Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,698, 10 ta' Settembru, 2021
Taqsima B

L.N. 361 of 2021

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (Marketing of UCITS) (Amendment) Regulations, 2021

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 (Marketing of UCITS) (Amendment) Regulations, 2021, and these regulations shall be read and construed as one with the Investment Services Act (Marketing of UCITS) Regulations, hereinafter referred to as "the principal regulations".

S.L. 370.18.

(2) The scope of these regulations is to transpose, in part, Article 1 of Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings.

Amends regulation 1 of the principal regulations.

2. In sub-regulation (3) of regulation 1 of the principal regulations, for the words, "Articles 1, 2(1)(b) and (e), 3, 91(1) and (3), 92, 93, 94, 96 and 108 of Directive 2009/65/EC of the UCITS Directive,", there shall be substituted the words "Articles 1, 2(1)(b) and (e), 3, 91(1), 92, 93, 93a, 94, 96 and 108 of Directive 2009/65/EC of the UCITS Directive,".

Amends regulation 4 of the principal regulations.

3. Regulation 4 of the principal regulations shall be amended as follows:

(a) in paragraph (a) of sub-regulation (2) thereof, for the words, "including where relevant in respect of share classes; and", there shall be substituted the words "including where relevant in respect of share classes;";

(b) in paragraph (b) of sub-regulation (2) thereof, for the words, "marketed by the management company that manages the Maltese UCITS.", there shall be substituted the words "marketed by the management company that manages the Maltese UCITS;";

(c) immediately after paragraph (b) of sub-regulation (2) thereof, there shall be added the following new paragraphs:

"(c) the details necessary for the invoicing or for the communication of any applicable regulatory fees or charges by the European regulatory authority of the host Member State or EEA State, including the address; and

(d) information on the facilities for the performance of tasks referred to in regulation 5(7) of these regulations.";

(d) in sub-regulation (11) thereof, for the words, "the Maltese UCITS shall give written notice thereof to the European regulatory authority of the Member State or EEA State in which it is currently marketing its units prior to implementing the change", there shall be substituted the words, "the Maltese UCITS shall give written notice thereof to both the competent authority and the European regulatory authority of the UCITS host Member State or EEA State at least one (1) month before implementing that change."; and

(e) immediately after sub-regulation (11) thereof, there shall be added the following new sub-regulations:

"(12) Where, pursuant to a change as referred to in sub-regulation (11), the Maltese UCITS would no longer comply with the UCITS Directive, the competent authority shall inform the Maltese UCITS within fifteen (15) working days of receipt of all the information referred to in sub-regulation (11) that it is not to implement that change. In that case, the competent authority accordingly shall notify the European regulatory authority of the Member State or EEA State in which Maltese UCITS is currently marketing its units.

(13) Where a change referred to in sub-regulation (11) is implemented after information has been transmitted by the competent authority in accordance with sub-regulation (12) and pursuant to that change the Maltese UCITS no longer complies with the UCITS Directive, the competent authority shall take all appropriate measures in accordance with the Act, including, where necessary, the express prohibition of marketing of the Maltese UCITS and shall notify the European regulatory authority of the Member State or EEA State in which Maltese UCITS is currently marketing its units without undue delay of the

measures taken.

(14) If a Maltese UCITS wishes to terminate arrangements made for marketing of its units, including, where relevant, the share classes thereof in the Member State or EEA State in which Maltese UCITS is currently marketing its units, in respect of which it has made a notification in accordance with sub-regulation 4(1), it shall be allowed to de-notify such marketing arrangements after fulfilling the following conditions:

(a) a blanket offer shall be made to repurchase or redeem, free of any charges or deductions, all such units held by investors in that Member State or EEA State, and shall be publicly available for at least 30 working days, addressed, directly or through financial intermediaries, individually to all investors in that Member State or EEA State whose identity is known;

(b) the intention to terminate arrangements made for marketing such units in that Member State or EEA State is made public by means of a publicly available medium, including by electronic means, which is customary for marketing UCITS and suitable for a typical UCITS investor; and

(c) any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units identified in the notification referred to in sub-regulation 4(16).

(15) The information referred to in sub-regulations 4(14)(a) and (b) shall clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase their units. Such information shall be provided in the official language or one of the official languages of the Member State or EEA State in respect of which the Maltese UCITS has made a notification in accordance with sub-regulation 4(1), or in a language approved by the competent authorities of that Member State EEA State. With effect from the date referred to in sub-regulation 4(14)(c), the Maltese UCITS shall cease any new or further, direct or indirect, offering or placement of its units which were the subject of de-notification in that Member State or

EEA State.

(16) The Maltese UCITS shall submit to the competent authority a notification containing the information referred to in sub-regulations 4(14)(a), (b) and (c).

(17) The Maltese UCITS shall provide investors who remain invested in it as well as the competent authority with the information required under Articles 68 to 82 and under Article 94 of the UCITS Directive. The Maltese UCITS shall provide such information using any electronic or other distance communication means.

Provided that the information and communication means are available for investors in the official language or one of the official languages of the Member State or EEA State where the investor is located or in a language approved by the competent authorities of that Member State or EEA State.".

Amends regulation 5 of the principal regulations.

4. Regulation 5 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words, "key investor information document translated in the official language, or one of the official languages of the Member State or EEA State in which it is marketing its units or into a language approved by the European regulatory authority of such Member State or EEA State, together with the following information and documents prescribed hereunder free of charge and upon request:", there shall be substituted the words, "documents referred to under sub-regulation (1)(a) to (d) free of charge and upon request for the purposes of inspection and obtaining copies thereof:";

(b) in paragraph (b) of sub-regulation (1) thereof, for the words, "an annual report for each financial year; and", there shall be substituted the words "an annual report for each financial year;";

(c) in paragraph (c) of sub-regulation (1) thereof, for the words, "a half-yearly report covering the first six months of the financial year.", there shall be substituted the words "a half-yearly report covering the first six months of the financial year; and";

(d) immediately after paragraph (c) of sub-regulation

(1) thereof, there shall be added the following new paragraph:

"(d) key investor information document.";

(e) in sub-regulation (3) thereof, for the words, "The Maltese UCITS shall, at its discretion, translate the documents", there shall be substituted the words "The Maltese UCITS shall translate the key investor information document referred to in sub-regulation 1(d) into the official language, or one of the official languages, of the UCITS host Member State or EEA State or into a language approved by the European regulatory authority of that Member State or EEA State. The Maltese UCITS shall, at its discretion, translate the documents";

(f) in sub-regulation (7) thereof, for the words "take the measures necessary to ensure that facilities are available therein for making payments to unit holders, re-purchasing or redeeming units and making available the information which the Maltese UCITS is obliged to provide", there shall be substituted the words, "take the measures necessary to ensure that facilities are available therein to:", and immediately thereafter, there shall be added the following new paragraphs:

"(a) process subscription, repurchase and redemption orders and make other payments to unit-holders relating to the units of the UCITS, in accordance with the conditions set out in the documents required pursuant to sub-regulation 1(a) to (c);

(b) provide investors with information on how orders referred to in point (a) above can be made and how repurchase and redemption proceeds are paid;

(c) facilitate the handling of information and access to procedures and arrangements relating to the investors' exercise of their rights arising from their investment in the UCITS in the Member State or EEA State where the UCITS is marketed;

(d) provide investors with information relevant to the tasks that the facilities perform in a durable medium; and

(e) act as a contact point for communicating with the European regulatory authority of that Member State or EEA State."; and

(g) immediately after sub-regulation (7) thereof, there shall be added the following new sub-regulations:

"(7A)The Maltese UCITS shall ensure that the facilities to perform the tasks referred to in sub-regulation (7), including electronically, are provided:

(a) in the official language or one of the official languages of the Member State or EEA State where the UCITS is marketed or in a language approved by the European regulatory authority of that Member State or EEA State; and

(b) by the UCITS itself, by a third party which is subject to regulation and supervision governing the tasks to be performed, or by both.

(7B) For the purposes of sub-regulation (7A)(b), where the tasks are to be performed by a third party, the appointment of the said third party shall be evidenced by a written contract, which specifies which of the tasks referred to in sub-regulation (7) are not to be performed by the UCITS and that such third party will receive all the relevant information and documents from the UCITS.".

Amends regulation 8 of the principal regulations.

5. Regulation 8 of the principal regulations shall be amended as follows:

(a) in paragraph (a) of sub-regulation (1) thereof, for the words, "European UCITS of its units in Malta, including where relevant in respect of share classes; and", there shall be substituted the words "European UCITS of its units in Malta, including where relevant in respect of share classes;";

(b) in paragraph (b) of sub-regulation (1) thereof, for the words "by the management company that manages the European UCITS.", there shall be substituted the words "by the management company that manages the European UCITS;";

(c) immediately after paragraph (b) of sub-regulation (1) thereof, there shall be added the following new paragraphs:

"(c) the details necessary for the invoicing or for the communication of any applicable regulatory fees or charges by the competent authority,

including the address; and

(d) information on the facilities for the performance of tasks referred to in regulation 9(5) of this Act.";

(d) sub-regulation (7) thereof shall be deleted;

(f) in sub-regulation (10) thereof, for the words, "to the competent authority prior to implementation of the change.", there shall be substituted the words, "to both the competent authority and European regulatory authority of the UCITS home Member State or EEA State at least one month before implementing that change."; and

(g) immediately after sub-regulation (10) thereof, there shall be added the following new sub-regulations:

"(11) Where, pursuant to a change as referred to in sub-regulation (10), the European UCITS would no longer comply with the UCITS Directive, the European regulatory authority of the UCITS home Member State or EEA State shall inform the European UCITS within fifteen (15) working days of receipt of all the information referred to in sub-regulation (10) that it is not to implement that change.

(12) Where a change referred to in sub-regulation (10) is implemented after information has been transmitted in accordance with sub-regulation (11) and pursuant to that change the European UCITS no longer complies with the UCITS Directive, the European regulatory authority of the UCITS home Member State or EEA State shall take all appropriate measures, including, where necessary, the express prohibition of marketing of the European UCITS, and shall notify the competent authority without undue delay of the measures taken.

(13) If a European UCITS wishes to terminate arrangements made for marketing of its units, including, where relevant, the share classes thereof in Malta, it shall be allowed to de-notify such marketing arrangements after fulfilling the following conditions:

(a) a blanket offer shall be made to

repurchase or redeem, free of any charges or deductions, all such units held by investors in Malta, and shall be publicly available for at least thirty (30) working days, addressed, directly or through financial intermediaries, individually to all investors in Malta, whose identity is known;

(b) the intention to terminate arrangements made for marketing such units in Malta is made public by means of a publicly available medium, including by electronic means, which is customary for marketing UCITS and suitable for a typical UCITS investor; and

(c) any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units identified in the notification referred to in sub-regulation 8(15).

(14) The information referred to in sub-regulations 8(13)(a) and (b) shall clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase their units. Such information shall be provided in the official language or one of the official languages of Malta, or in a language approved by the competent authority. As of the date referred to in sub-regulation 8(13)(c), the European UCITS shall cease any new or further, direct or indirect, offering or placement of its units which were the subject of de-notification in Malta.

(15) The European UCITS shall submit to the European regulatory authority of the UCITS home Member State or EEA State a notification containing the information referred to in sub-regulations 8(13)(a), (b) and (c).

(16) The European UCITS shall provide investors who remain invested in it as well as the competent authority with the information required under Articles 68 to 82 and under Article 94 of the UCITS Directive. The European UCITS may provide such information using any electronic or other distance communication means, provided that the information and communication means are available for investors in the official language or one of the official languages of Malta, or in a language approved by the competent authority.".

6. Regulation 9 of the principal regulations shall be amended as follows: Amends regulation 9 of the principal regulations.

(a) in sub-regulation (1) thereof, for the words, "key investor information document in English or in Maltese and with the following information and documents prescribed hereunder free of charge and upon request:", there shall be substituted the words, "documents referred to under sub-regulation (1)(a) to (d) free of charge and upon request for the purposes of inspection and obtaining copies thereof:";

(b) in paragraph (b) of sub-regulation (1) thereof, for the words, "an annual report for each financial year; and", there shall be substituted the words "an annual report for each financial year;";

(c) in paragraph (c) of sub-regulation (1) thereof, for the words, "a half-yearly report covering the first six months of the financial year.", there shall be substituted the words "a half-yearly report covering the first six months of the financial year; and";

(d) immediately after paragraph (c) of sub-regulation (1) thereof, there shall be added the following new paragraph:

"(d) key investor information document.";

(e) in sub-regulation (2) thereof, immediately before the words, "The information and documents prescribed in sub-regulation (1)(a) to (c) shall be provided to investors in the manner prescribed by the Investment Services Rules.", there shall be inserted the words, "The European UCITS shall translate the key investor information document referred to in sub-regulation 1(d) into the official language, or one of the official languages of Malta or into a language approved by the competent authority.";

(f) in sub-regulation (5) thereof, the words, "take the measures necessary to ensure that facilities are available in Malta for making payments to unit holders, re-purchasing or redeeming units and making available the information which the European UCITS is obliged to provide", there shall be substituted the words, "take the measures necessary to ensure that facilities are available in Malta to:", and immediately thereafter, there shall be added the following new paragraphs:

"(a) process subscription, repurchase and redemption orders and make other payments to unit-holders

relating to the units of the European UCITS, in accordance with the conditions set out in the documents required pursuant to sub-regulation 1(b) to (d);

(b) provide investors with information on how orders referred to in point (a) above can be made and how repurchase and redemption proceeds are paid;

(c) facilitate the handling of information and access to procedures and arrangements relating to the investors' exercise of their rights arising from their investment in the European UCITS in Malta;

(d) make the information and documents required pursuant to Chapter IX available to investors under the conditions laid down in Article 94, for the purposes of inspection and obtaining copies thereof;

(e) provide investors with information relevant to the tasks that the facilities perform in a durable medium; and

(f) act as a contact point for communicating with the competent authority."; and

(g) immediately after sub-regulation (5) thereof, there shall be added the following new sub-regulations:

"(5A)The European UCITS shall not be required to have a physical presence in Malta or to appoint a third party for the purposes of sub-regulation (5).

(5B) The European UCITS shall ensure that the facilities to perform the tasks referred to in sub-regulation (5), including electronically, are provided:

(a) in the official language, or one of the official languages of Malta or in a language approved by the competent authority by the European UCITS itself; and

(b) by a third party which is subject to regulation and supervision governing the tasks to be performed, or by both.

(5C) For the purposes of sub-regulation (5B), where the tasks are to be performed by a third party, the appointment of the said third party shall be evidenced by

a written contract, which specifies which of the tasks referred to in sub-regulation (5) are not to be performed by the European UCITS and that the third party will receive all the relevant information and documents from the European UCITS.".

7. Schedule A of the principal regulations shall be deleted.

Amends Schedule A of the principal regulations.

VERŻJONI ELETTRONIKA

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 FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€0.54