L.N. 6 of 1995

INVESTMENT SERVICES ACT, 1994
(ACT NO. XIV OF 1994)

Investment Services Act (Exemption) Regulations, 1995

BY VIRTUE of the powers vested in him by paragraph (g) of subsection (1) of section 12 of the Investment Services Act, 1994, the Minister of Finance, acting on the advice of the Malta Financial Services Centre, has made the following regulations:—

Citation and commencemer

1. (1) These regulations may be cited as the Investment Services Act (Exemption) Regulations, 1995.

(2) These regulations shall be deemed to have come into force on the 23rd September, 1994, except such provisions thereof which deal with advertisements which shall come into force on the coming into force of section 11 of the Act.

Interpretation

2. Any reference in these regulations to the Act is a reference to the Investment Services Act, 1994, and the provisions of section 2 of the Act shall also apply to these regulations.

Investment services exemptions.

3. The following persons are hereby being exempted for the purposes of the requirement for a licence for investment services in terms of section 3 of the Act:—

(a) the Central Bank of Malta;

(b) the competent authority and any person who is appointed thereby in the course and for the purpose of its regulatory and supervisory functions;

(c) the Malta Stock Exchange and any person who is appointed thereby in the course and for the purpose of its regulatory and supervisory functions;

Cap. 345.

(d) a person who holds a stockbroker's licence issued under the Stock Exchange Act, to the extent that the investment service provided by such person is that of dealing or arranging deals, in terms of paragraphs 1 or 2 of the First Schedule to the Act, in instruments which are listed on the Borża;

(e) a liquidator or a curator in bankruptcy acting in the course of the liquidation or bankruptcy;

(f) a person who is not a licence holder under the Act, who deals as a principal or as an agent, or arranges deals, or provides advice, in terms of paragraphs 1 or 2 or 5 of the First Schedule to the Act, with or for or to a person who is licensed under the Act, or who is a bank licensed in terms of the Banking Acts of Malta, or who is

a firm licensed under the Insurance Business Act, or who is an institution licensed under the Financial Institutions Act, 1994, or who is a stockbroker who holds a licence under the Stock Exchange Act; Cap. 290. Act No. XXII of 1994.

(g) a person dealing as principal, in terms of paragraph 1 of the First Schedule to the Act, for his own account as long as he does not hold himself out as being in the business of buying instruments with a view to selling them, nor solicits members of the public to deal with him on the basis of, or consequent to, such representations;

(h) a person dealing as an agent in terms of paragraph 1 of the First Schedule to the Act, or arranging deals in terms of paragraph 2 of the First Schedule to the Act, or giving advice in terms of paragraph 5 of the First Schedule to the Act, as long as such person does not do any of the following:

(i) receive, directly or indirectly, any remuneration or other benefit for the service;

(ii) hold himself out as providing an investment service; or

(iii) solicit members of the public to take such services;

(i) a company providing an investment service to another company in the same group, but only if:

(i) the service does not consist of acting in any capacity in relation to a collective investment scheme; and

(ii) the company does not hold itself out as providing an investment service and it does not solicit members of the public to take such services; and

(iii) the provision of the services is for the purpose of the group; and

(iv) the service would not have required to be covered by a licence under the Act if it had been provided by the company to which it is provided;

(j) a company operating a scheme approved by the competent authority where the service consists of dealing or arranging to deal in instruments, in terms of paragraphs 1 or 2 of the First Schedule to the Act, for its own employees, former employees, their dependents, or for employees, former employees or their dependents of companies in the same group, in instruments issued by the company or other companies in the group;

(k) a person arranging deals or giving advice, in terms of paragraphs 2 or 5 of the First Schedule to the Act, in the course of lawfully carrying on the profession of advocate, certified public accountant or certified public accountant and auditor but only if:

(i) the arranging of deals or giving of advice is limited to what is necessary in the course of carrying on that profession and excludes anything which induces or is intended to induce a client to acquire, continue to hold, or to dispose of an instrument; and

(ii) the person arranging the deal or giving advice is not remunerated additionally for providing the investment service, does not hold himself out as providing an investment service, and does not solicit members of the public to take such services;

(l) a person arranging deals or giving advice in terms of paragraphs 2 or 5 of the First Schedule to the Act, in the course of lawfully carrying on the profession of certified public accountant or certified public accountant and auditor, but only where the transaction or advice relates to an acquisition or a disposal or a subscription or a scheme or an arrangement in respect of instruments in a private company which is not a collective investment scheme;

(m) a person dealing as an agent in terms of paragraph 1 of the First Schedule to the Act, in the course of lawfully carrying on the profession of advocate, certified public accountant or certified public accountant and auditor but only if:

(i) the transaction is in respect of instruments in a private company which is not a collective investment scheme; and

(ii) no advice is given and no discretion is exercised in respect of the transaction;

(n) a person resident outside Malta providing management or administration services in terms of paragraph 3 of the First Schedule to the Act to a collective investment scheme licensed under the Act where the competent authority is satisfied that such person is of sufficient standing and repute;

(o) a person giving advice, in terms of paragraph 5 of the First Schedule to the Act, in the course of expressing an opinion or view in a newspaper, journal, magazine or other periodical publication, or television or radio broadcast, made, distributed, or received in or from Malta, but only if:

(i) the opinion or view is not directed at particular instruments; and

(ii) no person involved in the making or distribution of the publication or broadcast stands to receive any remuneration or other benefit, directly or indirectly, as a result of anyone acting on the advice; and

(iii) the opinion or view is not, and is not part of, an advertisement or promotion requiring approval under section 11 of the Act;

(p) a person who acts as a registrar of a company's members or debenture holders, in terms of paragraph 3 of the First Schedule to the Act, as required by the Commercial Partnerships Ordinance, except where the company concerned is a collective investment scheme. Cap. 168.

Collective investment scheme exemptions.

4. The following collective investment schemes are hereby being exempted for the purposes of the requirement for a licence for collective investment schemes in terms of section 4 of the Act:

(a) a scheme involving participants, each of which carries on a business other than that which constitutes an investment service and enters into the arrangement for commercial purposes related to that business;

(b) a scheme which operates according to the principle of risk spreading or in respect of which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled, but only if the general purpose of the scheme is commercial and not for investment purposes;

(c) a collective investment scheme which the competent authority is satisfied is essentially private in nature and purpose;

(d) a scheme approved by the competent authority operated by a company for its own employees, former employees and their dependents, or for employees, former employees, or their dependents, of companies in the same group, in instruments issued by a company or companies within that group.

Exempt advertisements.

5. The following advertisements are hereby being exempted for the purposes of requiring consent in terms of section 11 of the Act:

(a) advertisements included in a publication published and circulated principally outside Malta, or in a sound or television broadcast transmitted principally for reception outside Malta unless the advertisement is directed to persons in Malta, or is otherwise intended to be made available to persons in Malta, unless such advertisements are specifically prohibited by the competent authority;

(b) advertisements, in the form of prospectuses, approved by the Borża relating to instruments listed or to be listed on the Borża, but only if such instruments are not units in a collective investment scheme;

(c) advertisements issued by exempted persons, but only if they relate to matters in respect of which they are exempted.

Definition of expressions.

6. (a) For the purposes of the exemptions in paragraphs (i) and (j) of regulation 3 of these regulations, and of the exemption in paragraph (d) of regulation 4 of these regulations, the expression "in the same group", in relation to any company, means any body corporate which is that company's subsidiary or parent company, or a subsidiary of that company's parent company, and the expression "parent company" means a company which:

(i) has a majority of the members' voting rights in another undertaking (a subsidiary); or

(ii) has the right to appoint or remove a majority of the members of the board of directors or persons entrusted with the administration of another undertaking (a subsidiary) and is at the same time a member of that undertaking.

(b) For the purposes of the exemptions in paragraphs (l) and (m) of regulation 3 of these regulations, the expression "private company" has the meaning given to it in the Commercial Partnerships Ordinance.

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