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Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 19,925, 22 ta' Diċembru, 2017
Taqsima B

L.N. 405 of 2017

Investment Services Act (Cap. 370)

Investment Services Act (Provision of Investment Services and Activities by Third- Country Firms) Regulations, 2017

IN EXERCISE of the powers conferred by article 12 of the Investment Services Act, the Minister responsible for the regulation of Financial Services, 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 Investment Services Act (Provision of Investment Services and Activities by Third-Country Firms) Regulations, 2017.

(2) The purpose of these regulations is to implement Article 4(1) paragraphs 3, 10, 11 and 30, and Articles 39 to 43 of MIFID as herein defined, and they shall be interpreted and applied accordingly.

(3) These regulations shall come into force on the 3rd January 2018.

Interpretation.

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

Cap. 370.

"the Act" means the Investment Services Act;

"ancillary services" means any of the services listed in the Third Schedule to the Act;

"branch" means a place of business other than the head office which is a part of an investment firm, which has no legal personality and which provides investment services and, or activities and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State or EEA State by an investment firm with headquarters in another Member State or EEA State shall be regarded as a single branch;

"Directive 97/9/EC" means Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes, as amended from time to time;

"investment firm" means any person, other than persons to whom MiFID does not apply in terms of Article 2 of the said directive, whose regular occupation or business is the provision

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of any one or more core investment services to third parties on a professional basis;

"MiFID" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"MiFIR" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as may be 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;

"overseas regulatory authorities", in relation to third-country firms, means the national authorities of a third country which are empowered by law or regulation to supervise third-country firms;

"professional client" means a client meeting the criteria laid down in Annex II of MiFID;

"retail client" means a client who is not a professional client;

"third country" means a country which is not a Member State or an EEA State;

"third-country firm" means a firm that would have qualified as a credit institution providing investment services or performing investment activities, or as an investment firm, if its head office or registered office were located within the Union rather than in a third country.

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

Licensing of a branch of a third-country firm established in Malta.

3. (1) A third-country firm intending to provide investment services or perform investment activities in or from Malta, with or without any ancillary services to retail clients or to professional clients, within the meaning of Section II of Annex II of MiFID, shall establish a branch in Malta.

(2) The branch of a third-country firm intending to provide

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investment services or perform investment activities in or from Malta in accordance with sub-regulation (1) shall be licensed in terms of article 3 of the Act.

(3) Without prejudice to any provisions of the Act and any regulations and rules made thereunder, the branch of third-country firm shall only obtain a licence from the competent authority if the following conditions are fulfilled:

(a) the provision of services for which the third-country firm requests licensing is subject to authorisation and supervision in the third country where the firm is established and the requesting third-country firm is properly authorised, whereby the overseas regulatory authority pays due regard to any FATF recommendations in the context of anti-money laundering and countering the financing of terrorism;

(b) cooperation arrangements, that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors, are in place between the competent authority and the overseas regulatory authority of the country where the firm is established;

(c) sufficient initial capital is at free disposal of the branch;

(d) one or more persons are appointed to be responsible for the management of the branch and they all comply with the requirements applicable to the management body prescribed in Investment Services Rules and, or Conduct of Business Rules, as applicable, issued by the competent authority in terms of the Act;

(e) the third country where the third-country firm is established has signed an agreement with Malta which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements;

(f) the firm belongs to an investor-compensation scheme authorised or recognised in accordance with Directive 97/9/EC.

Application for an licence and obligation to provide information.

4. An application for a licence shall be submitted by the third-country firm in accordance with article 5 of the Act. Moreover the third-country firm intending to obtain licensing for the provision of any investment services or the performance of investment activities with or without any ancillary services in or from Malta through a branch shall also provide the competent authority with the following:

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(a) the name of the overseas regulatory authority responsible for the supervision of the third- country firm in the third country concerned:

Provided that when more than one overseas regulatory authority is responsible for supervision, the details of the respective areas of competence shall be provided;

(b) all relevant details of the third-country firm (name, legal form, registered office and address, members of the management body, relevant shareholders) and a programme of operations setting out the investment services and, or activities as well as the ancillary services to be provided and the organisational structure of the branch, including a description of any outsourcing to third parties of essential operating functions;

(c) the name of the persons responsible for the management of the branch and the relevant documents to demonstrate compliance with requirements prescribed in the applicable Investment Services Rules and, or Conduct of Business Rulebook as applicable, issued by the competent authority in terms of the Act;

(d) information about the initial capital at free disposal of the branch.

Granting of a licence and non-application of article 6(1)(a)(ii) of the Act.

5. (1) Without prejudice to article 6 of the Act, the competent authority shall only grant a licence to the third-country firm which intends to establish its branch in Malta when it is satisfied that:

(a) the conditions prescribed under regulation 3 of these regulations are fulfilled; and

(b) the branch of the third-country firm will be able to comply with the provisions referred to in regulation 6.

(2) The provisions of article 6(1)(a)(ii) of the Act, shall not apply in the licensing of a branch of a third-country firm.

Obligations of the branch of the third-country firm.

6. The branch of the third-country firm authorised in accordance with sub-regulation (1) above, shall comply with the obligations laid down in Articles 16 to 20, 23, 24, 25 and 27, Article 28(1), and Articles 30, 31 and 32 of MiFID, as transposed in regulations issued under the Act or in Investment Services Rules or in Conduct of Business Rules issued by the competent authority in terms of the Act and in Articles 3 to 26 of the MiFIR and the measures adopted pursuant thereto.

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Supervision by the competent authority.

7. (1) The branch of the third-country firm shall be subject to the supervision of the competent authority.

(2) The competent authority shall not impose any additional requirements on the organisation and operation of the branch in respect of the matters covered by MiFID and any branch of a third-country firm shall not be treated more favourably than European Union firms.

Provision of services at the exclusive initiative of the client.

8. (1) Where a retail client or professional client, established or situated in Malta, initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, the requirement for licensing under regulation 3 shall not apply to the provision of that service or activity by the third-country firm to that person including a relationship specifically relating to the provision of that service or activity.

(2) An initiative by such clients shall not entitle the third-country firm to market otherwise than through the branch, where one is required in accordance with Maltese law, new categories of investment products or investment services to that client.

Power of competent authority to cancel or suspend a licence.

9. Without prejudice to article 7 of the Act, the competent authority may at any time cancel or suspend a licence issued to a third-country firm where such a firm:

(a) does not make use of the licence within 12 months;

(b) expressly renounces the licence or has provided no investment services or performed no investment activity for the preceding six months;

(c) has obtained the licence by making false statements or by any other irregular means;

(d) no longer meets the conditions under which licensing was granted;

(e) has seriously and systematically infringed the provisions adopted pursuant to MiFID governing the operating conditions for investment firms and applicable to third-country firms.

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Administrative Penalties, other administrative measures and appeals.

10. (1) Where a person falling within the scope of these regulations fails to comply with any provisions of such regulations or any rules issued thereunder further implementing such regulations, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty and other administrative measures in accordance with the provisions of the Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations.

L.N. 401.

(2) A right of appeal to the Financial Services Tribunal shall lie from the decisions which the competent authority shall take under these regulations and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — *Printed at the Government Printing Press on recycled paper*

Prezz/*Price*
€0.27