L.N. 359 of 2008

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (Licence and Other Fees) Regulations, 2008

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance, the Economy and Investment, after consultation with the Malta Financial Services Authority, has made the following regulations:

Citation and commencement. L.N. 425 of 2007.

1. (1) The title of these regulations is the Investment Services Act (Licence and Other Fees) Regulations, 2008.

(2) These regulations shall come into force on the 1st January. 2009 and shall apply to fees falling due on or after the said date. Nothing in these regulations shall be deemed to affect the liability in respect of any fees due under the Investment Services Act (Licence and Other Fees) Regulations, 2007 prior to the coming into force of these regulations.

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

"the Act" means the Investment Services Act;

"carry on an activity" includes but shall not be limited to marketing, advertising or otherwise promoting as may be further stipulated in Investment Services Rules issued by the competent authority in terms of article 6 of the Act;

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

"eligible counterparties" shall have the same meaning as that assigned to it by the Investment Services Rules issued by the competent authority in terms of article 6 of the Act;

"European investment firm" shall have the same meaning as that assigned to it by regulation 2 of the European Passport Rights for Investment Firms Regulations, 2007 ;

L.N. 325 of 2007.

"European management company" shall have the same meaning as that assigned to it by regulation 2 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations, 2004;

L.N. 207 of 2004.

"European UCITS" shall have the same meaning as that assigned to it by regulation 2 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations, 2004;

"hold or control" includes the holding by a licence holder of a mandate over a client's bank account, or of a power of attorney to control a client's assets: provided that a licence holder shall not be considered to be holding or controlling a client's money or assets if a recommendation made by the licence holder can be placed into effect only by the customer or by a third party, such as a bank, acting on the customer's behalf. The competent authority shall have the discretion to determine whether a licence holder is holding or controlling clients' money or assets in any given case;

"home Member State or EEA State" shall have the same meaning as that assigned to it by regulation 2 of the European Passport Rights for Investment Firms Regulations and by regulation 2 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations, 2004;

"professional client" shall have the same meaning as that assigned to it by Investment Services Rules issued by the competent authority in terms of article 6 of the Act;

"retail client" shall have the same meaning as that assigned to it by Investment Services Rules issued by the competent authority in terms of article 6 of the Act;

"revenue" means the net revenue which shall be calculated in the following manner - the gross revenue indicated in the annual audited financial statements and that is derived from activities for which an investment services license was issued in terms of article 3 of the Act, less any commissions that are directly related to the acquisition of the said gross revenue, paid or payable to third parties;

"tied agent" has the meaning assigned to it by regulation 2 of the Appointment of Tied Agents Regulations, 2007. L.N. 327 of 2007.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

3. There shall be paid to the competent authority by any person or body or collective investment scheme the following fees as applicable: Payment of application, licence and other fees.

(a) upon submission of an application for the granting of a licence, recognition, registration or authorisation, irrespective of whether the application is eventually accepted or not, the Application Fee established in the Second Column of the Schedule;

(b) on the date of the granting by the competent authority, of an investment services licence, the Licence Fee established in the Third Column of the said Schedule;

(c) annually, upon the submission of the annual audited financial statements by investment services licence holders , the Supervisory Fee established in the Fourth Column of the said Schedule;

(d) on the date of the granting of a collective investment scheme licence, recognition, registration or authorisation, the Supervisory Fee established in the Fourth Column of the said Schedule by the holders of such licence, recognition, registration or authorisation;

(e) annually, upon the anniversary of such date as is mentioned in paragraph (c), the same annual fee established in the Fourth Column of the said Schedule shall be payable by the persons referred to in (c) above.

4. (1) A person or body applying for a licence for investment services in terms of article 3 of the Act shall be classified at the discretion of the competent authority into one of four categories which determine the financial resources requirements of licence holders, as follows: Licence classification.

Category 1a: Licence Holders authorised to receive and transmit orders in relation to one or more instrument and, or provide investment advice and, or place instruments without a firm commitment basis but not to hold or control Clients' Money or Customers' Assets.

Category 1b: Licence Holders authorised to receive and transmit orders, and, or provide investment advice in relation to one or more instrument and, or place instruments without a firm commitment basis solely for professional clients and. or eligible counterparties but not to hold or control clients' money or customers' assets.

Category 2: Licence Holders authorised to provide any Investment Service and to hold or control Clients' Money or Customers' Assets, but not to operate a multilateral trading facility or deal for their own account or underwrite or place instruments on a firm commitment basis.

Category 3: Licence Holders authorised to provide any Investment Service and to hold and control clients' money or customers' assets.

Category 4: Licence Holders authorised to act as trustees or custodians of collective investment schemes.

(2) The competent authority shall set out in the licence the nature of the activities which particular licence holders may carry out.

Payment to the competent Authority.

5. (1) There shall be paid to the competent authority by:

(a) any European investment firm establishing a branch in Malta in terms of regulation 3 of the European Passport Rights for Investment Firms Regulations, 2007 upon notification to the competent authority that it wants to establish a branch in Malta and upon the commencement of business in Malta, the relevant notification and supervisory fees established in the Second and Third Column, respectively, of the Schedule;

(b) any European management company establishing a branch in Malta in terms of regulation 15 of the Undertaking of Collective Investment in Transferable Securities and Management Companies Regulations, 2004 upon notification to the competent authority that it wants to establish a branch in Malta and upon the commencement of business in Malta, the relevant notification and supervisory fees established in the Second and Third Column, respectively, of the Schedule;

(c) European UCITS marketing their units in Malta in terms of regulation 8 of the Undertaking of Collective Investments in Transferable Securities and Management Companies Regulations, 2004 upon notification to the competent authority that it wants to

market its units in Malta and upon the commencement of such marketing in Malta, the relevant notification and supervisory fees established in the Second and Third Column, respectively of the Schedule.

(2) In addition to the above fees, the following fees shall also be paid to the competent authority:

(a) by European Investment Firms and European management companies establishing a branch in Malta, annually, upon the anniversary of the date on which they commence business in Malta, the supervisory fee established in the Third Column of the Schedule;

(b) by European UCITS marketing their units in Malta in terms of regulation 8 of the Undertaking of Collective Investments in Transferable Securities and Management Companies Regulations, 2004 annually, upon the anniversary of the date on which they commence to market their units in Malta, the supervisory fee established in the Third Column of the Schedule.

6. The Investment Services Act (Licence and Other Fees) Regulations, 2007 are hereby repealed. Repeals L.N.425 of 2007.

SCHEDULE
(Regulation 3 and 5)

Licence Fees

First Column	Second Column Application/ Notification Fee	Third Column Licence Fee	Fourth Column Supervisory Fee	
	€	€		€
(a) Investment Services Licences:				
Category 1a	750	1,300	For revenue up to €50,000 Further tranches of €50,000 up to a maximum of €1,000,000	1,300 250 per tranche or part thereof
Category 1b	750	1,800	For revenue up to €50,000 Further tranches of €50,000 up to a maximum of €1,000,000	1,800 250 per tranche or part thereof
Category 2	1,500	3,000	For revenue up to €250,000 Further tranches of €250,000 up to a maximum	3,000 350 per tranche or part thereof

			of €5,000,000	
Category 3	2,000	4,000	For revenue up to €250,000	4,000
			Further tranches of €250,000 up to a maximum of €5,000,000	350 per tranche or part thereof
Category 4	4,000	10,000	10,000	
(b) Collective Investment Schemes which fall within the scope of article 4 of the Act; and include schemes formed in accordance with or existing under the laws of a country other than Malta which carry on an activity in Malta:				
Scheme:	2,000		2,500	
Up to fifteen sub-funds (per sub-fund)	450		400	
Sixteen sub-funds and over (per sub-fund)	250		150	
(c) Collective Investment Schemes which qualify as professional investor funds in terms of Rules				

issued for this purpose by the competent authority:		
"In principle" approval	600	
Licence Scheme	1,500	1,500
Per sub-fund	1,000	500
Recognition Fees		
(d) Persons providing administrative services in terms of article 9A of the Act	3,000	1,200
(e) Private Schemes recognised in terms of the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations	1,750	500
(f) European investment firms establishing a branch in Malta in terms of regulation 3 of the European Passport Rights for Investment Firms Regulations		
(i) authorised by their Home		

member Stae or EEA State to receive and transmit orders in relation to one or more instruments and, or provide investment advice and, or place instrument without a firm commitment basis , in terms of the Directive but are not authorized to hold and control Clients Money or Curstomers' Assets.	750	1,200
(ii) authorized by their home Member State or EEA State to provide any investment services in terms of the Directive and to hold and control Clients' Money or Customers' Assets but not to operate a multilateral trading facility or to deal for their own account or underwrite or place instruments on a firm commitment basis	1,000	3,000
(iii) authorized by their home Member State or		

EEA State to provide any investment services in terms of the Directive, and to hold and control Clients' Money or Customers' Assets	1,650	3,600
(g) European management companies establishing a branch in Malta in terms of regulation 15 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations	1,250	4,000
(h) European UCITS marketing their units in Malta in terms of regulation 8 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations:		
(i) European UCITS Scheme	2,000	2,500
(ii) Up to 15 sub-funds (per sub-fund)	450	450
(iii) 16 sub-	250	250

funds and over (per sub-fund)		
Registration Fees		
(i) Tied agents registered by the competent authority in terms of regulation 5 of the Appointment of Tied Agents Regulations:		
(i) where the tied agent is an individual	100	300
(ii) where the tied agent is not an individual	150	350 and 200 per individual employed by such tied agent and who is directly involved in the provision of tied agent activities.

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