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*Taqsima B*

**L.N. 106 of 2014**

# INVESTMENT SERVICES ACT (CAP. 370)

## Investment Services Act (European Social Entrepreneurship Funds) Regulations, 2014

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 and scope.

**1.** (1) The title of these regulations is the Investment Services Act (European Social Entrepreneurship Funds) Regulations, 2014.

(2) The purpose of these regulations is to implement the relevant provisions of the EU Regulation, as hereinafter defined, on European Social Entrepreneurship Funds, and these regulations shall be interpreted and applied accordingly.

Interpretation.

**2.** In these regulations, unless the context otherwise requires -

"the Act" means the Investment Services Act; Cap. 370.

"AIF" means an alternative investment fund which is a collective investment scheme, including the 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 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);

"ESMA" means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010;

"EU Regulation" means Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds, as amended from time to time and as applicable to the managers of qualifying social entrepreneurship funds that wish to use the designation "EuSEF" in relation to the marketing of qualifying social entrepreneurship funds

in the European Union;

"European manager of qualifying social entrepreneurship funds" means a manager of qualifying social entrepreneurship funds, which manager is established in an EU Member State or EEA State other than Malta and is subject to registration with the regulatory authority of its home Member State in accordance with the EU Regulation;

"Financial Services Tribunal" means the tribunal established in terms of article 21 of the Malta Financial Services Authority Act; Cap. 330.

"home Member State" means the EU Member State or EEA State where the manager of a qualifying social entrepreneurship fund is established and is subject to registration with its regulatory authority;

"host Member State" means the EU Member State or EEA State, other than Malta, where the manager of a qualifying social entrepreneurship fund markets qualifying social entrepreneurship funds in accordance with the EU Regulation;

"host regulatory authority" means the national authority which a host Member State may designate, by law or regulation, to undertake the registration of managers of qualifying social entrepreneurship funds in terms of the EU Regulation;

"Maltese manager of qualifying social entrepreneurship funds" means a manager of qualifying social entrepreneurship funds, which manager is established in Malta and is licensed with the competent authority in accordance with the EU Regulation and in terms of the Act; and

"qualifying social entrepreneurship fund" means a collective investment scheme licensed as an AIF that:

(a) intends to invest at least 70% of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents, within a time frame laid down in its rules or instruments of incorporation;

(b) does not use more than 30% of its aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents; and

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(c) is established within the territory of a EU Member State or EEA State, including Malta.

(2) Words and expressions used in the Act shall, in these regulations, have the same meaning as is assigned to them in the Act.

(3) In the event that any of these regulations conflict with the provisions of the EU Regulation, the latter shall prevail.

Competent authority. Cap. 330.

**3.** The Malta Financial Services Authority, established by the Malta Financial Services Authority Act, shall be the designated competent authority in Malta for the purposes of implementing the relevant provisions of the EU Regulation, and any reference in these regulations to the competent authority shall be read and construed accordingly.

Applicability of the EU Regulation to the competent authority.

**4.** (1) The competent authority shall exercise all the functions, obligations and powers and shall satisfy all the requirements imposed on competent authorities by the EU Regulation.

(2) Without prejudice to sub-regulation (1), the competent authority may, for the better implementation of the EU Regulation, exercise any of the powers assigned to it under the Act in relation to Maltese managers of qualifying social entrepreneurship funds and European managers of qualifying social entrepreneurship funds marketing their funds in Malta.

Investment Services Rules.

**5.** For the better carrying out of the provisions of the EU Regulation and of these regulations, the competent authority may, from time to time, issue and publish Investment Services Rules which shall be binding on all Maltese managers of qualifying social entrepreneurship funds. Such rules may lay down additional requirements and conditions in relation to such managers and any other matters as the competent authority may deem appropriate including:

(a) the operation of the EU Regulation or of these regulations;

(b) any matter relating to the functions, obligations and powers of the competent authority under the EU Regulation; and

(c) any other matter arising in connection with the EU Regulation or these regulations.

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Powers of the competent authority.

**6.** The competent authority shall supervise compliance with the requirements prescribed in the EU Regulation by Maltese managers of qualifying social entrepreneurship funds and by European managers of qualifying social entrepreneurship funds marketing their funds in Malta.

Breaches by Maltese managers of qualifying social entrepreneurship funds.

**7.** (1) In the case of a Maltese manager of qualifying social entrepreneurship funds marketed in a host Member State, where there are clear and demonstrable grounds that lead the host regulatory authority to believe that the Maltese manager is in breach of the EU Regulation in the host Member State, and upon receipt of the relevant notification, the competent authority shall take appropriate measures.

(2) Where, despite the measures taken by the competent authority, or because the competent authority has failed to take measures within a reasonable time, the Maltese manager persists in acting in a manner that is clearly in breach of the EU Regulation, the competent authority shall receive notification by the host regulatory authority of any measures proposed to be taken in order to protect the investors of the relevant qualifying social entrepreneurship fund, including the possibility of preventing the Maltese manager from carrying out any further marketing of its qualifying social entrepreneurship funds in the host Member State.

Administrative penalties.

**8.** (1) Where the Maltese manager of a qualifying social entrepreneurship fund contravenes or fails to comply with any provisions of the EU Regulation, these regulations and any Investment Services Rules issued thereunder, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such manager an administrative penalty not exceeding one hundred and fifty thousand euro (€150,000).

(2) The competent authority shall notify the European Commission and ESMA of the provisions on administrative penalties and measures applicable to breaches of the provisions of the EU Regulation, the Act, these regulations and any Investment Services Rules issued thereunder by 16 May 2015. The competent authority shall also notify the European Commission and ESMA of any subsequent amendment thereto.

Right of appeal.

**9.** A right of appeal to the Financial Services Tribunal shall lie from a decision of the competent authority:

(a) to impose a penalty in terms of regulation 8; or

(b) made in the exercise of its functions under Chapter III of the EU Regulation.

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Breaches by European managers of qualifying social entrepreneurship funds.

**10.** (1) Where there are clear and demonstrable grounds that lead the competent authority to believe that a European manager of qualifying social entrepreneurship funds is in breach of the EU Regulation in Malta, it shall promptly inform the regulatory authority of the home Member State of the European manager. The regulatory authority of the home Member State shall take the necessary measures.

(2) Where, despite the measures taken by the regulatory authority of the home Member State, or because the regulatory authority has failed to take measures within a reasonable time, the European manager of qualifying social entrepreneurship funds persists in acting in a manner that is clearly in breach of the EU Regulation, the competent authority may, after informing the regulatory authority of the home Member State, take all the appropriate measures in order to protect the investors of the relevant qualifying social entrepreneurship funds, including the possibility of preventing the European manager from carrying out any further marketing of its qualifying social entrepreneurship funds in Malta.

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