

SUBSIDIARY LEGISLATION 345.06**FINANCIAL MARKETS ACT (MEMBERSHIP AND ACCESS) REGULATIONS**

1st November, 2007

LEGAL NOTICE 331 of 2007, and by Legal Notices 386 of 2017.

1. (1) The title of these regulations is the Financial Markets (Membership and Access) Regulations.

Title and objective.
Amended by:
L.N. 386 of 2017.

(2) The objective of these regulations is to transpose and implement article 4(1),(30) and (55), Article 36 and Article 53(3) of MiFID, as herein defined, and shall be interpreted and applied accordingly.

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

Interpretation.
Amended by:
L.N. 386 of 2017.

"Act" means the Financial Markets Act and the words and expressions used shall have the same meaning as is given to them in the said Act;

Cap. 345.

"branch" means a place of business which is a part of the European investment firm, and which has no legal personality and which provides the services for which the European investment firm has been authorised all the places of business set up in the same Member State or EEA State by a European investment firm with headquarters in another Member State or EEA State shall be regarded as a single branch;

"competent authority" means the Malta Financial Services Authority appointed under article 2 of the Act;

"Directive 2013/36/EU" 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, as amended from time to time, and includes any implementing measures that may have been or may be issued thereunder;

"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;
- (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) if 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;

"MiFID" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments as amended from time to time, and includes any implementing measures that may have been or may be issued thereunder.

Cap. 370.	(2) For the purposes of these regulations, "persons licensed under the Investment Services Act" shall mean persons licensed to execute orders on behalf of other persons and, or to deal on own account in terms of the Schedule to the Investment Services Act.
Membership of a regulated market. Cap. 370.	3. Persons licensed under the Investment Services Act may become members of a regulated market and participate in the clearing and settlement system provided for members of such a regulated market.
Membership of or access to a regulated market.	4. A European investment firm may, either directly or indirectly, become a member of or have access to a regulated market established in Malta and participate in the clearing and settlement system provided for members of such a regulated market.
Forms of membership or access.	5. (1) European investment firms shall have the right of membership or have access to any regulated market established in Malta by means of any one of the following arrangements:
S.L. 370.10	(a) directly, by setting up branches in Malta, in terms of the European Passport Rights for Investment Firms Regulations; and, or (b) indirectly, by setting up a subsidiary company in Malta duly licensed in terms of the Investment Services Act and regulations issued thereunder, or by acquiring other investment firms in Malta and which are already members of any such regulated market or already have access thereto. (2) Where a regulated market operates without any requirement for a physical presence, European investment firms may become members of or have access to such regulated market on the same basis as aforesaid without having to be established in Malta. (3) The arrangements referred to in subregulations (1) and (2) shall be provided for in the bye-laws of a regulated market.
Compliance with bye-laws issued by the regulated market. Cap. 370. <i>Amended by: L.N. 386 of 2017.</i>	6. (1) Persons licensed under the Investment Services Act and European investment firms which are granted the right of membership or access to a regulated market in terms of these regulations shall comply with any applicable bye-laws issued by the regulated market, including bye-laws relating to the membership, conduct of business and fees; bye-laws relating to transactions effected by means of the facilities provided by the regulated market; requirements and procedures for clearing and settlement; and any other bye-laws of the regulated market which are applicable to members of the regulated market or to persons having access to the regulated market in terms of these regulations. (2) Branches or subsidiaries of European investment firms referred to in sub-regulation (1) shall comply with the aforementioned bye-laws on a continuing basis if they are to continue to benefit from the right of membership of or access to a regulated market, and the bye-laws of a regulated market shall include provision to this effect.
Cap. 370.	(3) Persons licensed under the Investment Services Act and

European investment firms referred to in sub-regulation (1) shall also on a continuous basis comply with the capital adequacy requirements set out and supervised by the home Member State or EEA State in terms of Directive 2013/36/EU and with any additional capital adequacy requirements in respect of matters not covered by the said Directive which the competent authority may impose.

7. These regulations shall apply *mutatis mutandis* to European credit institutions within the meaning of regulation 2 and to credit institutions licensed in terms of the Banking Act.

Credit institutions.
Cap. 371.

8. Regulated markets may also admit as members or participants persons who satisfy the following requirements:

Other persons that
may be admitted as
members or
participants.

- (a) are fit and proper;
- (b) have a sufficient level of trading ability and competence;
- (c) have, where applicable, adequate organizational arrangements;
- (d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the regulated market may have established in order to guarantee the adequate settlement transactions.

9. (1) Where a person falling within the scope of these regulations fails to comply with any provisions of such regulations or any rules issued thereunder further implementing such regulations, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty and other administrative measures in accordance with the provisions of the Financial Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations, 2017.

Administrative
Penalties, other
administrative
measures and
Appeals.
Added by:
L.N. 386 of 2017.

L.N. 392.

(2) A right of appeal to the Financial Services Tribunal shall lie from the decisions which the competent authority shall take under these regulations and the provisions of Part VI of the Act shall *mutatis mutandis* apply.

Cap. 345.