L.N. 25 of 2019

INVESTMENT SERVICES ACT
(CAP. 370)

Investment Services Act (Money Market Funds) Regulations, 2019

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 and Scope.

1. (1) The title of these regulations is the Investment Services Act (Money Market Funds) Regulations, 2019.

(2) The purpose of these regulations is to implement the relevant provisions of the MMF Regulation as herein defined.

Interpretation.

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

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

"the AIFM Directive" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 as amended from time to time, and includes any implementing measures that may be issued thereunder;

"Alternative Investment Fund or AIF" means a collective investment scheme, including sub-funds 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;

"manager of an MMF" means, in the case of an MMF that is a UCITS, the UCITS management company, or the UCITS investment company in the case of a self-managed UCITS, and, in the case of an MMF that is an AIF, an AIFM or an internally-managed AIF;

"MMF" means a money market fund;

"MMF Regulation" means Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds 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;

"UCITS" means undertakings for collective investment in transferable securities which are harmonized in accordance with the UCITS Directive, or a sub-fund of such undertaking, and includes an open ended investment company or a unit trust to which the UCITS Directive applies;

"UCITS Directive" means 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) (recast), as amended from time to time, and includes any implementing measures that have been or may be issued thereunder.

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

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 MMF Regulation and these regulations, and any reference in these regulations to the competent authority shall be read and construed accordingly.

Applicability of the MMF Regulation to the competent authority.

4. (1) The competent authority shall exercise and fulfil all the functions, obligations and powers which are required or may be imposed on competent authorities in accordance with the MMF Regulation and it shall satisfy all the obligations and requirements imposed on competent authorities by the MMF Regulation.

(2) Without prejudice to sub-regulation 4(1), the competent authority may, for the better implementation of the MMF Regulation, exercise any of the powers assigned to it under the Act in relation to investment services licence holders in possession of a licence in terms of article 3 of the Act and collective investment schemes in possession of a licence in terms of article 4 of the Act or in relation to any other person falling under its regulatory or supervisory functions in terms of the Act.

Authorisation of an MMF.

5. No collective investment undertaking shall be established, marketed or managed in Malta as an MMF unless it is in possession of

a collective investment scheme licence in terms of article 4 of the Act and authorised as an MMF in accordance with the MMF Regulation.

Powers of the competent authority.

6. Without prejudice to any other regulatory and investigatory powers of the competent authority, in order to fulfil its duties under the MMF Regulation, the competent authority shall have the following supervisory and investigatory powers:

(a) request access to any document in any form, and to receive or take a copy thereof;

(b) require an MMF or the manager of an MMF to provide information without delay;

(c) require information from any person related to the activities of an MMF or the manager of an MMF;

(d) carry out on-site inspections with or without prior announcement;

(e) take appropriate measures to ensure that an MMF or the manager of an MMF continues to comply with the MMF Regulation;

(f) issue an order to ensure that an MMF or the manager of an MMF complies with the MMF Regulation and desists from a repetition of any conduct that could infringe the MMF Regulation.

Administrative Penalties and other specific administrative measures.

7. (1) Without prejudice to any other regulatory and investigatory powers of the competent authority, the competent authority shall, by notice in writing and without recourse to a court hearing, exercise its supervisory powers and its powers to impose maximum administrative penalties as follows :

(a) in the case of a legal person, the administrative pecuniary sanction of up to a maximum of five million euro (€5,000,000) or 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body:

Provided that where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting

according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

(b) in the case of a natural person, the administrative pecuniary sanction of up to a maximum of five million euro (€5,000,000);

(c) as an alternative to paragraphs (a) and (b), the maximum administrative pecuniary sanctions shall be equivalent to at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if it exceeds the maximum amount of five million euro (€5,000,000).

(2) Without prejudice to powers vested in the competent authority in accordance with Directive 2009/65/EC or 2011/61/EU, as applicable, the competent authority, while respecting the principle of proportionality, shall impose an administrative penalty in terms of sub-regulation (1) and take the appropriate administrative measures referred to in sub-regulation (3) where an MMF or the manager of an MMF:

(a) fails to comply with any of the requirements, in infringement of Articles 9 to 16 and 17 to 21, 23 to 26 or 29 to 34 of the MMF Regulation or any other provision of the MMF Regulation;

(b) fails to comply with any provisions of the Act, and, or regulations and, or Rules made thereunder implementing the provisions of the MMF Regulation;

(c) has obtained authorisation through false statements or any other irregular means, in infringement of Article 4 or 5 of the MMF Regulation;

(d) uses the designation 'money market fund', 'MMF' or of another designation that suggests that a UCITS or AIF is an MMF, in infringement of Article 6 of the MMF Regulation.

(3) In the cases referred to in sub-regulation (2), the competent authority of the MMF shall, as appropriate:

(a) take administrative measures in terms of the Act and, or any regulations made thereunder and in terms of these regulations to ensure that the MMF or the manager of an MMF concerned complies with the relevant provisions;

(b) withdraw an authorisation granted in accordance with Article 4 or 5 of the MMF Regulation.

Publication of the decisions of the competent authority.

8. (1) The competent authority shall publish any decision imposing an administrative sanction or measure for infringements of the provisions of the Act, the regulations or Rules issued thereunder, on its website without undue delay after the person on whom the sanction or measure was imposed has been informed of that decision. The publication referred to in this sub-regulation shall include at least information on the type and nature of the infringement and the identity of the persons responsible:

Provided that this obligation does not apply to decisions imposing measures that are of an investigatory nature.

(2) Where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where the publication jeopardises the stability of the financial markets or an ongoing investigation, the competent authority shall:

(a) defer the publication of the decision to impose the sanction or measure until the reasons for non-publication cease to exist;

(b) publish the decision to impose the sanction or measure on an anonymous basis in a manner which complies with Maltese law, if such anonymous publication ensures effective protection of the personal data concerned;

(c) not publish the decision to impose a sanction or measure in the event that the options laid down in paragraphs (a) and (b) are considered to be insufficient to ensure:

(i) that the stability of the financial markets would not be put in jeopardy;

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(3) In the case of a decision to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

(4) Where the decision to impose a sanction or measure is subject to appeal before the relevant judicial or other authorities, the competent authority shall also publish immediately on its website such information and any subsequent information on the outcome of such

an appeal. Any decision annulling a previous decision to impose a sanction or a measure shall also be published.

(5) The competent authority shall ensure that any publication in accordance with this regulation shall remain on its official website for a period of at least five years from its publication:

Personal data contained in the publication shall be kept on the website of the competent authority only for the period which is necessary in accordance with the applicable data protection legislation.

Appeals.

9. 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*.

Treatment of existing UCITS and AIFs.

10. (1) By 21 January 2019, an existing UCITS or AIF that invests in short-term assets and has as distinct or cumulative objectives offering returns in line with money market rates or preserving the value of the investment shall submit an application to the competent authority together with all documents and evidence necessary to demonstrate the compliance with the MMF Regulation.

(2) No later than 2 months after receiving the complete application, the competent authority shall assess whether the UCITS or AIF is compliant with the MMF Regulation in accordance with Articles 4 and 5. The competent authority of the MMF shall issue a decision and notify it immediately to the UCITS or AIF.

MMF Regulation.

11. In the case of a collective investment scheme authorised as an MMF in accordance with the MMF Regulation, insofar as the provisions of the MMF Regulation are inconsistent with the provisions of the AIFM Directive, the UCITS Directive, the Act, or the regulations and Rules issued thereunder, the provisions of the MMF Regulation shall prevail.

Objective.

12. The objective of these regulations is to implement the relevant provisions of the MMF Regulation and they shall be interpreted and applied accordingly.

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