VERŻJONI ELETTRONIKA

L.N. 9 of 2014

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (Fees) Regulations, 2014

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

Citation and commencement.

1. (1) The title of these regulations is the Investment Services Act (Fees) Regulations, 2014.

(2) These regulations shall come into force on the 1st January 2014, 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, 2008 prior to the coming into force of these regulations.

L.N.359 of 2008.

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

"the Act" means the Investment Services Act;

Cap. 370.

"Alternative Investment Fund" or "AIF" 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 the management of one or more AIFs;

"competent authority" means the Malta Financial Services Authority as defined in terms of article 2 of the Act;

"eligible counterparties" has 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;

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"European AIF" has the same meaning as that assigned to it by regulation 2 of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations; S.L. 370.21

"European AIFM" has the same meaning as that assigned to it by regulation 2 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations; S.L. 370.22

"European investment firm" has the same meaning as that assigned to it by regulation 2 of the European Passport Rights for Investment Firms Regulations; S.L. 370.10

"European management company" has the same meaning as that assigned to it by regulation 2 of the Investment Services Act (UCITS Management Company Passport) Regulations; S.L. 370.20

"European UCITS" has the same meaning as that assigned to it by regulation 2 of the Investment Services Act (Marketing of UCITS) Regulations; S.L. 370.18

"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", in relation to a European investment firm, has the same meaning as that assigned to it by regulation 2 of the European Passport Rights for Investment Firms Regulations; S.L. 370.10

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

"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 licence 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 same meaning as that assigned to it by regulation 2 of the Investment Services Act (Tied Agents) Regulations. S.L. 370.14

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(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.

Payment of application fee.

3. Any person or body or collective investment scheme shall, 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, pay to the competent authority the application fee established in the Second Column of the Schedule.

Payment of annual supervisory fees.

4. There shall be paid to the competent authority the following annual supervisory fees, as applicable:

(a) investment services licence holders shall, upon the submission of the annual audited financial statements, pay an annual supervisory fee as established in the Third Column of the Schedule:

Provided that the first annual supervisory fee shall be due immediately once a licence is granted and shall be equal to a proportion of the minimum fee. The first annual supervisory fee payable shall be proportionate to the period remaining between the date of the granting of the licence and the established date for the submission of the annual audited financial statements;

(b) collective investment schemes, recognised persons or registered persons shall, upon the anniversary of the date of the granting of a licence, recognition, or registration, pay the annual supervisory fee established in the Third Column of the Schedule:

Provided that the first annual supervisory fee shall be payable immediately once a licence, recognition or registration is granted.

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, 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; S.L. 370.10

(b) any European management company establishing a branch in Malta in terms of regulation 9 of the Investment S.L. 370.20

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Services Act (UCITS Management Company Passport) Regulations, 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) any European AIFM establishing a branch in Malta
S.L. 370.22 in terms of regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations, 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;

(d) any European UCITS having its units marketed in
S.L. 370.18 Malta in terms of regulation 8 of the Investment Services Act (Marketing of UCITS) Regulations, 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;

(e) any European AIF having its units marketed in
S.L. 370.21 Malta in terms of regulations 3 and 5 of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations, 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;

(f) an AIFM, whether established in an EU or EEA Member State or in a third country, wishing to market in Malta units or shares of an AIF whether established in an EU or EEA Member State other than Malta or in a third country in terms of
S.L. 370.24 regulations 7 and 22 of the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations shall, upon notification to the competent authority that it wants to market by private placement in Malta pay, 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 annual supervisory fees established in the Third Column of the Schedule shall also be paid to the competent authority by:

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(a) European Investment Firms, establishing a branch in Malta, annually, upon the anniversary of the date on which they commence business in Malta;

(b) European management companies establishing a branch in Malta, annually, upon the anniversary of the date on which they commence business in Malta;

(c) European AIFMs establishing a branch in Malta, annually, upon the anniversary of the date on which they commence business in Malta;

(d) European UCITS having their units marketed in Malta annually, upon the anniversary of the date of the commencement of such marketing in Malta;

(e) European AIFs having their units marketed in Malta annually, upon the anniversary of the date of the commencement of such marketing in Malta;

(f) AIFMs, whether established in an EU or EEA Member State or in a third country wishing to market in Malta units or shares of an AIF whether established in an EU or EEA Member State other than Malta or in a third country, annually, upon the anniversary of the date of the commencement of such marketing in Malta.

Licence classification.

6. (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 the six categories which determine the financial resources requirements of licence holders, as follows:

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.

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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 4a: Licence holders authorised to act as trustees or custodians of collective investment schemes.

Category 4b: Licence holders authorised to act as custodians to the following:

(a) AIFs marketed in Malta in terms of regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations; or S.L. 370.24

(b) AIFs which have no redemption rights exercisable during the five year period from the date of initial investment and which generally do not invest in assets that must be held in custody in terms of the Investment Services Rules.

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

Non-refundable or prorated fees.

7. None of the fees established and due in terms of these regulations shall be refundable. Nor shall they be prorated, other than the first annual supervisory fee as established in regulation 4.

Revocation of the Investment Services Act (Licence and Other Fees) Regulations. L.N. 359 of 2008.

8. The Investment Services Act (Licence and Other Fees) Regulations are hereby revoked.

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SCHEDULE

(Regulations 3, 4 and 5)

Fees

First Column	Second Column	Third Column	
	Application/ Notification Fee	Supervisory Fee	
	€		€
(a) Investment Services Licences:			
Category 1a	2,500	For revenue up to €50,000	2,000
		Further tranches of €50,000 up to a maximum of €1,000,000	350 per tranche or part thereof
Category 1b	3,000	For revenue up to €50,000	2,750
		Further tranches of €50,000 up to a maximum of €1,000,000	350 per tranche or part thereof
Category 2	5,000	For revenue up to €250,000	4,500
		Further tranches of €250,000 up to a maximum of €5,000,000	400 per tranche or part thereof
Category 3	7,000	For revenue up to €250,000	6,000
		Further tranches of €250,000 up to a maximum of €50,000,000	400 per tranche or part thereof
Category 4a	17,000		15,000
Category 4b	7,500		5,000
(b) Collective Investment Schemes which fall within the scope of article 4 of the Act; and which are authorized as UCITS Schemes and non-UCITS Retail Schemes:	2,500		3,000
Scheme sub-funds (per sub-fund)	450		500
			Up to fifteen sub-funds (per sub-fund)
			No annual supervisory fee will be payable from the 16th Scheme sub-fund upwards

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(c) Collective Investment Schemes which qualify as Professional Investor Funds and Alternative Investment Funds in terms of Investment Services Rules issued for this purpose by the competent authority:	2,000	2,000
Scheme sub-funds (per sub-fund)	1,000	600
Recognition Fees		
(d) Persons providing administrative services in terms of article 9A of the Act	3,000	1,500
(e) Private Schemes recognised in terms of the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations	2,000	750
Notification Fees		
(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 State 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 customers' 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 9 of the Investment Services Act (UCITS Management Company Passport) Regulations	1,250	4,000
(h) European Alternative Investment Fund Managers establishing a branch in Malta in terms of regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations	1,250	4,000

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(i) European UCITS marketing their units in Malta in terms of regulation 8 of the Investment Services Act (Marketing of UCITS) Regulations:		
(i) UCITS Scheme	2,500	3,000
(ii) Per Scheme sub-funds (per sub-fund)	450	500 Up to 15 Scheme sub-funds (per sub-fund). *No annual supervisory fee will be payable from the 16th Scheme sub-fund upwards*
(j) European Alternative Investment Funds having their units marketed in Malta in terms of regulation 5 of Investment services Act (Marketing of Alternative Investment Funds) Regulations:		
(i) European AIF	2,500	3,000
(ii) Per Scheme sub-funds (per sub-fund)	450	500 Up to 15 Scheme sub-funds (per sub-fund). *No annual supervision fee will be payable from the 16th Scheme sub-fund upwards*
(k) Marketing of units or shares of an AIF (whether established in an EU/EEA Member State or in a third country) by an Alternative Investment Fund Manager (whether established in an EU/EEA Member State or in a third country) pursuant to regulations 7 and 22 of the Investment Services Act (Alternative Investment Fund Managers) (Third Country) Regulations		
(i) AIF	2,500	3,000
(ii) Per AIF sub-funds (per sub-fund)	450	500
Registration Fees		
(l) 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	300	300
(ii) where the tied agent is not an individual	350	350 and 250 per individual employed by such tied agent and who is directly involved in the provision of tied agent activities.

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