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L.N. 213 of 2018**TRADING LICENCES ACT
(CAP. 441)****Trading Licences (Amendment) Regulations, 2018**

IN EXERCISE of the powers conferred by article 17 of the Trading Licences Act, the Minister for the Economy, Investment and Small Businesses, has made the following regulations:-

Citation. **1.** The title of these regulations is the Trading Licences (Amendment) Regulations, 2018 and these regulations shall be read and construed as one with the Trading Licences Regulations, hereinafter referred to as "the principal regulations".

S.L. 441.07.

Amends regulation 2 of the principal regulations. **2.** In regulation 2 of the principal regulations, there shall be added the following new definitions:

(a) immediately after the definition of the term "alcoholic beverage" thereof there shall be added the following new definitions:

Cap. 204. "the Bank" means the Central Bank of Malta established by article 3 of the Central Bank of Malta Act;

"branch" means premises of a credit reference agency, other than its head office, from which all or some of the business of a credit reference agency is undertaken;

(b) immediately after the definition of the term "bread" thereof there shall be added the following new definition:

"business model" means a step-by-step plan of action on how revenues and profits will be generated by a credit reference agency, as well as the services it plans to offer, including the expenses it will incur;

(c) immediately after the definition of the term "the busker" thereof there shall be added the following new definitions:

"CBM Directive No 15" means the Central Bank of Malta Directive No 15 entitled 'Supervision of Credit Reference Agencies';

"Central Credit Register" means the Register established under article 24 of the Central Bank of Malta Act; Cap. 204.

"company" has the same meaning assigned to it by article 2 of the Companies Act; Cap. 386.

"credit information" means a collection of public and non-public information and other related information, including Central Credit Register data, which when assessed, assembled and evaluated indicates the creditworthiness of a legal or natural person;

"credit reference agency" means any undertaking licenced by the Trade Licensing Unit in terms of regulation 47A, the main business of which is to prepare, assemble and evaluate credit information and related credit and risk management services on legal and natural persons for the purpose of issuing credit scores to be furnished to third parties, provided that a credit reference agency is not precluded from carrying out other related tasks;

"credit score" means a measure of creditworthiness derived from credit information and which must under pain of nullity include data derived from the Central Credit Register;

"critical operations" means any operations relating to the credit scoring and credit information granting services that, if interrupted, can put the business of a credit reference agency at risk, including, but not limited to financial loss, damage, interruption or a breach of security;

(d) immediately after the definition of the term "form" thereof, there shall be added the following new definitions:

"indemnity policy" means an insurance policy issued according to documented terms and conditions, provided by a reputable insurance company;

"legal entity identifier" means a unique identifier consisting of a 20-character alpha-numeric code, which allows for the identification of legally independent entities in global financial markets;

"legal organisation" has the same meaning assigned to it by article 1 of the Second Schedule of the Civil Code; Cap. 16.

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(e) immediately after the definition of the term "open-air market" thereof, there shall be added the following new definition:

"operational policies" means any framework policies and practices of the credit reference agency;

(f) immediately after the definition of the term "person of the legal profession" thereof, there shall be added the following new definition:

"personal data" has the same meaning assigned to it by article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

(g) immediately after the definition of the term "street" thereof, there shall be added the following new definition:

"supervisory authority" means the Bank.

Adds new Part and regulations to the principal regulations.

3. Immediately after Part VII of the principal Regulations there shall be added the following new Part and regulations:

"PART VIIA

Credit Reference Agencies

Licensing of credit reference agency.

47A. (1) Without prejudice to regulation 9 and to any other license or authorization needed under any other law, an application for a trading license in order to carry out the business of a credit reference agency shall be made in duplicate to the Trade Licensing Unit on the appropriate form which shall *inter alia* include the following information:

- (a) the applicant's legal status;
- (b) the address of the applicant's head office and the principal place of business if applicable;
- (c) the names of the persons who effectively direct the business and the operations of the credit reference agency.

(2) The application shall be accompanied by a non-refundable fee of five hundred euro (€500) and the following documents submitted in duplicate:

(a) a declaration of business activities disclosing the programme of operations, setting out in particular the type of activities undertaken by the applicant;

(b) a copy of the Memorandum and Articles of Association in case the applicant is a company or a copy of the Statute in case the applicant is a legal organisation, clearly specifying the operation of a credit reference agency as one of the main objectives;

(c) a description of the structure of the organisation, governance arrangements, and the operational policies covering the critical operations including, where applicable, a description of the intended use of branches;

(d) a document disclosing that the credit reference agency has an active legal entity identifier;

(e) a document describing the technological infrastructure and capacity in place including the type of scoring methodology used for the issuance of credit scoring;

(f) a statement in writing confirming that central credit register data will be used for the issuance of credit scores;

(g) a document disclosing the statutory auditors or audit firms responsible to carry out the audit of the credit reference agency;

(h) if the credit reference agency is a company, a copy of the business model and a copy of the audit financial statements or consolidated financial statements of the last three (3) years, if applicable;

(i) if the credit reference agency is a legal organisation, a copy of the business model and a copy of the management accounts; and

(j) a copy of the financial statements showing that the credit reference agency has capital and reserves of not less than one hundred thousand euro (€100,000).

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(3) The Trade Licensing Unit shall within five (5) working days from the date of receipt of two (2) copies of the application form and the accompanying documents in duplicate submit a copy of each to the Bank for assessment and opinion.

(4) Without prejudice to sub-regulation (1) of regulation 47A the Trade Licensing Unit of its own accord or at the recommendation of the Bank may require the applicant to submit further documentation and information for the issuance of a license.

(5) The Trade Licensing Unit in consultation with the Bank shall assess and determine the application.

(6) In the case of an application made in terms of this regulation an application can only be submitted by a company or a legal organization:

Provided that as from 1st January 2020, an application for a trading licence in order to carry out the business of a credit reference agency can only be submitted by a company.

Processing of
credit reference
agency application.

47B. (1) The Trade Licensing Unit shall, without delay, acknowledge receipt of an application and receipt of the applicable licence fee in writing to the applicant and shall specify the procedure under which a refusal by the Trade Licensing Unit to grant a licence may be appealed in terms of the Act and Part VI of these regulations:

Provided that an application form shall not be deemed to be complete unless the Trade Licensing Unit is in receipt of all the documentation required to be submitted together with the application form.

(2) The Bank shall within ten (10) working days of being informed by the Trade Licensing Unit about the receipt of an application:

(a) report to the Trade Licensing Unit whether the Bank is satisfied that the information and documentation submitted is complete; or

(b) in the case of incomplete information and, or documentation, indicate to the Trade Licensing Unit the additional information and, or documentation needed, in accordance with sub-regulation 3 of regulation 47A.

(3) The Bank shall give its recommendation for the issuance of a license or otherwise, to the Trade Licensing Unit within three (3) months from the date of receipt of a complete application:

Provided, that during the three (3) month period, the Bank may require further clarifications, additional information and documentation:

Provided further, that the three (3) month period may at the discretion of the Bank be extended for one period of not more than three (3) months. Such extension and the reasons therefore shall be notified to the Trade Licensing Unit who shall inform the applicant of the extension.

(4) An application for a licence is deemed to be determined by the Trade Licensing Unit in consultation with the Bank when:

(a) the Trade Licensing Unit in consultation with the Bank has decided to issue a licence without condition; or

(b) the Trade Licensing Unit in consultation with the Bank has decided to issue a licence subject to conditions it may deem appropriate:

Provided that, all such conditions shall be specified in writing.

(5) If a licence is issued, it is to be issued in the name of the credit reference agency, and by reference to the applicable code issued by the Trade Licensing Unit:

Provided that the licence so issued is non transferable:

Provided further the conditions contained in the Second Schedule shall not apply in the case of credit reference agencies.

Refusing of an application of a licence to a credit reference agency.

47C. (1) The Trade Licensing Unit shall refuse the application on the recommendation of the Bank if it is not satisfied that:

(a) all qualifying shareholders and all persons who will effectively direct the operation of the credit reference agency are suitable persons to ensure prudent management;

(b) the credit reference agency has a sound and prudent management, and has a robust governance arrangement, including a clear organisational structure;

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(c) there is in place an effective procedure to identify, handle and manage operational or security incidents to which the credit reference agency might be exposed to;

(d) there is in place an effective complaints procedure to investigate complaints from consumers arising out, or in connection with, any alleged infringement by the credit reference agency;

(e) there is in place a disposal procedure for the deletion of credit score, Central Credit Register data and credit information established to be inaccurate or ineligible;

(f) there is in place a indemnity insurance against any liability which the credit reference agency may incur for compensation in respect of any loss or damage which any person may suffer as a result of any negligent act, error or omission committed by the applicant in the carrying out of its business in a policy year in which that person is covered; or

(g) other requirements considered necessary in the particular circumstances, were not met.

(2) Without prejudice to sub-regulation (1) and regulation 47A, the Trade Licensing Unit, on the recommendation of the Bank, may refuse to issue the license if it deems fit.

(3) A decision to refuse the issuance of a license shall be accompanied with the reasons for such refusal.

(4) Any applicant who feels aggrieved by a decision of the Trade Licensing Unit may file an appeal to the Licensing Appeals Board in accordance with the Act and Part VI.

Nullification of licence.

47D. Without prejudice to sub-regulation (6) of regulation 9, a license to carry out the business of a credit reference agency shall be deemed null *ab initio* if the pre-requisites of regulations 47A and 47C were not met by the applicant.

Cancellation of license.

47E. (1) A license may be cancelled by the Trade Licensing Unit:

(a) where it becomes aware of proof of dissolution of said credit reference agency; or

(b) at the request of the credit reference agency or at the request of a person authorised to so act on its behalf. Such request shall be made on the appropriate form.

(2) The effective date of cancellation in the case of dissolution shall be the day following the date of dissolution of the credit reference agency.

(3) Without prejudice to sub-regulation (1) a licence to carry out the business as a credit reference agency can be suspended or cancelled by the Trade Licensing Unit on the recommendation of the Bank:

(a) when the credit reference agency does not commence the operation pursuant to the licence within twelve (12) months of its issue, or has ceased its operations for more than six (6) months; or

(b) when the credit reference agency no longer fulfils the conditions for the granting of a licence; or

(c) if it is considered that, by reason of the manner in which the credit reference agency is conducting its affairs, would constitute a breach of personal data pertaining to data subjects or a breach in operations as stipulated in the CBM Directive No 15; or

(d) if it is considered that, the credit reference agency has failed to satisfy any of its obligations or any of the provisions arising under these regulations, the CBM Directive No 15 or under the provisions of any other law; or

(e) if the board of directors, any of the ultimate shareholders, or any of the administrators have been found guilty of negligence, irregularity or misconduct; or

(f) when the credit reference agency does not abide with the requirements and obligations issued by the Bank, as the supervisory authority, from time to time; or

(g) if the capital and reserves is less than hundred thousand euro (€100,000); or

(h) if the credit reference agency conducts any other business which could give rise to a conflict of interest with the task of the issuance of a credit score;

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(i) if the Central Credit Register data is being used for any purpose other than for the issuance of a credit score;

Provided that in the case of suspension or cancellation of the license, no refund of fees will be affected by Trade Licensing Unit.

(5) The Trade Licensing Unit, on the recommendation of the Bank, may:

(a) require the removal of any director, manager, administrator, trustee or principal officer;

(b) impose other restrictions as the Bank, as the supervisory authority, may stipulate from time to time.

(6) A company or legal organisation which has its licence suspended or cancelled shall cease to act as a licensed credit reference agency from the date on which the suspension or cancellation takes effect:

Provided that the suspension shall cease to take effect when the Bank informs the Trading Licensing Unit that the credit reference agency has abided with the requirements issued by the Bank.

(7) The Trade Licensing Unit and the Bank shall publish a notice of suspension or cancellation of a licence on its website.

Validity of licence.

47F. A licence to carry out the business of a credit reference agency shall be renewable every five (5) years upon a submission by the credit reference agency for a renewal. A charge for renewal of the licence will be issued by the Trade Licensing Unit, following the recommendation of the Bank:

Provided that, the fee of five hundred euro (€500) shall be paid within thirty (30) working days of the charge being issued.

Right for information and inspection.

47G. (1) A license holder shall provide the Trade Licensing Unit, and the Bank and any other person authorised in that behalf, all information and documentation as may be appropriately required in relation to the commercial activity licensed under these regulations.

(2) The Trade Licensing Unit, and any other person so authorised as aforesaid shall have the right to enter, with the assistance of the Police, and inspect any premises related to a commercial activity, and require additional documentation:

Provided that, the Bank, as a supervisory authority, has the right to enter the premises and inspect any information or documentation as may be necessary related to the commercial activity of a credit reference agency, without the assistance of the Police.

Compliance date.

47H. A company or a legal organisation operating as a credit reference agency shall ensure conformity with the requirements within six (6) months from the day of the coming into force of these regulations. If a company or a legal organisation does not comply with the requirements of these regulations, it shall be prohibited from carrying out the business of a credit reference agency."

4. Immediately after Type Code 74.872 and the Commercial Activity *Auctioneer* in Part II of the First Schedule to the principal regulations, there shall be added the following new type and commercial activity:

Amends Part II of the First Schedule to the principal regulations.

"82.91 Commercial activity of a Credit Reference Agency".
