L.N. 392 of 2005

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (Prospectus of Collective Investment Schemes) Regulations, 2005

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations.

(2) These regulations shall come into force immediately upon publication: provided however that where any of the provisions thereof relate to offers to the public and to prospectuses submitted to the competent authority on or after the 15th December, 2005, such provisions shall come into force on the 15th December, 2005.

Interpretation.

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

"the Act" means the Investment Services Act; Cap. 370.

"approval" means the positive act at the outcome of the scrutiny of the completeness of the prospectus by the competent authority or by the European regulatory authority including the consistency of the information given and its comprehensibility, within the meaning of the Directive;

"closed-ended scheme" means a scheme with fixed share capital;

"competent authority" means the Malta Financial Services Authority appointed under article 2A of the Act; Cap. 330.

"the Directive" means Directive 2003/71/EC of the European Parliament and of the Council of 4 November, 2003 on the prospectus to be published when securities are offered to the public

or admitted to trading and amending Directive 2001/34/EC as may be amended from time to time and includes any implementing measures that have been or may be issued thereunder;

"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 from time to time;

"European based scheme" means a European based closed-ended scheme covered by the Directive and a collective investment scheme within the meaning of article 2 of the Act established in a Member State other than Malta or an EEA State or set up by contract or otherwise under the laws of a country which is a Member State or an EEA State and which is not a European UCITS within the meaning of the Investment Services Act (Undertakings for Collective Investment in Transferable Securities and Management Companies) Regulations, 2004;

"European based closed-ended scheme covered by the Directive" means a collective investment scheme within the meaning of article 2 of the Act established in a Member State other than Malta or an EEA State or set up by contract or otherwise under European law, which is closed-ended and which is covered by the Directive;

"European regulatory authority" means the body or bodies designated by a Member State other than Malta or an EEA State to carry out the duties provided for in the Directive;

"home Member State or EEA State" means the Member State or EEA State where the prospectus has been approved in terms of the Directive;

"host Member State or EEA State" means one or more Member States or EEA States where an offer to the public is made, in respect of which Malta is the home Member State;

"Malta based scheme" means a collective investment scheme within the meaning of article 2 of the Act, constituted or incorporated under Maltese law;

"Malta based closed-ended scheme" means a Malta based scheme which is closed-ended;

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

"Non-European based schemes" means a collective investment scheme within the meaning of article 2 of the Act established outside a Member State or an EEA State or set up by contract or otherwise under the laws of a country which is not a Member State or an EEA State;

"offer to the public" has the same meaning assigned to the words "offer of securities to the public" in article 2 of the Companies Act, and reference therein to the words "securities" or "shares" shall be read as references to "units"; Cap. 386.

"summary" shall in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the Malta based closed-ended scheme and the units on offer, in the language in which the prospectus is originally drawn up and shall contain a warning as specified in Article 5 (2) of the Directive;

"unit" has the same meaning assigned to it by the Act.

PART I – MALTA BASED SCHEMES

Prospectus requirements for Malta based schemes.

3. (1) A Malta based scheme shall not offer any of its units to the public unless it has issued a prospectus which complies with these regulations and which is made available for inspection by the public.

(2) The contents of a prospectus shall comply with the licence conditions and, or such other requirements as the competent authority may, from time to time, establish.

(3) No prospectus shall be published, nor shall any amendments to a prospectus be made, by any Malta based scheme unless such prospectus and any amendments thereto, have been approved by the competent authority:

Provided that Malta based schemes, which under regulations made under the Act are exempted from the requirement of a licence under article 4 of the Act, are prohibited from making any offer of any of its units to the public except with the prior approval of the competent authority which may impose such terms and conditions as it may deem appropriate.

(4) The approval of the prospectus of a Malta based closed-ended scheme shall also meet the requirements of regulation 4 hereof.

(5) A prospectus shall be dated and signed by the persons who are responsible for its issue.

(6) The prospectus shall be made available to investors free of charge before they become committed to investing in the Malta based scheme. The essential elements of the prospectus shall be kept up to date.

(7) All advertising and publicity material comprising an offer to the public to purchase or subscribe for units in the Malta based scheme shall indicate that a prospectus is available and the place or places where the prospectus and any documents updating it may be obtained.

(8) Where the Malta based scheme is a company, a partnership *en commandite* or a limited partnership or other commercial partnership formed and registered under the laws of Malta, a signed copy of the prospectus shall be lodged with the Registrar of Companies prior to the issue of the form of application for the subscription of units. Such copy shall be signed by at least two directors or persons holding equivalent posts, or by one director and the company secretary, or by at least two persons duly authorised in writing by the Board of Directors for that purpose, in which case the Board authority or a certified true copy thereof, shall be lodged.

Prospectus requirements of Malta based closed-ended scheme.

4. (1) The documents submitted to the competent authority for approval shall be complete and the competent authority shall notify the Malta based closed-ended scheme that documents are incomplete within ten working days of their submission.

(2) The competent authority shall notify a Malta based closed-ended scheme of its decision regarding the approval of the prospectus within ten working days of the submission of the draft prospectus.

(3) The time limit referred to in sub-regulation (2) of this regulation shall be extended to twenty working days if the offer to the public involves units issued by a Malta based closed-ended scheme which does not have any securities admitted to trading on a Recognised Investment Exchange and which has not previously offered units to the public.

(4) If the competent authority fails to give a decision on the prospectus within the time limits mentioned in sub-regulations (2) and (3) of this regulation, this shall not be deemed to constitute approval of the prospectus.

(5) Where the competent authority finds, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, the time limits referred to in sub-regulations (2) and (3) shall apply only from the date on which such information is provided by the Malta based closed-ended scheme. The competent authority shall nonetheless as specified in sub-regulation (1) of this regulation notify the Malta based closed-ended scheme that the documents are incomplete within ten working days of the submission of the prospectus.

Responsibility for compliance.

5. Any person responsible for the issue, circulation or distribution of a prospectus or for the issue of a form of application for units in a Malta based scheme shall ensure that these regulations are complied with.

Prospectus including a statement by experts.

6. A prospectus including a statement purporting to be made by an expert shall not be issued unless -

(a) the expert has given and has not, before the issue of the prospectus, withdrawn his written consent to the issue thereof; and

(b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

Civil liability for misstatements in prospectus.

7. (1) The persons who are responsible for the issue of a prospectus shall be jointly and severally liable for any damage sustained by a person subscribing for units on the faith of that prospectus, by reason of any untrue statement included therein.

(2) An expert who has given the consent required by regulation 6 shall be liable in respect of an untrue statement made by him as an expert.

(3) A person shall be civilly liable for statements made in the summary, including any translation thereof, where such statements are untrue when read together with the other parts of the prospectus.

Interpretation of provisions relating to prospectus.

8. For the purposes of these regulations:

(a) the term "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

(b) a statement included in a prospectus shall be deemed to be untrue if it is misleading, inaccurate or inconsistent in the form and context in which it is included; and

(c) a statement shall be deemed to be included in a prospectus if it is contained therein or in any document appearing on the face thereof or by reference incorporated therein or issued therewith.

Exercise of passport rights by a Malta based closed-ended scheme.

9. (1) Where a Malta based closed-ended scheme whose prospectus and supplements thereto have been drawn in accordance with the Directive wishes to offer units to the public in one or more host Member States or EEA States, the competent authority shall, at the request of the Malta based closed-ended scheme or the person responsible for drawing up the prospectus of the said scheme and within three working days following that request or, if the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus provide the European regulatory authority of the host Member State or EEA State with a certificate of approval attesting that the prospectus and supplements thereto have been drawn up in accordance with the Directive and with a copy of the said prospectus and supplements thereto. If applicable, this notification shall be accompanied by a translation of the summary produced under the responsibility of the Malta based closed-ended scheme or person responsible for drawing up the prospectus. The same procedure shall be followed for any supplement to the prospectus.

(2) Where certain information required to be disclosed in terms of the Directive has been omitted the competent authority shall outline the reasons for the omission in the certificate of approval referred to in sub-regulation (1) of this regulation.

(3) When an offer to the public is made in one or more Member States or EEA States excluding Malta, the prospectus shall be drawn up either in a language accepted by the European regulatory authorities of those Member States or EEA States or in a language customary in the sphere of international finance, at the choice of the Malta based closed-ended scheme:

Provided that for the purpose of scrutiny by the competent authority, the prospectus shall be drawn up in Maltese or English or in

a language customary in the sphere of international finance, at the choice of the Malta based closed-ended scheme.

(4) Where an offer to the public is made in more than one Member States or EEA States including Malta, the prospectus shall be drawn up in English or Maltese and shall also be made available either in a language accepted by the European regulatory authorities of each host Member State or EEA State or in a language customary in the sphere of international finance, at the choice of the Malta based closed-ended scheme.

PART II – EUROPEAN AND NON-EUROPEAN BASED SCHEMES

European and non-European based schemes.

10. Regulation 3, other than sub-regulation (4) thereof, and regulations 5, 6, 7 and 8, shall apply *mutatis mutandis* to a European based scheme and to a non-European based scheme and accordingly reference in these regulations to "Malta based scheme" shall be deemed to include a reference to a "European based scheme and to a non-European based scheme".

Exercise of passport rights by a European based closed-ended scheme covered by the Directive.

11. (1) Regulation 10 of these regulations shall not apply to a European based closed-ended scheme covered by the Directive whose prospectus and supplements thereto have been drawn up in accordance with the requirements of the Directive.

(2) The certificate of approval provided by the European regulatory authority of the home Member State or EEA State in terms of Article 18(1) of the Directive attesting that the prospectus and supplements of a European based closed-ended scheme covered by the Directive have been drawn in accordance with the requirements of the said Directive shall be valid for the offer to the public in Malta.

(3) The prospectus shall be drawn up either in English or in a language customary in the sphere of international finance at the choice of the European based closed-ended scheme covered by the Directive.

(4) A summary of the prospectus shall be translated either in English or in Maltese.

(5) Where the competent authority finds that irregularities have been committed by the European based closed-ended scheme covered by the Directive making an offer to the public in Malta, it shall refer these findings to the European regulatory authority of the home Member State or EEA State.

(6) If despite the measures taken by the European regulatory authority of the home Member State or EEA State or because such measures prove inadequate, the European based closed-ended scheme covered by the Directive persists in breaching the relevant legal or regulatory provisions, the competent authority, after informing the European regulatory authority of the home Member State or EEA State, shall take all appropriate measures in order to protect investors. The European Commission shall be informed of such measures at the earliest opportunity.

PART III - MISCELLANEOUS

Applicable guidelines to professional investor funds.

12. Where the scheme qualifies as a professional investor fund in terms of guidelines issued for this purpose by the competent authority, any prospectus or other offering document issued by the scheme shall comply with such requirements as the competent authority may from time to time establish by the said guidelines, and regulations 3 to 8 shall not apply thereto.

Central competent administrative authority.

13. (1) For the purposes of implementing the relevant provisions of the Directive, the "central competent administrative authority" within the meaning of the Directive shall be the competent authority.

(2) Without prejudice to the powers of the competent authority under the Act and under any other law and to better implement the provisions of the Directive, the competent authority shall have the power to:

(a) require a Malta based closed-ended scheme to include, if necessary, supplementary information in the prospectus for investor protection;

(b) require a Malta based closed-ended scheme and the persons that control it or are controlled by it, to provide information and documents;

(c) require auditors and managers of the Malta based closed-ended scheme, as well as financial intermediaries commissioned to carry out the offer to the public to provide information;

(d) suspend a public offer for a maximum of ten consecutive working days on any single occasion if it has reasonable grounds for suspecting that the provisions of the Directive have been infringed;

(e) prohibit or suspend advertisements for a maximum of ten consecutive working days on any single occasion if it has reasonable grounds for believing that the provisions of the Directive have been infringed;

(f) prohibit a public offer if it finds that the provisions of the Directive have been infringed or if it has reasonable grounds for suspecting that they would be infringed;

(g) make public the fact that the Malta based closed-ended scheme is failing to comply with its obligations.

Cooperation.

14. Without prejudice to the powers of the competent authority under the Act and under any other law and to better implement the provisions of the Directive, the competent authority shall have the power to cooperate with other European regulatory authorities within the meaning of Article 22 of the Directive.

Administrative penalties.

15. (1) Without prejudice to civil or criminal sanctions imposed under any other law, the competent authority may impose administrative penalties within the meaning of article 6 of the Act where the competent authority is satisfied that a scheme's conduct amounts to a breach of any provision of the Act, regulations or guidelines issued thereunder to implement the provisions of the Directive.

(2) The competent authority may disclose to the public every measure or sanction that has been imposed for infringement of the provisions adopted pursuant to the Directive unless:

(a) the disclosure would seriously jeopardise the financial markets; or

(b) cause disproportionate damage to the parties involved.

Appeals.

16. Any decision taken in terms of these regulations by the competent authority in respect of any matter concerning the prospectus or an offer to the public, shall be subject to a right of appeal to the Financial Services Tribunal within the meaning of article 19 of the Act.

Objective.

17. (1) The objective of these regulations is partly to implement the relevant provisions of the Directive and shall be interpreted and applied accordingly.

(2) In the event that any of these regulations conflict with the provisions of the Directive, the latter shall prevail.

Repeals L.N. 103 of 1996.

18. The Investment Services Act (Prospectus of Collective Investment Schemes) Regulations, 1996, are hereby repealed.