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Taqsima B

L.N. 300 of 2015

INVESTMENT SERVICES ACT (CAP. 370)

Investment Firms (Reorganisation and Winding-up) Regulations, 2015

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 as the competent authority for the purposes of the Act, has made the following regulations:-

Citation.

1. The title of these regulations is the Investment Firms (Reorganisation and Winding-up) Regulations, 2015.

Purpose.

2. (1) The purpose of these regulations is to implement the provisions of Directive 2001/24/EC of the European Parliament and of the Council of 4th April, 2001 on the reorganisation and winding-up of investment firms, as rendered applicable to investment firms by Article 117 of Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014, establishing a framework for the recovery and resolution of credit institutions and investment firms, and shall be interpreted and applied accordingly.

(2) In the event that there is a conflict between any of these regulations and the provisions of the Directives mentioned in sub-regulation (1), the provisions of the Directives shall prevail.

Scope.

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3. (1) These regulations apply to Maltese investment firms holding an investment services licence issued by the competent authority under the Investment Services Act, which are subject to the requirements of the CRD and the CRR and to their branches located in other Member States or EEA States; and Part IV of these regulations applies to branches present in Malta of investment firms authorized in another Member State or EEA State which are subject to the requirements of the said CRD and CRR. These regulations shall not apply to those branches of investment firms that are situated in a Member State or an EEA State in which they have their head offices.

(2) The provisions of these regulations shall also apply to the financial institutions, firms and parent undertakings falling within the scope of Directive 2014/59/EU in the event of application of the resolution tools and exercise of the resolution powers provided for in Directive 2014/59/EU of the European Parliament and of the Council.

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(3) The provisions of these regulations relating specifically to the branches of an investment firm not having a head office within a Member State or an EEA State apply only where such investment firm has branches in at least two States being either a Member State or an EEA State.

(4) These regulations shall only apply to reorganisation measures or winding-up proceedings adopted immediately after the date of coming into force of these regulations.

PRELIMINARY

Interpretation.

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

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"the Act" means the Investment Services Act;

"administrative or judicial authorities" mean such administrative or judicial authorities of Malta that are competent for the purposes of reorganisation measures or winding-up proceedings;

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"administrator" means a special controller appointed under the Companies Act; or a controller appointed under the Controlled Companies (Procedure for Liquidation) Act; or a competent person appointed under article 15A(1)(c) of the Act; or any other person or body appointed by the competent authority or the foreign judicial or administrative authority for the purpose of administering reorganisational measures;

"branch" means a place of business which forms a legally dependent part of an investment firm and which carries out directly all or some of the transactions inherent in the business of investment firms, as defined in point (17) of Article 4(1) of the CRR;

"the BRRD" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

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

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or, as the case may be, the Resolution Committee established by the Malta Financial Services Authority Act with respect to reorganization measures taken pursuant to the BRRD and to the said Act;

"the Court" means the Civil Court in its contentious jurisdiction in its role as the judicial authority competent for the purposes of reorganisation measures or winding-up proceedings in terms of Parts V and VI of the Companies Act; Cap. 386.

"the CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"the CRR" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;

"European investment firm" means an investment firm having its head office in a Member State or an EEA State, other than Malta;

"financial institution" shall have the same meaning as that assigned to it in point (26) of Article 4(1) of the CRR;

"foreign authority" means the body or bodies empowered to supervise investment firms by any Member State or EEA State other than Malta;

"head office" means the office that serves as the administrative centre of an investment firm responsible for the activities of overall management of the investment firm including its branches;

"home Member State" means the Member State or EEA State in which an investment firm has been granted authorisation, as defined in point (43) of Article 4(1) of the CRR;

"host Member State" means the Member State or EEA State in

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which an investment firm has a branch or in which it provides services, as defined in point (44) of Article 4(1) of the CRR;

"instrument" means any instrument, contract or right falling within the Second Schedule to the Act and whether or not issued in Malta;

"investment firm" means a person as defined in point (1) of Article 4(1) of Directive 2004/39/EC, which is subject to the requirements imposed by that Directive, the CRD and the CRR, excluding the following:

(a) credit institutions;

(b) local firms;

(c) firms which are not authorised to provide the ancillary service referred to in point (1) of Section B of Annex I to Directive 2004/39/EC, which provide only one or more of the investment services and activities listed in points 1, 2, 4 and 5 of Section A of Annex I to that Directive, and which are not permitted to hold money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients;

"known creditors" means creditors where the administrator or liquidator is aware of, or should reasonably be aware of:

(a) the creditor's identity;

(b) the creditor's claim or potential claim, and

(c) a recent address where the creditor is likely to receive a communication;

"liquidator" means -

(a) in Malta, an individual liquidator or liquidation committee appointed under the provisions of the Companies Act to administer the winding-up of a Maltese investment firm or its branches and includes the official receiver as defined in the Companies Act when acting in the capacity of liquidator and the controller as defined in the Controlled Companies (Procedure for Liquidation) Act when acting in the capacity of liquidator; and

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(b) in another Member State or EEA State, any person or body duly appointed in accordance with the legislation and

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procedures of that State, for the purposes of administering winding-up proceedings of a European investment firm or its branches;

"Maltese investment firm" means an investment firm whose home Member State is Malta;

"Member State" means a member of the European Union;

"parent undertaking" shall have the same meaning as that assigned to it in point (15)(a) of Article 4(1) of the CRR;

"the Registrar" means the person appointed to act as the Registrar of Companies by the Minister responsible for the registration of companies and other commercial partnerships pursuant to article 400 of the Companies Act; Cap. 386.

"regulated market" means a regulated market as defined in article 2 (1) of the Financial Markets Act; Cap. 345.

"reorganisation measures" means measures which are intended to preserve or restore the financial situation of an investment firm and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; those measures include the application of the resolution tools and the exercise of resolution powers provided for in the Recovery and Resolution Regulations, 2015; L.N. xxxxx of 2015.

"winding-up proceedings" means collective proceedings opened and monitored by the administrative or judicial authorities of Malta with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure.

(2) Words and expressions which are also used in the Act have the same meaning as in the Act.

PART I

REORGANISATION MEASURES

Adoption of reorganisation measures in Malta. Cap. 386. Cap. 370.

5. (1) The Court shall, upon receipt of an application made in terms of the Companies Act, and the Act, decide on the implementation of reorganisation measures with respect to a Maltese investment firm including its branches established in host States.

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(2) Reorganisation measures adopted by the Court in respect of a Maltese investment firm including its branches in any other host State shall, unless expressly provided otherwise in these regulations, be applied in terms of the Companies Act and the Act as appropriate.

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(3) Upon reorganisation measures taken pursuant to these regulations becoming effective in Malta they shall be immediately fully effective in any other Member State or EEA State without any further formalities, including formalities as against third parties in any Member State or EEA State, even if the legislation of such host State applicable to such third parties, does not provide for such reorganisation measures, or alternatively makes their implementation subject to conditions which are not fulfilled.

(4) Nothing in these regulations shall prejudice the powers of the competent authority in relation to reorganisation measures with respect to a Maltese investment firm, including its branches established in host States where provided for in article 15A of the Act.

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Information for the competent authority and the foreign authority of the host State.

6. (1) The Court shall, upon receipt of an application for any reorganisation measure, inform the competent authority regarding this request in order to obtain its views on the adoption of such measure and the practical effects which it may have:

Provided that where the reorganisation measure involves a company recovery order in terms of the Companies Act, the provisions of article 329B(3)(d) of the Companies Act shall apply.

Cap. 386.

(2) Where the court makes a decision, order or appointment of any of the following kinds -

(a) any compromise or arrangement in terms of article 327 of the Companies Act; or

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(b) a company recovery order and appoints a special controller in accordance with article 329B of the Companies Act,

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it must immediately inform the competent authority, or cause the competent authority to be informed without delay, of the decision, order or appointment which has been made.

(3) Where the competent authority is informed of a decision, order or appointment in accordance with this regulation it shall, in turn without delay and by any means available, inform the foreign authority, if any, of the decision to adopt reorganisation measures including the practical effects which such a measure may have, if

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possible before it is adopted or otherwise immediately thereafter:

Provided that this sub-regulation shall not apply where regulation 83 of the Recovery and Resolution Regulations, 2015 applies, and accordingly the foreign authority shall be informed by the Resolution Committee in terms of such Regulations. L.N. xxxxx of 2015.

(4) The duties provided for in this regulation are supplemental to and without prejudice to the duties of the Registrar of Courts in article 329B(13)(a) to (c) of the Companies Act. Cap. 386.

Information for the competent authorities and the foreign authority of the home State.

7. (1) Where, upon receipt of an application, the Court deems it necessary to implement one or more reorganisation measures on a branch of a Maltese investment firm situated in another Member State or an EEA State, the Court shall inform the competent authority regarding this request in order to obtain its views on the adoption of such measure and the practical effects which it may have:

Provided that where the reorganisation measure involves a company recovery order in terms of the Companies Act, the provisions of article 329B(3)(d) of the Companies Act shall apply. Cap. 386.

(2) Where the Court makes a decision, order or appointment of any of the following kinds -

(a) any compromise or arrangement in terms of article 327 of the Companies Act; or Cap. 386.

(b) a company recovery order and appoints a special controller in accordance with article 329B of the Companies Act, Cap. 386.

it must immediately inform the competent authority, or cause the competent authority to be informed without delay, of the decision, order or appointment which has been made.

(3) Where the competent authority is informed of a decision, order or appointment in accordance with this regulation it shall, in turn without delay and by any means available, inform the foreign authority of the decision to adopt reorganisation measures including the possible practical effects of such measures.

(4) The duties provided for in sub-regulations (1) and (2) are supplemental to and without prejudice to the duties of the Registrar of Courts in article 329B(13)(a) to (c) of the Companies Act. Cap. 386.

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Publication of Court decision on reorganisation measures in interests of third parties' right of redress.

8. (1) Where a decision on reorganisation measures adopted by the Court is subject to a right of redress and its implementation is likely to affect the rights of third parties, upon the Court's taking such decision, the administrator or any other person appointed by the Court in relation to such measure, shall at the earliest opportunity publish an extract from the Court's decision in -

(a) the Malta Government Gazette;

(b) any two Maltese newspapers, provided that one extract is published in the English language and the other is published in the Maltese language;

(c) the Official Journal of the European Union, provided that third party rights in any host State are capable of being affected by the reorganisation measures; and

(d) two national newspapers in each host State, provided that third party rights in the host State are capable of being affected by the reorganisation measures.

(2) The publication made pursuant to sub-regulation (1) shall at least specify -

(a) the purpose and legal basis of the Court's decision taken;

(b) the time limits for lodging requests for redress to the Court;

(c) a clearly understandable indication of the date of expiry of the time limit for lodging requests for redress to the Court; and

(d) the details of the Court and that it is competent to hear the grievances of persons stipulated under the Companies Act or any other applicable law.

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(3) The information set out in sub-regulation (1) shall be published in English or in both English and Maltese as well as, where applicable, in an official language of the host State in which the information is published.

(4) The reorganisation measures apply regardless of the provisions concerning publication set out in sub-regulations (1) and (2) and are fully effective against creditors, unless otherwise provided by law or by the administrative or judicial authorities.

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(5) The obligation of publication provided for in this regulation is without prejudice to the duties of the special controller as stipulated in article 329B(7)(c) of the Companies Act. Cap. 386.

Information to known creditors to enable them to lodge claim or submit observations. Cap. 386.

9. (1) Where the Companies Act provides that creditors are to be informed of their rights to lodge a claim or to submit observations at a creditors meeting, the administrator shall without delay inform in writing all known creditors, including creditors who have their normal place of residence, domicile or head office in another Member State or EEA State, about any Court decision, order or appointment in terms of articles 327 or 329B of the Companies Act regarding the commencement of reorganisation procedures as well as details regarding the information requested in this regulation:

Provided that this sub-regulation shall not apply where regulation 83 of the Recovery and Resolution Regulations, 2015 applies and accordingly the foreign authority shall be informed by the Resolution Committee in terms of such Regulations. L.N. xxx of 2015.

(2) The information given to creditors shall include at least the following:

(a) that reorganisation measures have commenced in relation to a Maltese investment firm;

(b) the applicable time limits for the reorganisation measures, if any;

(c) the penalties laid down in regards to any time limits, if any;

(d) the body or authority empowered to accept claims or observations in relation to the measures; and

(e) as to whether creditors whose claims are preferential or secured in rem need to lodge their claims.

(3) In the case of company recovery proceedings the information provided for above shall be supplemental to and without prejudice to the duties of the special controller in article 329B(7) of the Companies Act. Where the special controller is obliged to advise creditors as to the date and venue of any creditors' meeting to which they may be entitled to attend, sufficient notice shall be given in terms of article 329B(7)(b) of the Companies Act. Cap. 386.

(4) The information set out in sub-regulation (2) shall be issued in English or in both English and Maltese.

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(5) A form shall also be used bearing, in all the official languages of the European Union, the heading "Invitation to lodge a claim. Time limits to be observed.".

(6) (a) Creditors who have their normal place of residence, domicile or head office in another Member State or EEA State shall have the same right to lodge claims or submit observations in terms of Part VI of the Companies Act as creditors with their normal place of residence, domicile or head office in the home State in accordance with the procedures laid down in regulation 19.

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(b) A creditor shall send copies of supporting documents, if any, and shall indicate -

(a) the nature of the claim;

(b) the date on which it arose;

(c) the amount of the claim;

(d) whether the creditor alleges any preference, security *in rem* or reservation of title in respect of the claim; and

(e) the assets that are covered by the creditor's security.

Branches of third country investment firms - information foreign authority in other host States.

10. (1) Where, upon receipt of an application to adopt a decision on a reorganisation measure in relation to a branch present in Malta of an investment firm having its head office outside a Member State or EEA State, the Court shall inform the competent authority regarding this request in order to obtain its views on the adoption of such measure and the practical effects which it may have:

Provided that where the reorganisation measure involves a company recovery order in terms of the Companies Act, the provisions of article 329B(3)(d) of the Companies Act shall apply.

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(2) Where the Court makes a decision, order or appointment of any of the following kinds -

(a) any compromise or arrangement in terms of article 327 of the Companies Act; or

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(b) a company recovery order and appoints a special controller in accordance with article 329B of the Companies Act,

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it must immediately inform the competent authority, or cause the competent authority to be informed without delay, of the decision, order or appointment which has been made.

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(3) Where the competent authority is informed of a decision, order or appointment in accordance with this regulation, it shall, in turn without delay and by any means available, communicate the information outlined above to the foreign authorities of any other host State in which the investment firm has set up branches which are included on the list referred to in Article 5 of Directive 2014/65/EU.

(4) The administrative or judicial authorities referred to in this regulation shall endeavour to coordinate their actions.

(5) The duties provided for in this regulation are supplemental to and without prejudice to the duties of the Registrar of Courts as stipulated in article 329B(13)(a) to (c) of the Companies Act. Cap. 386.

PART II

WINDING-UP PROCEEDINGS

Adoption of winding-up proceedings in Malta. Cap. 386. Cap. 370.

11. (1) The Court shall, upon receipt of an application in terms of the Companies Act and the Act, decide on opening of winding-up proceedings in respect of a Maltese investment firm, including its branches established in any Member State or EEA State.

(2) The Court's decision concerning the dissolution and winding-up of a Maltese investment firm including its branches in any host State shall be recognised within the territory of any other Member State or EEA State without any further formalities and shall be effective there as soon as the Court's decision is effective in Malta.

(3) (a) The Court shall, upon receipt of an application for any winding-up proceedings, inform the competent authority regarding this request in order to obtain its views on the adoption of such measures and the practical effects which they may have.

(b) Where the court makes a decision, order or appointment of any of the following kinds -

(i) a winding-up order under article 219 of the Companies Act; or Cap. 386.

(ii) the appointment of a provisional administrator under article 228 of the Companies Act, Cap. 386.

it must immediately inform the competent authority, or cause the competent authority to be informed without delay of the decision, order or appointment which has been made.

(4) Where the competent authority is informed of a decision, order or appointment in accordance with this regulation, the

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competent authority shall in turn, without delay and by any means available, inform the foreign authority in all Member States or EEA States that the decision, order or appointment has been made and the possible effects that of a decision, order or appointment of that kind may have.

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(5) Where an arrangement has been concluded pursuant to article 291 of the Companies Act, any person appointed by the Maltese investment firm or creditors shall inform the competent authority of the arrangement which has been approved.

Cap. 386.

(6) Where a liquidator is appointed as mentioned in article 230 of the Companies Act the liquidator must inform the competent authority of his appointment.

Cap. 386.

(7) In the case of a member's voluntary winding-up, the liquidator shall in terms of article 272 of the Companies Act inform the competent authority if he is of the opinion that the Maltese investment firm will not be able to pay its debts within the period stated in the declaration of solvency.

Cap. 386.

(8) The duties provided for in this regulation are supplemental to and without prejudice to the duties of the Registrar of Courts in articles 224 and 264 of the Companies Act.

(9) Nothing in these regulations shall prejudice the duties and powers of the competent authority in relation to winding-up proceedings with respect to a Maltese investment firm including its branches established in host States, where provided for in the Act.

Applicable law in the winding-up of a Maltese investment firm.

12. (1) Subject to the exceptions expressly provided for in these regulations, the decision to dissolve and wind up a Maltese investment firm as well as its method of winding-up and dissolution, shall be made in accordance with the general provisions of Part V of the Companies Act.

Cap. 386.

(2) In relation to a Maltese investment firm, the law of Malta shall be the applicable law and shall determine in particular:

(a) the assets subject to administration and the treatment of assets acquired by the investment firm after the opening of winding-up proceedings;

(b) the respective powers of the Maltese investment firm and the liquidator;

(c) the conditions under which set-off may be invoked;

(d) the effects of the winding-up proceedings on current

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contracts to which the Maltese investment firm is party;

(e) the effects of the winding-up proceedings brought by individual creditors, with the exception of lawsuits pending as provided for in regulation 34;

(f) the claims which are to be lodged against the Maltese investment firm and the treatment of claims arising after the opening of winding-up proceedings;

(g) the rules governing the lodging, verification and admission of claims;

(h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, the rights of creditors who have obtained partial satisfaction after the opening of the winding-up order by virtue of a right *in rem* or through set-off;

(i) the conditions for and the effects of the closure of winding-up proceedings, in particular by composition;

(j) the rights of creditors after the closure of the winding up proceedings;

(k) who is to bear the cost and expenses incurred in the winding-up proceedings; and

(l) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Consultation with competent authority before voluntary winding-up.

13. (1) Before any voluntary winding-up decision is taken by the board of directors or other governing bodies of an investment firm these said governing bodies shall consult the competent authority in the most appropriate form.

(2) The commencement of the voluntary winding-up of an investment firm shall not preclude the adoption of reorganisation measures or the opening of winding-up proceedings by the Court.

Withdrawal of an investment firm's authorisation. Cap. 386.

14. (1) Where the Court decides upon the opening of winding-up proceedings either in the absence of reorganisation measures or in terms of article 329B(12) of the Companies Act following the failure of reorganisation measures, the authorisation of the investment firm shall be withdrawn by the competent authority in terms of the provisions of article 7 of the Act.

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(2) The withdrawal of authorisation provided for in this

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regulation shall not prevent the person or persons entrusted with the winding-up from carrying on some of the investment firm's activities insofar as that is necessary or appropriate for the purposes of winding-up:

Provided that, such activities shall be carried under the supervision of the competent authority.

Publication of decision to open winding-up procedures by liquidator or Court.

15. (1) The liquidator or any other person appointed for this purpose by the Court shall at the earliest opportunity make their decision to open winding-up proceedings public by publishing an extract from the decision ordering the winding-up proceedings in:

(a) the Malta Government Gazette;

(b) any two Maltese newspapers, provided that one extract is published in the English language and the other is published in the Maltese language;

(c) the Official Journal of the European Union, provided that third party rights in any host State are capable of being affected by the winding-up proceedings; and

(d) two national newspapers in each host State, provided that third party rights in the host State are capable of being affected by the winding-up proceedings.

(2) The publication made pursuant to sub-regulation (1)(a) to (d) shall at least specify:

(a) that winding-up proceedings have commenced in relation to a Maltese investment firm;

(b) the applicable time limits for the winding-up proceedings, if any;

(c) the penalties laid down in regards to any time limits, if any;

(d) the full address of the body or authority empowered to accept claims or observations relating to claims and the other measures laid down; and

(e) as to whether creditors whose claims are preferential or secured in rem need lodge their claims.

(3) The information set out in sub-regulation (1) shall be published in English or in both English and Maltese.

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(4) A form shall also be used bearing, in all the official languages of the European Union, the heading "Invitation to lodge a claim. Time limits to be observed.".

(5) The duties provided for in this regulation are without prejudice to the duties of the Registrar of Courts in article 401 of the Companies Act. Cap. 386.

Information to known creditors.

16. (1) When winding-up proceedings have commenced, the liquidator shall without delay individually inform all known creditors wheresoever resident or domiciled, in writing:

(a) that winding-up proceedings have commenced in relation to a Maltese investment firm;

(b) of the applicable time limits for the winding-up proceedings, if any;

(c) of the penalties laid down in regards to any time limits, if any;

(d) of the body or authority empowered to accept claims or observations relating to claims and the other measures laid down; and

(e) as to whether creditors whose claims are preferential or secured *in rem* need lodge their claims.

(2) Where the liquidator shall in terms of the Companies Act advise creditors as to *inter alia* the date and venue of any creditors meeting to which the addressee may be entitled to attend such notice in sub-regulation (1) shall be given without prejudice the provisions of article 296 of the Companies Act. Cap. 386.

(3) The information set out in sub-regulation (1) shall be issued in English or in both English and Maltese.

(4) A form shall also be used bearing, in all the official languages of the European Union, the heading "Invitation to lodge a claim. Time limits to be observed.".

Reports to creditors.

17. (1) A liquidator shall send a written report setting out the position in particular as regards the progress of the winding-up once every twelve months, beginning from the date when the liquidator’s appointment has effect, to every known creditor wheresoever resident or domiciled.

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(2) Where the official receiver is acting as a liquidator the first such report to creditors is to contain the information required in terms of article 227 of the Companies Act.

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(3) The requirement in sub-regulation (1) does not apply where a liquidator is required by order of the Court to send reports to creditors at intervals which are more frequent than those required by this regulation.

(4) The duties provided for in this regulation are without prejudice to article 234 of the Companies Act.

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Honouring of obligations.

18. (1) Where an obligation has been honoured for the benefit of an investment firm which is not a legal person and which is the subject of winding-up proceedings opened in another Member State or EEA State when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings.

(2) Where such an obligation is honoured before the publication provided for in regulation 15 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of winding-up proceedings.

(3) Where the obligation is honoured after the publication provided for in regulation 15 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

Right of creditors, etc., to lodge claims.

19. (1) Any creditor, including the public authorities of a Member State or a EEA State, being domiciled in or having a normal place of residence or head-office in a Member State or EEA State other than Malta, shall have all the rights provided to creditors in Part V of the Companies Act to lodge claims or to submit written observations relating to claims in relation to a Maltese investment firm being wound up.

Cap. 386.

(2) The claims of any creditor who is domiciled in or having a normal place of residence or head office in any Member State or EEA State other than Malta, shall be treated in the same way as any creditor resident or domiciled or having a head office in Malta and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors having their domiciles, normal places of residence, or head offices in Malta.

(3) When lodging a claim a creditor shall send copies of

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supporting documents, if any, and shall indicate:

(a) the nature of the claim;

(b) the date on which it arose and its amount;

(c) whether the creditor alleges preference;

(d) security *in rem* or reservation of title in respect of the claim; and

(e) what assets are covered by the creditor's security.

(4) Any creditor who is domiciled or having a normal place of residence or head office in a Member State or EEA State other than Malta, may lodge claims or submit observations relating to such claim in the official language or one of the official languages of that other Member State or EEA State. In that event, the lodgement of the creditor's claim or the submission of observations on such claim shall bear the heading "Lodgement of claim" or "Submission of observations relating to claims" in English or Maltese. In addition, the creditor may be required to provide a translation into English or Maltese of the lodgement of claim or submission of observations relating to claims or of any of the documentation and, or information required in sub-regulation (3).

(5) The provisions of this regulation are without prejudice to the provisions of article 232 of the Companies Act. Cap. 386.

Investment firms the head offices of which are outside the Community.

20. (1) Where, upon receipt of an application to adopt a decision or order to commence winding-up procedures of a branch present in Malta of an investment firm having its head office situated outside a Member State or EEA State, the Court shall inform the competent authority regarding this request in order to obtain its views on the adoption of such measure and the practical effects which it may have.

(2) Where the Court makes a decision, order or appointment of any of the following kinds -

(a) a winding-up order under article 219 of the Companies Act; or Cap. 386.

(b) the appointment of a provisional administrator under article 228 of the Companies Act, Cap. 386.

it must immediately inform the competent authority, or cause the competent authority to be informed without delay of the decision, order or appointment which has been made.

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(3) Where the competent authority is informed of a decision, order or appointment in accordance with this regulation, the competent authority shall in turn, without delay and by any means available communicate such information to the foreign authorities of any other host State in which the investment firm has set up branches which are included on the list referred to in Article 5 of Directive 2014/65/EU, and shall inform the foreign authority of the decision to open winding-up procedures and the practical effects of such. The competent authority shall also advise the foreign authority of any other host States that the authorisation of the branch has been withdrawn.

PART III

PROVISIONS COMMON TO REORGANISATION AND WINDING-UP PROCEEDINGS

Employment contracts and relationships.

21. The effects of a reorganisation measure or winding-up proceedings of an investment firm on employment contracts and employment relationships are determined in accordance with the laws of the Member State or EEA State to which that contract or relationship is subject.

Contracts in connection with immovable property.

22. The effects of a reorganisation measure or winding-up proceedings of an investment firm on a contract conferring the right to make use of or acquire immovable property situated within the territory of a Member State or EEA State are to be governed in accordance with the law of that Member State or EEA State.

Registrable rights.

23. Rights of an investment firm in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State or EEA State under the authority of which the register is kept.

Third parties rights *in rem*.

24. (1) The adoption of reorganisation measures or the opening of winding-up proceedings of a Maltese investment firm shall not affect the rights *in rem* of creditors or third parties in respect of tangible or intangible, movable or immovable assets including both specific assets and collections of indefinite assets as a whole which change from time to time belonging to the investment firm concerned which are situated within the territory of a Member State or EEA State at the time of the opening of such measures or proceedings.

(2) The rights *in rem* referred to in sub-regulation (1) shall in particular mean -

(a) the right to transfer assets or have them transferred and to obtain satisfaction from the proceeds of or the income

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from those assets, in particular by virtue of a lien, mortgage or hypothec;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand the assets from, and, or to require restitution, by anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) a right in rem to the beneficial use of assets.

(3) A right, recorded in a public register and enforceable against third parties, under which a right *in rem* within the meaning of sub-regulation (1) may be obtained, is also to be treated as a right *in rem* for the purposes of this regulation.

(4) Sub-regulation (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors referred to in regulation 12(2)(l).

Reservation of title agreement.

25. (1) The commencement of reorganisation measures or winding-up proceedings in relation to a Maltese investment firm purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of the commencement of such measures or proceedings the asset is situated within the territory of another Member State or EEA State.

(2) The commencement of reorganisation or winding-up proceedings against a Maltese investment firm selling an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such measure or proceedings the asset sold is situated within the territory of a Member State or EEA State in which such measures or proceedings were commenced.

(3) Sub-regulations (1) and (2) do not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors referred to in regulation 12(2)(l).

Creditor's rights to set off.

26. (1) The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights of creditors to demand the set-off of their claims against the claims of the Maltese investment firm where such a set-off is permitted by the law of the Member State or EEA State which is applicable to the claim of the Maltese investment firm.

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(2) This regulation does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors referred to in regulation 12(2)(l).

Lex rei sitae.

27. The enforcement of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system held or located in a Member State or EEA State shall be governed by the law of the Member State or EEA State where the register, account, or centralised deposit system in which those rights are recorded is held or located.

Netting agreements. Cap. 459. L.N. xxxx of 2015.

28. Pursuant to the provisions of the Set-Off and Netting on Insolvency Act, and without prejudice to regulations 68 and 71 of the Recovery and Resolution Regulations, 2015, netting agreements shall be governed by the law of the contract which governs such agreements.

Repurchase agreements. L.N. xxxx of 2015.

29. Without prejudice to regulations 68 and 71 of the Recovery and Resolution Regulations, 2015 and to regulation 27 of these Regulations, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.

Regulated markets.

30. Without prejudice to regulation 27, transactions carried out in the context of a regulated market are to be governed solely in accordance with the law of the contract which governs such transactions.

Proof of liquidators' appointment.

31. (1) The administrator or liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or her or by any other certificate issued by the administrative or judicial authority of the home State attesting to the due appointment of the administrator or liquidator.

(2) A translation into the official language or one of the official languages of the Member State or EEA State within the territory of which the administrator or liquidator wishes to act may be required. No legalisation or other similar formality shall be required.

(3) Administrators and liquidators shall be entitled to exercise within the territory of any Member State or EEA State all the powers which they are entitled to exercise within the territory of the home State. They may also appoint persons to assist or, where appropriate, represent them in the course of the reorganisation measure or winding-up proceedings, in particular in host States and, specifically in order to help overcome any difficulties encountered by creditors in the host State.

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(4) In exercising their powers, administrators and liquidators shall comply with the law of the Member State or EEA State within the territory of which they wish to take action, in particular with regard to procedures for the realisation of assets and the provision of information to employees. Those powers may not include the use of force or the right to rule on legal proceedings or disputes.

Detrimental acts.

32. (1) Regulation 12 shall not apply as regards the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of these acts provides proof that:

(a) the act detrimental to the creditors as a whole is subject to the law of a Member State or EEA State other than the home State, and

(b) that law does not allow any means of challenging that act in the case in point.

(2) Where a reorganisation measure decided on by a judicial authority provides for rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole performed before adoption of the measure, regulation 5(2) shall not apply in the cases provided for in this regulation.

Protection of third party purchasers.

33. Where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, an investment firm disposes, for consideration, of -

(a) an immovable asset situated within the territory of a Member State or EEA State;

(b) a ship or an aircraft subject to registration in a public register kept under the authority of a Member State or EEA State; or

(c) instruments or rights in such instruments the existence or transfer of which presupposes their being recorded in a register, an account or a centralised deposit system held or located in a Member State or EEA State,

the validity of that act shall be governed by the law of the Member State or EEA State within whose territory the immovable asset is situated or under whose authority the register, account or system is kept, as the case may be.

Pending lawsuits.

34. The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of

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which the Maltese investment firm has been divested shall be governed solely in accordance with the law of the Member State or EEA State in which the lawsuit is pending.

Registration in a public register.

35. (1) In order to secure the rights of interested third parties, an administrator or liquidator may request that a reorganisation measure or the decision to open winding-up proceedings be registered in the registry of companies and any other public register by whatever name kept in Malta or any other Member State or EEA State.

(2) The costs of registration are to be regarded as costs and expenses incurred in the winding-up proceedings or reorganisation measure.

Professional secrecy.

Cap. 370.
Cap. 330.
S.L. 370.15

36. All persons required to receive or divulge information in connection with the information or consultation procedures laid down in these regulations shall be bound by professional secrecy, in accordance with the rules and conditions laid down in the Investment Services Act, the Malta Financial Services Authority Act and the Investment Services Act (Supervisory Review) Regulations, with the exception of any judicial authorities to which existing national provisions apply:

L.N. xxxx of 2015.

Provided that this regulation shall not apply where regulation 84 of the Recovery and Resolution Regulations, 2015 applies, and accordingly the confidentiality provisions of such Regulations shall apply.

PART IV

REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS IN RESPECT OF EUROPEAN INVESTMENT FIRMS EFFECTIVE IN MALTA

Adoption of reorganisation measures and winding-up proceedings of a European investment firm.
Cap. 386.

37. (1) The commencement of a reorganisation measure or winding-up proceedings of a European investment firm has effect in Malta as if it were part of the Companies Act, when such is in relation to:

(a) a branch in Malta of a European investment firm;

(b) any property or other assets in Malta of the European investment firm; or

(c) any debt or liability of such European investment firm.

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(2) Subject to sub-regulation (4), the administrator or liquidator or persons appointed to assist, or where appropriate, represent the administrators and liquidators may exercise in Malta, in relation to a European investment firm which is subject to a reorganisation measure or winding-up proceedings, any function which, pursuant to that measure or order, he is entitled to exercise in relation to a European investment firm.

(3) The appointment of the administrator and liquidator shall be evidenced -

(a) by a certified copy of the order or decision by a judicial or administrative authority competent in the home State for reorganisation or winding-up proceedings by or under which the administrator or liquidator was appointed; or

(b) by any other certificate issued by the judicial or administrative authority which has jurisdiction in relation to a reorganisation measure or winding-up proceedings, and, where necessary accompanied by a certified translation of that order, decision or certificate, as the case may be.

(4) In exercising the functions of the kind mentioned in sub-regulation (2), the administrator or the liquidator -

(a) may not take any action which would constitute an unlawful use of force in Malta;

(b) may not rule on any dispute arising from a matter falling within Parts I, II and III of these regulations; and

(c) notwithstanding the way in which functions may be exercised in the home State of the European investment firm, shall act in accordance with the laws or rules as to procedure which are effective in Malta.

European investment firms with branches in Malta.

38. (1) From the date of coming into force of these regulations, the Court may not, in relation to a Maltese investment firm or any branch of a Maltese investment firm located in another Member State or EEA State -

(a) make a winding-up order pursuant to article 224 of the Companies Act; or Cap. 386.

(b) adopt reorganisation measures or perform any act ancillary to the adoption of such measures in terms of Part VI of the Companies Act. Cap. 386.

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(2) Sub-regulation (1)(a) does not prevent -

(a) the Court from making a winding-up order after the coming into force of these regulations in relation to a Maltese investment firm or any branch of a Maltese investment firm located in another Member State or EEA State if -

(i) a provisional administrator was appointed in relation to the Maltese investment firm or a branch of a Maltese investment firm located in another Member State or EEA State before the coming into force of these regulations, and

(ii) the appointment continues in force until immediately before that winding-up order is made;

(b) the winding-up of a Maltese investment firm or a branch of a Maltese investment firm located in another Member State or EEA State after the coming into force of these regulations pursuant to a winding-up order which was made, and has not been discharged, before that date.

(3) Sub-regulation (1)(b) does not prevent a provisional administrator of a Maltese investment firm or a branch of a Maltese investment firm located in another Member State or EEA State appointed before the coming into force of these regulations from acting in relation to such institution after that date.

(4) Nothing in these regulations shall affect any proceedings commenced in any Court concerning the reorganisation or winding-up of an investment firm where such proceedings were commenced before the coming into force of these regulations.

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