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**L.N. 13 of 2015**

# INVESTMENT SERVICES ACT (CAP. 370)

# FINANCIAL MARKETS ACT (CAP. 345)

# RETIREMENT PENSIONS ACT (CAP. 514)

## Over-reliance on Credit Rating Regulations, 2015

IN exercise of the powers conferred by article 12(1)(k) of the Investment Services Act, article 49 of the Financial Markets Act and article 37(1)(l) of the Retirement Pensions Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

Citation, scope and commencement.

**1.** (1) The title of these regulations is the Over-Reliance on Credit Rating Regulations, 2015.

(2) The purpose of these regulations is to implement Articles 1, 2(2) and 3(2) of Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings.

(3) These regulations shall come into force on 1 January 2015.

Interpretation.

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

"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 managing one or more AIFs;

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"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

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"credit rating" shall have the same meaning as that assigned to it in paragraph (a) of Article 3(1) of the EU Regulation;

"credit rating agencies" shall have the same meaning as that assigned to it in paragraph (b) of Article 3(1) of the EU Regulation;

"EU Regulation" means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;

"Maltese management company" means a management company licensed by the competent authority with its head office and registered office situated in Malta and the regular business of which is the management of UCITS;

"Maltese UCITS" means -

(a) an investment company, a partnership *en commandite* or a limited partnership with its registered office and head office situated in Malta and licensed in terms of the Investment Services Act;

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(b) where the UCITS is constituted as a common fund, a UCITS domiciled in Malta in terms of the Investment Services Act (Contractual Funds) Regulations, and licensed in terms of the Investment Services Act;

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(c) where the UCITS is established as a unit trust, a unit trust whose proper law is the law of Malta;

"occupational retirement scheme" means an occupational scheme as defined in article 2 of the Retirement Pensions Act and licensed by the competent authority in terms of the said Act;

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"sole and mechanistic reliance on credit ratings" occurs when an action or omission is the consequence of any type of rule based on credit ratings without any discretion;

"UCITS" means undertakings for collective investment in transferable securities in terms of regulation 3(2) and (3) of the Investment Services Act (Marketing of UCITS) Regulations. For the purposes of these regulations, a UCITS shall also include subfunds thereof.

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**3.** Taking into account the nature, scale and complexity of the activities of UCITS, AIFs and occupational retirement schemes, the competent authority shall: Over-reliance on credit ratings.

(a) monitor the adequacy of the credit assessment processes of the Maltese management company or the Maltese UCITS, AIFMs and occupational retirement schemes;

(b) assess the use of references to credit ratings issued by credit rating agencies in the investment policies of UCITS, AIFs and occupational retirement schemes; and

(c) where appropriate, encourage mitigation of the impact of such references to credit ratings, with a view to reducing sole and mechanistic reliance on credit ratings.

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