and consequential winding up by the Court of a licence holder, provided such information does not concern third parties and is necessary for the carrying out of the proceedings, or is disclosed to an overseas body responsible for the liquidation and bankruptcy of a person holding a licence or an equivalent authorisation from a European regulatory authority or an overseas regulatory authority;

(*d*) where a summary or collection of the information is prepared or supplied in such a way as not to enable the identity of any persons, including UCITS, their management companies and custodians to whom the information relates to be ascertained;

(*e*) where the information is disclosed to an auditor where such disclosure would assist him in the exercise of his functions under article 18;

(*f*) where the information is provided to the Central Bank of Malta in the exercise of its functions in terms of law;

(*g*) where the information is provided to such other local or European or overseas regulatory, judicial or enforcement authorities in the pursuance of serious concerns of a regulatory or criminal nature; and Cap. 345.

(*h*) where the competent authority publishes the outcome of stress tests in accordance with Article 100 of the CRD or Article 32 of Regulation (EU) No 1093/2010 and, or transmits the results to the EBA:

Provided that this article shall not prevent the competent authority from exchanging or transmitting confidential information in accordance with the AIFM Directive, the BRRD, the CRD, the CRR, the MIFID, the MiFIR, the UCITS Directive, the IFD and the IFR, and with other Directives of the European Union applicable to licence holders, credit institutions, pension funds, insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators, including the exchange or transmission of confidential information to ESMA or the ESRB:

Provided further that this article shall not prevent the competent authority from using such information for other purposes where the body or person communicating information to the competent authority consents thereto.

(1A) Notwithstanding the provisions of sub-article (1), information obtained by the competent authority or by its officers,

employees or agents, as well as by inspectors, auditors and experts, who are or were engaged by the competent authority, in the course of their duties and, or pursuant to the IFR or the IFD as transposed in national law, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases:

(a) where it is necessary for the proper discharge of their duties or functions under this Act or any other Act, or as may be otherwise provided in any other law;

(b) where the information is disclosed in summary or aggregate form, provided that individual investment firms or persons cannot be identified, without prejudice to cases covered by criminal law;

(c) in civil or commercial proceedings, where the investment firm to which the information relates has been declared bankrupt or is being compulsorily wound up, such information does not concern third parties and the disclosure of such information is necessary for carrying out those proceedings;

(d) in proceedings initiated under article 19;

(e) to monitor the prudential rules set out in the IFD as transposed in national law and in the IFR;

(f) to impose penalties and other administrative measures;

(g) in an appeal against a decision of the competent authority, including court proceedings;

(h) to the Commission of the European Union when the information is necessary for the exercise of the powers of the Commission of the European Union, or

(i) to the EBA, ESMA, the ESRB, central banks of the Member States or EEA States, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, public authorities responsible for overseeing payment and settlement systems, where that information is necessary for the performance of their tasks.

(1B) Natural and legal persons and other bodies, other than those mentioned in sub-article (1A), that receive information pursuant to the IFR or the IFD as transposed in national law shall only use that information for the purposes expressly provided by the competent authority or by law.

(2) Without prejudice to the cases covered by criminal law, any confidential information received by bodies or natural or legal persons within the meaning of Article 81 of the MiFID, Article 15 of the IFD, and of Article 102 of the UCITS Directive shall only be used in the performance of their duties and for the exercise of their functions. In addition, such information is to be used specifically

for the purpose for which such information was provided to them and, or in the context of administrative or judicial proceedings specifically related to the exercise of those functions:

Provided that where a body or person communicating information to the competent authority consents thereto, such information may be used by the competent authority for other purposes.

(3) The provisions of this article and of articles 17 and 17F of this Act shall not preclude the competent authority from transmitting to the Central Bank of Malta, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to recognised clearing houses or other similar body performing clearing or settlement services, to bodies which administer compensation schemes, and to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their functions. Likewise, the competent authority shall be entitled to the receipt of such information as it may require for the purpose of performing its functions under the MIFID and the MiFIR:

Provided that where the exchange of information is carried out in terms of the UCITS Directive, the express consent of the European regulatory authority shall be obtained.

(4) Where an officer or an employee of a licence holder has reason to believe that a transaction or a proposed transaction could involve money laundering or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in the regulations made under article 12 of the Prevention of Money Laundering Act and any procedures and guidance issued thereunder, and such disclosure shall not constitute a breach of confidentiality. Cap. 373.

MISCELLANEOUS

Exclusion of liability. *Amended by: XXV.1995.432; XX. 2007.79; XXXI. 2017.64.*

27. *Deleted by Act V.2020.17.*

Notices, etc. *Amended by: XX. 2007.80; XXXI. 2017.65.*

28. A notice or other document to be given or served under this Act, or any regulations, Investment Services Rules or Conduct of Business Rules made thereunder, shall be deemed to have been duly given or served on a person if -

(*a*) it has been delivered to him; or

(*b*) it has been left at the address furnished by him to the competent authority, or to his last known address; or

(*c*) if it has been sent to him by post or by telefax at any of the aforesaid addresses; or

(*d*) in the case of a body of persons, whether corporate or unincorporate, or of a scheme or of a trust, if it has been given or served in any of the manners aforesaid to or on a secretary, clerk, manager, trustee or their

equivalent, or to any member of the governing body or an appointed representative.

Application of Exchange Control Act.

29. (*Deleted by: XX. 2007.81.*).

Social security and import duty exemptions in respect of licence holders and expatriate staff. Cap. 318.

30. (1) Expatriate officers and employees of any licence holder and the licence holder shall be exempt from the provisions of the Social Security Act, in respect of remuneration paid or attributed to such officers and employees by the licence holder for services rendered exclusively in a managerial capacity or in a function requiring special expertise which is not generally available in Malta.

(2) In order to obtain the exemption provided for by sub-article (1), the licence holder shall apply to the Department for Social Security identifying the officers and employees concerned together with such proof as the department may require that the conditions of that sub-article are satisfied.

(3) Personal belongings and effects of an expatriate officer or employee of a licence holder imported by him into Malta, not later than six months from his first taking up residence, shall be exempt from customs duty:

Provided that duty shall become payable on anything imported free of duty and subsequently sold, assigned or otherwise transferred to a person resident in Malta.

(4) Furniture, equipment and other material required by a licence holder and imported into Malta for its own use and purpose shall be exempt from customs duty:

Provided that duty shall become payable on anything imported free of duty and subsequently sold, assigned or otherwise transferred to a person resident in Malta.

(5) For the purposes of this article, "expatriate" means an individual who is not a national of Malta, who has been posted to Malta from abroad or recruited directly from abroad in order to be employed by a licence holder, whose mission in Malta is of a temporary nature and who has maintained the centre of his economic interests outside Malta.

Continuance of foreign body corporate. *Substituted by: XVII. 2002.153.*

31. (1) A body corporate, formed, incorporated or registered in a country outside Malta (hereinafter referred to as "foreign body corporate"), and carrying on the business of a collective investment scheme, which is similar in nature to a body corporate as known under the laws of Malta (hereinafter referred to as "local body corporate"), and which would, if it were such a local body corporate qualify to be authorised or recognised as a collective investment scheme under this Act, may, subject to the specific approval and authorisation of the competent authority, be continued as a collective investment scheme under this Act and under the applicable laws of Malta.

(2) The continuance of a foreign body corporate shall not take place unless such continuance (or similar process, including

conversion) is permitted by the applicable laws of the foreign jurisdiction and is in accordance with such provisions thereof as may bring about such continuance (or similar process).

(3) Continuance may only take place if it is allowed by the statute or equivalent instrument of the foreign body corporate to so continue, and if it is approved in accordance with the procedure, if any, established therein or in the applicable law of the foreign jurisdiction for this purpose.

(4) The continuance of a foreign body corporate as a local body corporate shall be effected by an instrument of continuance containing, in addition to the declarations relating to the continuance, the equivalent of a memorandum and articles or equivalent constitutive document as may be required by this Act or other applicable laws of Malta for the registration of such body corporate in accordance with the type of local body corporate in which it is to be continued, and showing on the face of it that the continuance has been approved as provided in this article.

(5) The delivery of the instrument of continuance to the Registrar of Companies shall, for all purposes of the laws of Malta, be equivalent to the delivery of a deed of partnership or of a memorandum and articles of a company, as the case may be, as if it were a local body corporate to be registered under this Act; and the Registrar shall treat it accordingly.

(6) Upon the delivery of the instrument of continuance and its registration under this Act the body corporate shall cease to be a body corporate under the jurisdiction of its previous registration and shall continue its corporate existence under the laws of Malta, and shall retain all its assets, rights and liabilities.

(7) Where continuance as aforesaid entitles or requires the body corporate to redeem the interest of dissenting persons whose approval is required, such interest may be redeemed on such terms as may be agreed or as the courts in Malta may, on demand of either party, establish.

(8) (*a*) A local body corporate carrying on business as a collective investment scheme authorised or otherwise falling within the meaning of this Act, may, subject to the specific approval and authorisation of the competent authority, be continued as a foreign body corporate, and the foregoing provisions of this article shall apply *mutatis mutandis*.

(*b*) A local body corporate shall not cease to be a local body corporate subject to Maltese jurisdiction until the Registrar has received notice in writing of the continuance (or other process) made as aforesaid and unless and until, being satisfied that the requirements of this article have been complied with, the Registrar has registered such continuance and has, in consequence thereof and by virtue of this article, struck the name of the company off the register.

(9) The Minister may, acting on the advice of the competent

authority, make regulations for the better carrying out of the provisions of this article.

Inclusion of holding companies in supervision of compliance with the group capital test. *Added by: LXXII.2021.27.*

32. Investment holding companies and mixed financial holding companies shall be included in the supervision of compliance with the group capital test.

Assessment of third country supervision and other supervisory techniques. *Added by: LXXII.2021.27.*

33. (1) Where two or more European investment firms that are subsidiaries of the same parent undertaking, the head office of which is in a third country, are not subject to effective supervision at group level, the competent authority shall, together with any other European regulatory authority involved, assess whether the European investment firms are subject to supervision by the third-country supervisory authority which is equivalent to the supervision set out in the IFD as transposed in national law and in Part One of the IFR.

(2) Where the assessment referred to in sub-article (1) concludes that no such equivalent supervision applies, the competent authority shall adopt appropriate supervisory techniques which achieve the objectives of supervision in accordance with Article 7 or 8 of the IFR. Those supervisory techniques shall be decided by the competent authority where it would have been the group supervisor had the parent undertaking been established in the European Union, after consulting the European regulatory authorities involved. Any measures taken pursuant to this paragraph by the competent authority shall be notified to the European regulatory authorities involved, to EBA and to the Commission of the European Union.

(3) Without prejudice to sub-article (2), where the competent authority would have been the group supervisor had the parent undertaking been established in the European Union, it may require the establishment of an investment holding company or mixed financial holding company in the European Union and apply Article 7 or 8 of the IFR to that investment holding company or mixed financial holding company.

Supervision of mixed-activity holding company. *Added by: LXXII.2021.27.*

34. Where the parent undertaking of an investment firm licensed under this Act is a mixed-activity holding company, the competent authority may supervise transactions between such investment firm and the mixed-activity holding company and the subsidiaries of the latter, and require the said investment firm to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures to identify, measure, monitor and control those transactions.

Accessibility of information on ESAP.
Added by: XIX.2026.21.

35. (1) For the purpose of making the information referred to in Article 68(1) and Article 78(1) of the UCITS Directive, as transposed in the Investment Services Rules, accessible on ESAP, a UCITS management company or a UCITS shall, when making that information public, also submit it at the same time to the collection body:

Provided that for the purposes of this sub-article, the collection body shall be the competent authority:

Provided further that such obligation shall apply with effect from 10 January 2028.

(2) The information referred to in sub-article (1) shall comply with the following requirements:

(*a*) it shall be submitted in a data extractable format or, where required by Union law or national law, in a machine-readable format; and

(*b*) it shall be accompanied by the following metadata:

(i) all the names of the UCITS to which the information relates;

(ii) the legal entity identifier of the UCITS, as specified in accordance with point (b) of Article 7(4) of the ESAP Regulation;

(iii) the size of the UCITS by category, as specified in accordance with point (d) of Article 7(4) of the ESAP Regulation;

(iv) the type of information, as classified in accordance with point (c) of Article 7(4) of the ESAP Regulation; and

(v) an indication of whether the information contains personal data:

Provided that for the purposes of sub-paragraph (ii), UCITS shall obtain a legal entity identifier.

(3) For the purpose of making the information referred to in article 6(10), in sofar as it relates to a UCITS managment company, accessible on ESAP, the collection body shall be the competent authority:

Provided that such obligation shall apply with effect from 10 January 2028.

(4) The information referred to in sub-article (3) shall comply with the following requirements:

(*a*) it shall be submitted in a data extractable format; and

(*b*) it shall be accompanied by the following metadata:

(i) all the names of the UCITS management company to which the information relates;

(ii) where available, the legal entity identifier of the UCITS management company as specified in accordance with point (b) of Article 7(4) of the ESAP Regulation;

(iii) the type of information, as classified in accordance with point (c) of Article 7(4) of the ESAP Regulation;

(iv) an indication of whether the information contains personal data.

(5) For the purpose of making the information referred to in article 16A(4) accessible on ESAP, the collection body shall be the competent authority:

Provided that such obligation shall apply with effect from 10 January 2028.

(6) The information referred to in sub-article (5) shall comply with the following requirements:

(*a*) it shall be submitted in a data extractable format; and

(*b*) it shall be accompanied by the following metadata:

(i) all the names of the UCITS to which the information relates;

(ii) where available, the legal entity identifier of the UCITS as specified in terms of point (b) of Article 7(4) of the ESAP Regulation;

(iii) the type of information, as classified in accordance with point (c) of Article 7(4) of the ESAP Regulation;

(iv) an indication of whether the information

contains personal data.

(7) For the purpose of making the information referred to in Article 44 of the IFD, as transposed in the Investment Services Rules, accessible on ESAP, investment firms or parent undertakings shall, when making that information public, also submit it at the same time to the collection body:

Provided that for the purposes of this sub-article, the collection body shall be the competent authority:

Provided further that such obligation shall apply with effect from 10 January 2030.

(8) The information referred to in sub-article (7) shall comply with the following requirements:

(*a*) it shall be submitted in a data extractable format or, where required by Union law or national law, in a machine-readable format; and

(*b*) it shall be accompanied by the following metadata:

(i) all the names of the investment firm or parent undertaking to which the information relates;

(ii) the legal entity identifier of the investment firm or parent undertaking, as specified in accordance with point (b) of Article 7(4) of the ESAP Regulation;

(iii) the size of the investment firm or parent undertaking by category, as specified in terms of point (d) of Article 7(4) of the ESAP Regulation;

(iv) the type of information, as classified in accordance with point (c) of Article 7(4) of the ESAP Regulation;

(v) an indication of whether the information contains personal data:

Provided that for the purposes of sub-paragraph (ii), companies shall obtain a legal entity identifier.

(9) For the purpose of making the information referred to in Article 3g(1) of Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, as transposed in the Investment Services Rules, accessible on ESAP, an investment firm, AIFM or UCITS management company shall, when making that information

public, also submit it at the same time to the collection body:

Provided that for the purposes of this sub-article, the collection body shall be the competent authority:

Provided further that such obligation shall apply with effect from 10 January 2030.

(10) The information referred to in sub-article (9) shall comply with the following requirements:

(*a*) it shall be submitted in a data extractable format or, where required by Union law or national law, in a machine-readable format; and

(*b*) it shall be accompanied by the following metadata:

(i) all the names of the investment firm, AIFM or UCITS management company to which the information relates;

(ii) the legal entity identifier of the investment firm, AIFM or UCITS management company, as specified in accordance with point (b) of Article 7(4) of the ESAP Regulation;

(iii) the size by category of the investment firm, AIFM or UCITS management company, as specified in accordance with point (d) of Article 7(4) of the ESAP Regulation;

(iv) the industry sectors of the economic activities of the company, as specified in accordance with point (e) of Article 7(4) of the ESAP Regulation;

(v) the type of information, as classified in terms of point (c) of Article 7(4) of the ESAP Regulation;

(vi) an indication of whether the information contains personal data:

Provided that for the purposes of sub-paragraph (ii), an investment firm, AIFM or UCITS management company shall obtain a legal entity identifier.

FIRST SCHEDULE

Amended by: L.N. 46 of 1999; XVII. 2002.154; XIII. 2004.80. Substituted by: XX. 2007.82. Amended by: L.N. 251 of 2013; L.N. 147 of 2014; XXXI. 2017.66.

(Article 2)

Investment Services and Activities

1. Reception and Transmission of Orders in relation to one or more instruments

The reception from a person of an order to buy, sell or subscribe for instruments and the transmission of that order to a third party for execution.

2. Execution of orders on behalf of clients

Substituted by: XXXI. 2017.66.

Acting to conclude agreements to buy or sell one or more instruments on behalf of clients and includes the conclusion of agreements to sell instruments issued by an investment services licence holder or a credit institution at the moment of their issuance.

3. Dealing on own account

Trading against proprietary capital resulting in conclusion of transactions in one or more instruments.

4. Management of Investments

Managing or agreeing to manage assets belonging to another person if those assets consist of or include one or more instruments or the arrangements for their management are such that the person managing or agreeing to manage those assets has a discretion to invest any of those assets in one or more instruments.

Management of Investments may also constitute the selection or agreement to select, on a discretionary basis, instruments by reference to which benefits are wholly or partly payable under a contract of insurance falling within class III - linked long term of the Second Schedule to the Insurance Business Act. Cap. 403.

Collective portfolio management of assets, belonging to a collective investment scheme, where the arrangements for their management are such that the person managing or agreeing to manage those assets has discretion to invest in any movable and, or immovable property.

5. Trustee, Custodian or Nominee Services

(*a*) Acting as trustee, custodian or nominee holder of an instrument, or of the assets represented by or otherwise connected with an instrument, where the person acting as trustee, custodian or nominee holder is so doing as part of his providing any investment service in paragraphs 1, 2, 3, 4 or 6 of this Schedule;

Provided that for the purposes of this sub-paragraph any person who is authorised or otherwise exempt from authorisation in the terms of article 43 or 43A of the Trusts and Trustees Act shall not by virtue of holding such assets be required to have a licence in terms of this sub-paragraph if such person does not provide an investment service and delegates all activities which are investment services in terms of Cap. 331.

this Act to a person who is licensed to provide such services; or

(*b*) Holding an instrument or the assets represented by or otherwise connected with an instrument as nominee, where the person acting as nominee is so doing on behalf of another person who is providing any investment service in this Schedule or on behalf of a client of such person, and such nominee holding is carried out in relation to such investment service:

Provided that for the purposes of this paragraph any person who is authorised or otherwise exempt from authorisation in the terms of article 43 or 43A of the Trusts and Trustees Act shall not by virtue of holding such assets be required to have a licence in terms of this Act.

(*c*) Acting as trustee or custodian in relation to a collective investment scheme.

6. Investment Advice

Giving, offering or agreeing to give, to persons in their capacity as investors or potential investors or as agent for an investor or potential investor, a personal recommendation in respect of one or more transactions relating to one or more instruments.

For the purposes of this paragraph, a "personal recommendation" shall mean a recommendation presented as suitable for the person to whom it is addressed, or which is based on a consideration of the circumstances of that person, and must constitute a recommendation to take one of the following steps:

(*a*) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular instrument;

(*b*) to exercise or not to exercise any right conferred by a particular instrument to buy, sell, subscribe for, exchange, or redeem an instrument;

(*c*) to select one or more instruments by reference to which benefits are wholly or partly payable under a contract of insurance falling within the meaning of class III - 'linked long term', of the Second Schedule to the Insurance Business Act.

Cap. 403.

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.

7. Underwriting of instruments and, or placing of instruments on a firm commitment basis

The underwriting or placing of instruments such that the person providing the service assumes the risk of bringing a new securities issue to the market by buying the issue from the issuer thereby guaranteeing the sale of a certain number of shares to investors

8. Placing of Instruments without a firm commitment basis

The marketing of newly-issued securities or of securities which are already in issue but not listed, to specified persons and which

does not involve an offer to the public or to existing holders of the issuer's securities' - without assuming the risk of guaranteeing the sale of a certain number of shares by buying the relative securities from the issuer.

9. Operation of a Multilateral Trading Facility

The operation of a multilateral system which brings together multiple third party buying and selling interests in instruments - in the system and in accordance with non-discretionary requirements - in a way that results in a contract.

10. The reception, transmission, and submission of a bid relating to emission allowances

The reception, transmission, and submission of a bid by a person on any auction platform which auctions emission allowances within the meaning of Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowances trading within the Community, as may be amended from time to time.

11. Operation of an Organised Trading Facility

Added by: XXXI. 2017.66.

The operation of an OTF whereby multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract.

SECOND SCHEDULE

Amended by: L.N. 191 of 1998; XVII. 2002.155; L.N. 318 of 2006. Substituted by: XX. 2007.83. Amended by: XXXI. 2017.67.

(Article 2)

Instruments

1. Transferable Securities.

Those classes of securities which are negotiable on the capital market and include:

(*a*) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depository receipts in respect of shares;

(*b*) bonds or other forms of securitised debt, including depository receipts in respect of such securities;

(*c*) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable

securities, currencies, interest rates or yields, commodities or other indices or measures.

2. Money Market Instruments.

Those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

3. Units in collective investment schemes.

4 Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.

5. Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

6. Options, futures, swaps, and any other derivative contracts relating to commodities, that can be physically settled provided that they are traded on a regulated market, within the meaning of the Financial Markets Act a Multilateral Trading Facility, or an Organised Trading Facility, except for wholesale energy products traded on an Organised Trading Facility that must be physically settled;

Cap. 345.

7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled, are not for commercial purposes, are not included in article 6 of this Schedule, and, which have the characteristics of other derivative instruments.

8. Derivative instruments for the transfer of credit risk.

9. Rights under a contract for differences or under any other contract the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price for property of any description or in an index or other factor designated for that purpose in the contract.

Substituted by: XXXI. 2017.67.

10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Schedule, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market, OTF, or an MTF;

11. Certificates or other instruments which confer property rights in respect of any instrument falling within this Schedule.

12. Foreign exchange acquired or held for investment purposes.

13. Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

Added by: XXXI. 2017.67.

THIRD SCHEDULE

Added by: XXXI. 2017.68.

(Article 2)

Ancillary Services

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash, collateral management and excluding maintaining securities accounts at the top tier level;

2. Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;

3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;

4. Foreign exchange services where these are connected to the provision of investment services;

5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;

6. Services related to underwriting;

7. Investment services and activities as well as ancillary services of the type included under Section A or B of Annex 1 related to the underlying of the derivatives included under points (5), (6), (7) and (10) of Section C of MIFID where these are connected to the provision of investment or ancillary services.
