SUBSIDIARY LEGISLATION 370.40

INVESTMENT SERVICES ACT AND BANKING ACT (MiFID AND MiFIR ADMINISTRATIVE PENALTIES, MEASURES AND INVESTIGATORY POWERS) REGULATIONS

3rd January, 2018

LEGAL NOTICE 401 of 2017, as amended by Legal Notices 135 of 2022, 216 of 2025 and 287 of 2026.

Title, scope.

1. (1) The title of these regulations is the Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations.

(2) The purpose of these regulations is to transpose and implement Article 70(1), Article 70(3) to (6) and Article (71)(1) to (5) of MiFID, as herein defined and shall be interpreted and applied accordingly.

(3) These regulations shall apply to:

(a) Maltese investment firms;

(b) European investment firms which have established a branch in Malta in terms of the European Passport Rights for Investment Firms Regulations with respect to the matters to for which the competent authority is responsible in terms of Article 35(8) of MIFID; S.L. 370.10

(c) Maltese credit institutions licensed under the Banking Act insofar as these offer structured deposits as defined in regulation 2(1); and Cap. 371.

(d) persons to whom the provisions of MiFIR apply.

Interpretation. *Amended by: L.N. 135 of 2022; L.N. 287 of 2026.*

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

"approved publication arrangement" or "APA" means a person authorised under MiFIR to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of MiFIR; Cap. 345.

"approved reporting mechanism" or "ARM" means a person authorised under MiFIR to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;

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

"consolidated tape provider" or "CTP" means a person authorised under MiFIR to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of MiFIR from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

"deposit" means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:

(a) its existence can only be proven by a financial instrument as defined herein unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State on 2 July 2014;

(b) its principal is not repayable at par;

(c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party;

"ESAP" means 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;

"ETF" means an 'exchange-traded fund' being a fund of which at least one unit or share class is traded throughout the day on at least one trading venue and with at least one market maker which takes action to ensure that the price of its units or shares on the trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value;

"European investment firm" means an investment firm as defined in Article 4(1) of MiFID authorised by its European regulatory authority within the meaning of Article 5 of MiFID or authorised by a European regulatory authority in an EEA

State";

"financial instrument" means an instrument included in the Second Schedule to the Investment Services Act; Cap. 370.

"Maltese credit institution" means a credit institution as defined in point (1) of Article 4(1) of 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 which is licensed in terms of the Banking Act, whose head office is in Malta and who is entitled to carry on an activity in a Member State other than Malta in exercise of a European passport right as defined in the European Passport Rights for Credit Institutions Regulations; Cap. 371. S.L. 371.11.

"Maltese investment firm" means a person licensed in terms of the Investment Services Act, whose head office is in Malta and who is entitled to carry on an activity in a Member State or EEA State other than Malta in exercise of a European Right; Cap. 370.

"European Right" means the entitlement of a person to establish a branch, or provide services, in a Member State or EEA State other than that in which it has its head office:

(a) in accordance with the Treaty as applied in the Member State or EEA State; and

(b) subject to the requirements of MIFID and subject to any regulations made under the Act; and, or Investment Services Rules and, or Conduct of Business Rules issued by the competent authority in terms of article 6 of the Act; implementing such requirements as may be applicable;

"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 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;

"structured deposit" means a deposit as defined in paragraph (c) of the definition "deposit", and which is fully repayable at maturity on terms under which interest or a

premium will be paid or is at risk, according to a formula involving factors such as:

(a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;

(b) a financial instrument or combination of financial instruments;

(c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or

(d) a foreign exchange rate or combination of foreign exchange rates;

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(2) Words and expressions which are also used in the Investment Services Act or in the Banking Act shall have the same meaning as in the respective Acts.

Supervisory powers and powers to impose penalties.
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3. The competent authority shall exercise its supervisory powers and its powers to impose penalties, in such a way as to ensure full and complete adherence to the requirements and obligations arising out of the Investment Services Act or the Banking Act and any regulations, Investment Services Rules and Conduct of Business Rules issued by the competent authority and MiFIR, either directly or in collaboration with European regulatory authorities and with overseas regulatory authorities, in terms of law as warranted by the relevant circumstances and shall take all measures necessary to ensure that such administrative penalties are implemented.

Administrative penalties and other administrative measures.
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4. (1) Without prejudice to article 16A of the Investment Services Act, to any regulations made under article 6(2) of the Investment Services Act and to article 35A of the Banking Act and to the supervisory powers of the competent authority referred in regulation 3, the competent authority shall impose administrative penalties and other administrative measures in respect of breaches of:

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(a) the provisions of the Investment Services Act and, or of regulations and, or Investment Services Rules and Conduct of Business Rules issued by the competent authority transposing the provisions of MiFID;

(b) the provisions of MiFIR.

(2) The administrative penalties and other measures taken pursuant to sub-regulation (1) shall be effective, proportionate and dissuasive.

Administrative penalties and other administrative measures for breaches of MiFID and MiFIR. *Amended by: L.N. 135 of 2022.*

5. (1) The competent authority shall exercise its supervisory powers and its powers to take and impose at least the following administrative penalties and measures:

(a) a public statement which indicates the natural or legal person and the nature of the infringement;

(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) in the case of a Maltese investment firm authorized in Malta, withdrawal or suspension of the relative licence or authorisation in accordance with the provisions of the Investment Services Act and the regulations issued thereunder;

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(d) a temporary ban on any Maltese investment firm being a member of or participant in regulated markets or MTFs or any client of OTFs;

(e) in the case of a legal person, maximum administrative fines of up to five million euro (€5,000,000), or 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body:

Provided that where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting, according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

(f) in the case of a natural person, maximum administrative fines of up to five million euro (€5,000,000);

(g) maximum administrative fines of up to twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts specified in paragraphs (e) and (f) above.

(h) in the case of an APA or ARM which has a derogation in accordance with Article 2(3) of MiFIR, withdrawal and suspension of the authorisation in accordance with Article 27e of MiFIR.

Publication of decisions. *Amended by: L.N. 287 of 2026.*

6. (1) The competent authority shall publish any decision imposing an administrative penalty or measure which it shall take under these regulations on its official website, as well as make

accessible on ESAP in accordance with sub-regulation (10), without undue delay after the person on whom the penalty or measure was imposed has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible:

Provided that this obligation shall not apply to decisions imposing measures that are of an investigatory nature.

(2) Notwithstanding sub-regulation (1), where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an on-going investigation, the competent authority shall either:

(a) defer the publication of the decision to impose the administrative penalty or measure until the moment where the reasons for non- publication cease to exist;

(b) publish the decision to impose the administrative penalty or measure on an anonymous basis in a manner which complies with Maltese law, if such anonymous publication ensures an effective protection of the personal data concerned; or

(c) not publish the decision to impose an administrative penalty or measure at all in the event that the options set out in points (a) and (b) are considered to be insufficient to ensure:

(i) that the stability of financial markets would not be put in jeopardy;

(ii) the proportionality of the publication of such decisions with regard to administrative penalties or measures which are deemed to be of a minor nature.

(3) In the case of a decision to publish an administrative penalty or measure on an anonymous basis in accordance with sub-regulation (2), the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

(4) Where the decision to impose an administrative penalty or measure is subject to appeal in terms of regulation 8, the competent authority shall also publish, immediately, on its official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to

impose an administrative penalty or a measure shall also be published.

(5) The competent authority shall ensure that any publication in accordance with this regulation shall remain on its official website for a period of at least five years after its publication:

Provided that personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection laws.

(6) This regulation shall be without prejudice to article 16(8) of the Malta Financial Services Authority Act.

(7) The competent authority shall inform ESMA of all administrative penalties imposed but not published in accordance with point (c) of sub-regulation (2) including any appeal in relation thereto and the outcome thereof.

(8) The competent authority shall provide ESMA annually with aggregated information regarding all sanctions and measures imposed in accordance with sub-regulations (1) to (4):

Provided that this obligation does not apply to measures of an investigatory nature.

(9) Where the competent authority has disclosed an administrative measure, penalty or criminal sanction to the public, it shall, at the same time, report that fact to ESMA.

(10) For the purpose of making the information referred to in sub-regulation (1) accessible on ESAP, the collection body shall be the competent authority:

Provided that such obligation shall apply with effect from 10th January 2030.

(11) The information referred to in sub-regulation (10) shall comply with the following requirements:

(a) it shall be submitted in a data extractable format;

(b) it shall be accompanied by the following metadata:

(i) all the names of the investment firm or market operator to which the information relates;

(ii) the legal entity identifier of the investment firm or market operator, 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.

Applicability of these regulations. *Amended by: L.N. 135 of 2022; L.N. 216 of 2025.* S.L. 370.10.

7. (1) These regulations shall apply at least in the case of breach of one or more of any of the following by a Maltese investment firm or a European investment firm which has established a branch in Malta in terms of the European Passport Rights for Investment Firms Regulations insofar as the enforcement of the provisions indicated hereunder fall within the responsibility of the competent authority in terms of Article 35(8) of MIFID, or by a Maltese credit institution offering structured deposits, insofar as the provisions indicated hereunder apply to the latter in terms of Article 1(4) of MIFID:

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(a) the provisions of article 6(1)(a),(d) and (e) 7(2)(b) and (c), 10(1), (2) and (4) of the Investment Services Act;

(b) the provisions of the Investment Services Rules transposing the provisions of Article 9 (1),(2), the second sub-paragraph of sub article (3), (5) and (6) 11(1) and (3) and 16 (2), (4), (5), (6), (7) and (10) of MiFID;

(c) the Conduct of Business Rules transposing the provisions of the first and second sub-paragraphs of 9(3), 16(3), 23(1), (2) and (3), 24(1) to (5) and (7) to (10) and the first and second sub-paragraphs of Article 24(11), Articles 25(1) to (6), the second sentence of Article 26(1), Articles 26 (2) and (3), 27 (1) to (8), 28(1) and (2), the second sub-paragraph of Article 30(1), the first sentence of the second sub-paragraph of Article 30(3) of MiFID;

S.L. 370.05.

(d) the provisions of the Investment Services Act (Control of Assets) Regulations transposing Article 16 (8), (9) and second sub-paragraph of Article 16(11) of MiFID;

L.N. 395.

(e) the provisions of regulations 3 to 8 of the Algorithmic Trading Regulations, 2017 transposing Article 17 of MiFID;

L.N. 400.

(f) the provisions of regulations 3(1) to (6), 4, 5, 6(1) to (3) and (5), 7(1),(3) and (4) of the Multilateral Trading Facilities and Organised Trading Facilities Regulations, 2017;

S.L. 370.13.

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(g) the provisions of regulations 3(2) and 4(2) of the European Passport Rights for Persons Operating Multilateral Trading Facilities Regulations or the Multilateral Trading Facilities and Organised Trading Facilities Regulations, 2017;

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(h) the provisions of regulations 3(2)(a), (4) and (5), 4(2) and (5), 8(2), (8), (10) and (11), 10(2), (5) to (7) of the European Passport Right for Investment Firms Regulations as well as those provisions in the latter regulations, transposing Article 16(11) of MiFID;

(i) the provisions of regulation 3(1), (2) and (4) of the Central Counterparties Access Regulations, 2017; L.N. 387.

(j) the provisions of regulations 3(1) to (3), (5), (15) and (17) and regulation 4(1) to (7) of the Position Limits and Position Management Controls in Commodity Derivatives and Reporting Regulations, 2017; and L.N. 389.

(k) *Deleted by Legal Notice 135 of 2022.* L.N. 391.

(l) the provisions of the Investment Services Act (Tied Agents) Regulations, 2017 transposing the first sub-paragraph of Article 29(2), the third sub-paragraph of Article 29(2), the first sentence of Article 29(3), the first sub-paragraph of Article 29(4) and Article 29(5) of MiFID. L.N. 403.

(2) These regulations shall apply at least in the case of a breach of any of the following provisions of MiFIR:

(a) Articles 3(1) and (3) relating to pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments;

(b) the first sub-paragraph of Article 4(3) relating to waivers for equity instruments;

(c) Article 5 relating to volume cap;

(d) Article 6 relating to post-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments;

(e) the first sentence of third sub-paragraph of Article 7(1) relating to authorisation of deferred publication;

(f) Article 8(1) relating to pre-trade transparency requirements for trading venues in respect of bonds, structured finance products and emission allowances;

(g) Article 8a(1) and (2) relating to pre-trade transparency requirements for trading venues in respect of derivatives;

(h) Article 8b relating to pre-trade transparency requirements for trading venues in respect of package orders;

(i) Article 10 relating to post-trade transparency requirements for trading venues in respect of

bonds, structured finance products, emission allowances and derivatives;

(j) the first sentence of the second sub-paragraph of Article 11(1), the second sub-paragraph of Article 11(1a), Article 11(1b) and the fourth sub-paragraph of Article 11(3) relating to deferred publication in respect of bonds, structured finance products or emission allowances;

(k) the first sentence of the second sub-paragraph and the fourth sub-paragraph of Article 11a(1) relating to deferred publication in respect of derivatives;

(l) Article 12(1) relating to the obligation to make pre-trade and post-trade data available separately;

(m) Article 13(1) and (2) relating to the obligation to make pre-trade and post-trade data available on a reasonable commercial basis;

(n) Article 14(1), (2) and (3) relating to the obligation for systematic internalisers to make public firm quotes in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments;

(o) Article 15(1) and (2) and the second sentence of Article 15(4) relating to the execution of client orders;

(p) the second sentence of article 17(1) relating to access to quotes;

(q) Article 20(1), Article 20(1a) and the first sentence of Article 20(2) relating to post-trade disclosure by investment firms, including systematic internalisers, in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments;

(r) Article 21(1), (2) and (3) relating to post-trade disclosure by investment firms in respect of bonds, structured finance products, emission allowances and derivatives;

(s) Article 22(2) relating to the provision of information for the purposes of transparency and other calculations;

(t) Article 22a(1) and (5) to (8) relating to the transmission of data to the CTP;

(u) Article 22b(1) relating to data quality;

(v) Article 22c(1) relating to the synchronisation of business clocks;

(w) Article 23(1) and (2) relating to the trading obligation for investment firms;

(x) Article 25(1) and (2) relating to the obligation to maintain records;

(y) the first sub-paragraph of Article 26(1), Article 26(2) to (5), the first sub-paragraph of Article 26(6) and the first to fifth and eighth sub-paragraph of Article 26(7) relating to the obligation to report transactions;

(z) Article 27(1) relating to the obligation to supply financial instrument reference data;

(aa) Article 27f(1), (2) and (3) relating to the requirements for the management body of a data reporting services provider, Article 27g(1) to (5) relating to the conditions for APAs, CTPs and ARMs;

(ab) Article 27g(1) to (5) relating to the organisational requirements for APAs;

(ac) and Article 27i(1) to (4) relating to the organisational requirements for ARMs;

(ad) Article 28(1) relating to the obligation to trade on regulated markets, MTFs or OTFs;

(ae) Article 29(1) and (2) relating to the clearing obligation for derivatives traded on regulated markets and timing of acceptance for clearing;

(af) Article 30(1) relating to indirect clearing arrangements;

(ag) Article 31(3) relating to post-trade risk reductions services;

(ah) Article 35(1), (2) and (3) relating to non-discriminatory access to a CCP;

(ai) Article 36(1), (2) and (3) relating to non-discriminatory access to a trading venue;

(aj) Article 37 (1) and (3) relating to non-discriminatory access to and obligation to licence benchmarks;

(ak) Article 39a relating to the prohibition of receiving payment for order flow; and

(al) Article 40 relating to ESMA temporary intervention powers;

(am) Article 41 relating to EBA temporary intervention powers;

(an) 42 relating to product intervention by the competent authority.

(3) *Deleted by Legal Notice 216 of 2025.*

(4) The provision of investment services, in or from Malta, without the required authorisation or approval in accordance with:

Cap. 370. (a) the provisions of the Investment Services Act transposing Article 5 of MiFID;

(b) the provisions of the Investment Services Rules transposing Article 6(2) of MiFID;

S.L. 370.10. (c) the provisions of the European Passport Right for Investment Firms Regulations transposing Articles 34 and 35 of MiFID;

S.L. 370.13. (d) the provisions of the European Passport Rights for Persons Operating Multilateral Trading Facilities Regulations or the Multilateral Trading Facilities and Organised Trading Facilities Regulations, 2017 transposing Article 34 of MiFID;

L.N. 400.

L.N. 405. (e) the provisions of the Investment Services Act (Provision of Investment Services and Activities by Third Country Firms) Regulations, 2017 transposing Article 39 of MiFID;

(f) *Deleted by Legal Notice 135 of 2022.*

L.N. 391.

shall also be considered as an infringement of the MiFID and therefore subject to the applicability of these regulations.

(5) The provision of investment services, in or from Malta, without the required authorisation or approval contrary to the requirements prescribed in:

(a) the provisions of Article 7(1) of MiFIR on the

requirement of market operators and investment firms operating a trading venue to obtain the competent authority's prior approval of the proposed arrangement for deferred trade publication and to disclose these arrangements to the market participants and to the public;

(b) the provisions of Article 11(1) of MiFIR on the requirement applicable to market operators and investment firms operating a trading venue to obtain authorisation from the competent authority for deferred publication of the details of transactions based on the size and type of the transaction; and

(c) the provisions of Article 27b of MiFIR on the requirements for authorisation to operate an APA or ARM, where an APA or ARM has a derogation in accordance with Article 2(3) of MiFIR.

shall also be considered as an infringement of the MiFIR and thereafter subject to the applicability of these regulations.

(6) Failure to cooperate or comply in an investigation or with an inspection or request covered by Article 69 of MiFID shall also be considered an infringement and subject to the applicability of these regulations.

Right of Appeal.

8. 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 article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis*.

Cap. 330.