

**L.N. 326 of 2007**

**INVESTMENT SERVICES ACT  
(CAP. 370)**

**European Passport Rights for Persons Operating Multilateral  
Trading Facilities Regulations, 2007**

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 as the competent authority for the purposes of the Act, has made the following regulations:

**1.** (1) The title of these regulations is the European Passport Rights for Persons Operating Multilateral Trading Facilities Regulations, 2007. Title,  
commencement and  
objective.

(2) These regulations shall come into force on the 1st November, 2007.

(3) The objective of these regulations is to implement the relevant provisions of Articles 31 and 62 of the Directive, as herein defined, and the regulations shall be interpreted and applied accordingly.

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

“the Act” means the Investment Services Act;

“competent authority” means the Malta Financial Services Authority appointed under Article 2A of the Act;

“the Directive” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“European right” means the entitlement of a person operating a multilateral trading facility to provide appropriate arrangements in the territory of a Member State or EEA State other than that in which that person has been authorized to operate such facility, so as to facilitate access to and use of their systems by remote users;

“Home Member State or EEA State” means the Member State or EEA State in which the persons operating the multilateral trading facility are so authorised;

“Host Member State or EEA State” means the Member State or EEA State in which, a person authorised to operate a multilateral trading facility in Malta, provides appropriate arrangements so as to facilitate access to and use of its system by remote members established in that same Member State or EEA State;

“Multilateral Trading Facility” has the same meaning as that assigned to the term in Article 4(15) of the Directive.

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

### **Part I – Exercise of European Passport Rights by Persons operating a Multilateral Trading Facility established in a Member State or EEA State**

Exercise of passport right by persons operating a Multilateral Trading Facility established in a Member State or EEA State.

**3.** (1) A person who operates a multilateral trading facility in any Member State or EEA state other than Malta and which is seeking to provide appropriate arrangements in Malta in exercise of a European right shall satisfy the conditions specified in sub-regulation (2) of this regulation and shall be exempt from the provisions of article 3 of the Act.

(2) The conditions for the purposes of this regulation are that –

(a) the person operating the multilateral trading facility has communicated to its European regulatory authority that it intends to provide arrangements to facilitate access to and use of its facility in Malta;

(b) the supervisory authority of the persons operating a Multilateral Trading Facility in terms of Article 31(6) of the Directive has, within one month of the receipt of the information specified in paragraph (a) of this sub-regulation, notified the competent authority of this information.

## **Part II – Exercise of Passport Rights by Persons operating a Multilateral Trading Facility established in Malta**

**4.** (1) Persons operating a multilateral trading facility established in Malta may exercise a European right to provide appropriate arrangements to facilitate access to and use of their systems by remote users in another Member State or in an EEA State subject to the requirements of this regulation.

Exercise of passport rights by persons licensed in Malta to operate a Multilateral Trading Facility.

(2) A person operating a multilateral trading facility established in Malta shall give the competent authority a notice of its intention to exercise a European right wherein it shall communicate the Member State or the EEA State in which it intends to provide such arrangements.

(3) The competent authority shall communicate, within one month, the information provided in terms of sub-regulation (2) of this regulation to the European regulatory authority of the Member State or EEA State in which the person operating a multilateral trading facility established in Malta intends to provide such arrangements.

(4) The competent authority shall, on the request of the European regulatory authority of the Member State or EEA State in which the person operating a multilateral trading facility established in Malta intends to provide such arrangements, and within a reasonable delay, communicate the identity of the members or participants of the multilateral trading facility established in Malta.

## **Part III – Contraventions by Persons operating a Multilateral Trading Facility in Malta in exercise of a European Right**

**5.** (1) Where the competent authority has clear and demonstrable grounds for believing that a person, authorised to operate a multilateral trading facility in any Member State or EEA state and who is providing access to its systems in Malta in exercise of a European right, is in breach of its obligations arising from the provisions adopted pursuant to the Directive, it shall refer those findings to the European regulatory authority.

(2) If, despite the measures taken by the European regulatory authority or because such actions prove inadequate, the person providing access to its systems in Malta in exercise of a European right, persists in acting in a manner which is clearly prejudicial to the interests of investors in Malta or the orderly function of markets, the competent authority shall, after informing the European regulatory authority, take all the appropriate measures needed in order to protect investors and

the proper functioning of the markets. This shall include the possibility of preventing the person providing access to its systems in Malta, in exercise of a European Right from making the said arrangements available to remote members or participants established in Malta. The European Commission shall be informed of such measures without delay.

(3) Any measure adopted pursuant to this regulation shall be communicated to the person concerned, in writing, together with reasons justifying such measures and shall be subject to a right of appeal to the Financial Services Tribunal and the provisions of article 19 of the Act shall apply *mutatis mutandis*.