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*Taqsima B*

**L.N. 252 of 2013**

# INVESTMENT SERVICES ACT (CAP. 370)

## Investment Services Act (Exemption) (Amendment) Regulations, 2013

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

Citation.

**1.** The title of these regulations is the Investment Services Act (Exemption) (Amendment) Regulations, 2013 and these regulations shall be read and construed as one with the Investment Services Act (Exemption) Regulations, hereinafter referred to as "the principal regulations". S.L. 370.02

Amends regulation 1 of the principal regulations.

**2.** In sub-regulation (2) of regulation 1 of the principal regulations, for the words "the Directive" there shall be substituted the words "the MiFID Directive, and Articles 2(3)(b), (c), (e), (f) and (g) and Article 3(1) of the AIFM Directive".

Amends regulation 2 of the principal regulations.

**3.** Regulation 2 of the principal regulations shall be amended as follows:

(a) the present provision shall be re-numbered as sub-regulation (1) thereof;

(b) in sub-regulation (1) thereof, as re-numbered -

(i) immediately adter the definition "the Act", there shall be added the following new definitions:

" "AIFM Directive" means Directive 2011/ 61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/ 2009 and (EU) No 1095/2010, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"alternative investment fund" or "AIF"

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means a collective investment scheme, including subfunds thereof, which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not qualify as a UCITS Scheme in terms of the UCITS Directive;

"alternative investment fund manager" or "AIFM" means a legal person whose regular business is managing one or more AIFs;";

(ii) the definition "the Directive" shall be deleted;

(iii) immediately after the definition "market operator" there shall be added the following new definition:

" "MiFID 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;";

(iv) immediately after the definition "multilateral trading facility", there shall be added the following new definition:

" "Occupational Pensions Directive" means Directive 2003/41/EC of the European Parliament and of the Council of the 3rd June, 2003 on the activities and supervision of institutions for occupational retirement provision as may be amended from time to time and includes any implementing measures that may be issued thereunder;";

(v) immediately after the definition "private company" there shall be added the following new definitions:

" "professional investor" shall have the

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meaning assigned to "professional client" in the Investment Services Rules or an investor who has opted to be treated as a professional client in terms of the said Rules;

"retail investor" means an investor who is not a professional investor;

"UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"; and

(c) immediately after sub-regulation (1) thereof, there shall be added the following new sub-regulation:

"(2) Words and expressions used in these regulations which are also used in the Act but which are not defined herein shall have the same meaning as in the Act.".

Amends regulation 3 of the principal regulations.

**4.** Regulation 3 of the principal regulations shall be amended as follows:

(a) in paragraph (s) of sub-regulation (1) thereof, for the words "or consequent to, such representations.", there shall be substituted the words "or consequent to, such representations;", and immediately thereafter, there shall be added the following new paragraphs:

"(t) an AIFM in so far as it manages one or more AIFs whose only investors are the AIFM or the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings:

Provided that this exemption shall apply solely for the said activity, and only as long as none of the said investors is itself an AIF;

(u) institutions for occupational retirement provision which are covered by the Occupational Pensions Directive, including, where applicable, the licensed entities responsible for managing such institutions and acting on

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their behalf referred to in Article 2(1) of the said Directive or the investment managers appointed pursuant to Article 19(1) of the said Directive, in so far as they do not manage AIFs;

(v) supranational institutions, such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund and other supranational institutions and similar international organisations, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest;

(w) national, regional and local governments and bodies or other institutions which manage collective investment schemes supporting social security and pension systems.

(x) a person providing management services to employee participation schemes or employee savings schemes;

(y) securitisation special purpose entities."; and

(b) in sub-regulation (2) thereof, for the words "The exemptions laid down in paragraphs (f), (g), (h), (l) and (q)", there shall be substituted the words "The exemptions laid down in paragraphs (f), (g), (h), (l), (q) and (t)".

Amends regulation 5 of the principal regulations.

**5.** Sub-regulation (1) of regulation 5 of the principal regulations shall be amended as follows:

(a) in paragraph (c) thereof, for the words "approved by the competent authority.", there shall be substituted the words "approved by the competent authority;"; and

(b) immediately after paragraph (c) thereof, there shall be added the following new paragraph:

"(d) investment undertakings, such as family office vehicles, which invest the private wealth of investors without raising external capital.".

Addition of new regulation to the principal regulations.

**6.** Immediately after regulation 5 of the principal regulations, there shall be added the following new regulation:

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"Exemption from risk spreading.

6. (1) The following collective investment schemes are hereby being exempted from the requirement to operate according to the principle of risk spreading:

(a) alternative investment funds marketed to professional investors;

(b) a collective investment scheme licensed as a professional investor fund targeting qualifying investors in terms of the Investment Services Rules;

(c) a collective investment scheme licensed as a professional investor fund targeting extraordinary investors in terms of the Investment Services Rules.

(2) The competent authority may from time to time prescribe the requirements and conditions for granting such exemption in the Investment Services Rules.".

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