

SUBSIDIARY LEGISLATION 370.29**OVER-RELIANCE ON CREDIT RATING
REGULATIONS**

1st January, 2015*

LEGAL NOTICE 13 of 2015.

1. (1) The title of these regulations is the Over-Reliance on Credit Rating Regulations. Citation and scope.

(2) The purpose of these regulations is to implement Articles 1, 2(2) and 3(2) of Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings.

2. In these regulations, unless the context otherwise requires - Interpretation.

"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;

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

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

"credit rating" shall have the same meaning as that assigned to it in paragraph (a) of Article 3(1) of the EU Regulation;

"credit rating agencies" shall have the same meaning as that assigned to it in paragraph (b) of Article 3(1) of the EU Regulation;

"EU Regulation" means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;

"Maltese management company" means a management company licensed by the competent authority with its head office and registered office situated in Malta and the regular business of which is the management of UCITS;

"Maltese UCITS" means -

*see regulation 1(3) of these Regulations, as originally promulgated.

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- Cap. 370. (a) an investment company, a partnership *en commandite* or a limited partnership with its registered office and head office situated in Malta and licensed in terms of the Investment Services Act;
- S.L. 370.16 (b) where the UCITS is constituted as a common fund, a UCITS domiciled in Malta in terms of the Investment Services Act (Contractual Funds) Regulations, and licensed in terms of the Investment Services Act;
- Cap. 370. (c) where the UCITS is established as a unit trust, a unit trust whose proper law is the law of Malta;
- Cap. 514. "occupational retirement scheme" means an occupational scheme as defined in article 2 of the Retirement Pensions Act and licensed by the competent authority in terms of the said Act;
- "sole and mechanistic reliance on credit ratings" occurs when an action or omission is the consequence of any type of rule based on credit ratings without any discretion;
- S.L. 370.18 "UCITS" means undertakings for collective investment in transferable securities in terms of regulation 3(2) and (3) of the Investment Services Act (Marketing of UCITS) Regulations. For the purposes of these regulations, a UCITS shall also include subfunds thereof.
- Over-reliance on credit ratings. **3.** Taking into account the nature, scale and complexity of the activities of UCITS, AIFs and occupational retirement schemes, the competent authority shall:
- (a) monitor the adequacy of the credit assessment processes of the Maltese management company or the Maltese UCITS, AIFMs and occupational retirement schemes;
 - (b) assess the use of references to credit ratings issued by credit rating agencies in the investment policies of UCITS, AIFs and occupational retirement schemes; and
 - (c) where appropriate, encourage mitigation of the impact of such references to credit ratings, with a view to reducing sole and mechanistic reliance on credit ratings.
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