

SUBSIDIARY LEGISLATION 370.31

INVESTMENT SERVICES ACT (EUROPEAN LONG-TERM INVESTMENT FUNDS) REGULATIONS

4th March, 2016

LEGAL NOTICE 70 of 2016.

1. (1) The title of these regulations is the Investment Services Act (European Long-Term Investment Funds) Regulations. Citation and scope.

(2) The purpose of these regulations is to implement the relevant provisions of the ELTIF Regulation.

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

"the Act" shall mean the Investment Services Act; Cap. 370.

"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 not may be issued thereunder;

"Alternative Investment Fund" or "AIF" shall mean a collective investment scheme, including sub-funds 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" shall mean a legal person whose regular business is managing one or more AIFs;

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

"European long-term investment fund" or "ELTIF" shall mean an EU AIF authorised as a European long-term investment fund in accordance with the ELTIF Regulation;

"EU AIF" shall mean:

- (a) an AIF which is authorised or registered in a Member State or an EEA State under the applicable national law; or
- (b) an AIF which is not authorised or registered in a Member State or an EEA State, but has its registered office and, or head office in a Member State or an EEA State;

"EU AIFM" shall mean an AIFM which has its registered office in a Member State or an EEA State;

"ELTIF Regulation" means Regulation (EU) No. 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, as may be amended from time to time;

"home Member State" shall mean:

- (a) in relation to an ELTIF, the Member State or EEA State where the ELTIF is authorised; and
- (b) in relation to the manager of an ELTIF, the Member State or EEA State in which the manager has its registered office;

"manager of an ELTIF" shall mean the authorised EU AIFM approved to manage an ELTIF, or the internally managed ELTIF where the legal form of the ELTIF permits internal management and where no external AIFM has been appointed; and

"the UCITS Directive" means Council Directive 85/611/EEC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended from time to time, and includes any implementing measures that may be issued thereunder.

(2) Words and expressions used in these regulations which are also used in the Act but which are not defined herein, shall have the same meaning assigned to them in the Act.

(3) In the event that any of these regulations conflict with the provisions of the ELTIF Regulation, the latter shall prevail.

Applicability of the
ELTIF Regulation.

3. The provisions of the ELTIF Regulation shall apply to:

- (a) ELTIFs for which Malta is the home Member State or which are marketed in Malta in terms of the ELTIF Regulation; and
- (b) the managers of ELTIFs for which Malta is the home Member State or which market ELTIFs in Malta in terms of the ELTIF Regulation.

The competent
authority.

4. The competent authority shall, in its capacity as competent authority in Malta of ELTIFs and of the managers of ELTIFs in terms of the ELTIF Regulation, be responsible for supervising compliance on an ongoing basis with the relevant provisions of the ELTIF Regulation.

Powers of the
competent
authority.

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

(2) The competent authority shall also exercise, with respect to the ELTIF Regulation, the powers conferred on it in accordance with the AIFM Directive, as transposed in Maltese law, including the power to impose an administrative penalty and any other measure in terms of article 16A of the Act.

(3) Without prejudice to sub-regulation (1), the competent authority may, for the better implementation of the ELTIF Regulation, exercise any of the powers assigned to it under the Act in relation to ELTIFs and to the managers of ELTIFs.

6. For the better carrying out of the provisions of the ELTIF Regulation and of these regulations, the competent authority may, from time to time, issue and publish investment services rules which shall be binding on ELTIFs and on the managers of ELTIFs. Such rules may lay down additional requirements and conditions in relation to ELTIFs and to the managers of ELTIFs and any other matters as the competent authority may deem appropriate, including:

Investment
services rules.

- (a) the operation of the ELTIF Regulation or of these regulations;
 - (b) any matter relating to the functions, obligations and powers of the competent authority under the ELTIF Regulation; and
 - (c) any other matter arising in connection with the ELTIF Regulation or these regulations.
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