L.N. 327 of 2007

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services (Tied Agents) 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:

Title, commencement and objective.

1. (1) The title of these regulations is the Investment Services (Tied Agents) Regulations, 2007.

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

(3) The objective of these regulations is to implement Article 23 of the Directive, as herein defined, and they shall be interpreted and applied accordingly.

Interpretation.

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

"the Act" means the Investment Services Act;

"ancillary services" shall have the same meaning as that assigned to it by the Investment Services Rules;

"the competent authority" means the Malta Financial Services Authority appointed under article 2 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 investment firm" means an investment firm as defined in Article 4(1) of the Directive authorised by its European

regulatory authority within the meaning of Article 5 of the Directive or authorised by a European regulatory authority in an EEA State;

"investment services licence holder" means a person who holds an investment services licence granted by the competent authority in terms of article 6 of the Act;

"tied agent" means a natural or legal person, who under the full and unconditional responsibility of only one investment services licence holder or European investment firm and on whose behalf it acts, promotes investment and, or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or instruments, places instruments and, or provides investment advice to clients or prospective clients in respect of those instruments or services.

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

Appointment of tied agents.

3. (1) Investment services licence holders and European investment firms may appoint tied agents for the purposes of promoting their services, soliciting business or receiving orders from clients or potential clients and transmitting them, placing instruments and providing investment advice in respect of such instruments and services offered by the investment services licence holder.

(2) Tied agents may, subject to these regulations, be established in Malta or in a Member State or EEA State.

Appointment of tied agents established in Malta.

4. (1) Tied agents established in Malta shall be subject to registration by the competent authority in terms of regulation 9 of these regulations and shall be exempt from the provisions of article 3 of the Act.

(2) An investment services licence holder or a European investment firm wishing to appoint a tied agent established in Malta to carry out business in Malta or elsewhere shall apply to the competent authority for the registration of such tied agent.

(3) An investment services licence holder or a European investment firm may appoint a tied agent established in Malta in terms of sub-regulation (2) of this regulation only if such tied agent has been registered by the competent authority in the public register kept in terms of regulation 9 hereof.

Appointment of tied agents established in a Member State or EEA State which allows the appointment of tied agents.

5. (1) Investment services licence holders may appoint tied agents established in a Member State or EEA State for the purposes of promoting their services, soliciting business or receiving orders from clients or potential clients and transmitting them, placing instruments

and providing investment advice in respect of such instruments and services offered by the investment services licence holder.

(2) An investment services licence holder may appoint a tied agent in terms of sub-regulation (1) of this regulation only if such tied agents are registered in the public register which the Member State or EEA State concerned has established for this purpose.

Appointment of tied agents in a Member State or EEA State not allowing the appointment of tied agents.

6. (1) Where the investment services licence holder appoints a tied agent established in a Member State or EEA State which, in terms of Article 23 of the Directive, does not provide for the appointment of tied agents, such licence holder shall be obliged to apply to the competent authority for the registration of the said tied agent.

(2) The provisions of regulation 4 shall apply *mutatis mutandis* to investment services licence holders and tied agents falling within the scope of sub-regulation (1).

Obligations of tied agents.

7. (1) Tied agents may not hold or control clients' money and or assets.

(2) Tied agents shall only act for one licence holder at any one time.

Responsibility of the investment services licence holder appointing tied agents.

8. (1) Where an investment services licence holder decides to appoint a tied agent, it remains fully and unconditionally responsible for any act or omission on the part of the tied agent when the latter is acting on behalf of the investment services licence holder.

(2) The investment services licence holder shall ensure that its tied agent discloses the capacity in which such tied agent is acting and the name of the investment services licence holder which such tied agent is representing when contacting or before dealing with any client or potential client.

(3) The investment services licence holder that appoints tied agents shall monitor the activities of its tied agents so as to ensure that they continue to comply with the requirements of these regulations and the Investment Services Rules that may be issued by the competent authority in terms of article 6 of the Act, when acting through tied agents.

(4) The investment services licence holder that appoints tied agents shall take adequate measures in order to avoid any negative impact that the activities of the tied agents, which are not covered by the scope of the Directive, could have on the activities carried out by the tied agents on behalf of the investment services licence holder.

Registration of tied agents.

9. (1) The competent authority shall keep a register of all tied agents which are:

(a) established in Malta and appointed by an investment services licence holder or by a European investment firm; or

(b) established in a Member State or EEA State which, in terms of Article 23 of the Directive, does not provide for the appointment of tied agents and such tied agent is appointed by an investment services licence holder.

Such register shall be updated on a regular basis and shall be accessible to the public.

(2) The competent authority shall only admit a tied agent to the register established in sub-regulation (1) of this regulation if the investment services licence holder or the European investment firm appointing the tied agent has established and has confirmed to the competent authority that the tied agent is of sufficiently good repute and possesses appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the potential clients:

Provided that where the tied agent will provide investment advice, the competent authority shall itself establish whether the tied agent possesses the level of competence required by the competent authority for this purpose.

(3) The competent authority shall not register, or shall withdraw registration of a tied agent where:

(a) the activities actually carried on clearly indicate that a tied agent has opted for registration in Malta for the purpose of evading the stricter standards in force in another Member State or EEA State within the territory of which it intends to carry out or carries out the greater part of its activities; or

(b) it is no longer satisfied that the tied agent fulfils the requirements of this sub-regulation.

Additional requirements for tied agents.

10. For the better carrying out of the requirements set out in these regulations the competent authority may from time to time, issue and publish Investment Services Rules in terms of article 6 of the Act, applicable to investment services licence holders appointing tied agents.

Right of appeal to Financial Services Tribunal.

11. Where the competent authority has refused to register a tied agent or has withdrawn a registration issued to a tied agent in terms of sub-regulation (3) of regulation 9 of these regulations, it shall notify the person to whom such registration was refused or the tied agent whose registration was withdrawn of its decision, in writing and such person, shall have a right of appeal from such decision of the competent authority to the Financial Services Tribunal and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

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