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Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,757, 24 ta' Diċembru, 2021
Taqsima B

L.N. 495 of 2021

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (Supervisory Consolidation) (Capital Requirements Directive) 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:

Title, scope and commencement.

1. (1) The title of these regulations is the Investment Services Act (Supervisory Consolidation) (Capital Requirements Directive) Regulations, 2021.

(2) The scope of these regulations is to transpose Articles 2(6), 3 (partly), 20(3), 48(1), 49, 51, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123(1), 124, 127, 151, 155, 156 and 158 of Directive 2013/36/EU.

(3) These regulations shall come into force on such date as the Minister for Finance and Employment may, by notice in the Gazette establish and a different date or dates may be so established for different provisions of these regulations.

Interpretation.

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

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

"ancillary services undertaking" shall have the same meaning as that assigned to it in point (18) of Article 4(1) of the CRR;

"branch" shall have the same meaning as that assigned to it in point (17) of Article 4(1) of the CRR;

"consolidated basis" shall have the same meaning as that assigned to it in point (48) of Article 4(1) of the CRR;

"consolidated situation" shall have the same meaning as that assigned to it in point (47) of Article 4(1) of the CRR;

"the competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Cap. 330.

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Authority Act;

"consolidating supervisor" shall have the same meaning as that assigned to it in point (41) of Article 4(1) of the CRR;

"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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

"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 amending Regulation (EU) No 648/2012;

"EBA" means the European Banking Authority as established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority;

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

"EIOPA" means the European Insurance and Occupational Pensions Authority as established by Regulation (EU) No. 1093/ 2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority;

"ESCB central banks" shall have the same meaning as that assigned to it in point (45) of Article 4(1) of the CRR;

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010;

"EU investment firm" means a firm as defined in Article 4(1)(2) of the CRR, authorised by its European regulatory authority within the meaning of Article 5 of the MiFID Directive or authorised by a European regulatory authority in an EEA State;

"EU parent financial holding company" shall have the same meaning as that assigned to it in point (31) of Article 4(1) of the CRR;

"EU parent institution" shall have the same meaning as that

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assigned to it in point (29) of Article 4(1) of the CRR;

"EU parent mixed financial holding company" shall have the same meaning as that assigned to it in point (33) of Article 4(1) of Article 4(1) of the CRR;

"European regulatory authority" means an authority which is situated in a country or territory outside Malta that is a Member State and is empowered by law or regulation to supervise investment firms;

"financial holding company" shall have the same meaning as that assigned to it in point (20) of Article 4(1) of the CRR;

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

Provided that the entities referred to in point (1) and in points (3) to (23) of Article 2(5) of the CRD shall be treated as financial institutions;

"home Member State" shall have the same meaning as that assigned to it in point (43) of Article 4(1) of the CRR;

"host Member State" shall have the same meaning as that assigned to it in point (44) of Article 4(1) of the CRR;

"insurance undertaking" shall have the same meaning as that assigned to it in point (5) of Article 4(1) of the CRR;

"investment firm" means a person who holds an investment services licence issued by the competent authority under the Act and which is subject to the requirements of the CRD and CRR; "Member State" includes an EU and EEA State;

"mixed activity holding company" shall have the same meaning as that assigned to it in point (22) of Article 4(1) of the CRR;

"mixed financial holding company" shall have the same meaning as that assigned to it in point (21) of Article 4(1) of the CRR;

"parent financial holding company in a Member State" shall have the same meaning as that assigned to it in point (30) of Article 4(1) of the CRR;

"parent institution in Malta" means an institution in Malta

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which has an institution or a financial institution as a subsidiary or which holds a participation in such an institution or financial institution, and which is not itself a subsidiary of another institution authorised in Malta, or of a financial holding company or mixed financial holding company set up in Malta;

"parent mixed financial holding company in a Member State" shall have the same meaning as that assigned to it in point (32) of Article 4(1) of the CRR;

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

"participation" shall have the same meaning as that assigned to it in point (35) of Article 4(1) of the CRR;

"Rules" means Rules for investment firms issued by the competent authority in terms of the Act;

"sub-consolidation basis" shall have the same meaning as that assigned to it in point (49) of Article 4(1) of the CRR;

"subsidiary" shall have the same meaning as that assigned to it in point (16) of Article 4(1) of the CRR;

"third country" means a country that is not a Member State;

"third country regulatory authority" means an authority which is in a country or territory that is not a Member State and is empowered by law or regulation to supervise investment firms.

(2) Words and expressions which are also used in the Act shall have the same meaning as that assigned to it in the Act.

Part I - Consolidated Supervision

Responsibility of the competent authority for consolidated supervision.

3. (1) The competent authority shall exercise supervision on a consolidated basis:

(a) where the parent undertaking is a parent institution in Malta or an EU parent institution, licensed in terms of the Act;

(b) where the parent of an investment firm licensed in terms of the Act is a parent financial holding company or parent mixed financial holding company in a Member State or an EU parent financial holding company or EU parent mixed financial holding company;

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(c) where investment firms authorised in two or more Member States, and one of the investment firms is an investment firm licensed in terms of the Act, have as their parent the same parent financial holding company, the same parent mixed financial holding company in a Member State, the same EU parent financial holding company or the same EU parent mixed financial holding company established in Malta;

(d) where the parent financial holding company or parent mixed financial holding company is established in a Member State other than Malta and it has more than one investment firm authorised in the European Union other than the Member State where the financial holding company is set up, one of which is licensed in Malta, and the investment firm licensed in Malta has the largest balance sheet total. That investment firm shall be considered to be controlled by an EU parent financial holding company or an EU parent mixed financial holding company.

(2) In particular cases, the competent authority may, by common agreement with other European regulatory authorities, waive the criteria referred to in sub-regulation (1)(c) and (e) if their application would be inappropriate, taking into account the investment firms and the relative importance of their activities in different countries, and appoint a European regulatory authority to exercise supervision on a consolidated basis. In these cases, before taking its decision, the competent authority shall give the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company or the institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that decision. The competent authority shall notify the Commission and the EBA of any such agreement.

Functions of the competent authority with respect to supervision on a consolidated basis.

4. (1) In addition to the obligations imposed by the provisions of the Act and any regulations or Rules made thereunder transposing the requirements of the CRD, and by the CRR, the competent authority acting as consolidating supervisor, shall carry out the following tasks:

(a) co-ordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations;

(b) planning and co-ordination of supervisory activities in going concern situations, including in relation to the activities relating to supervision on a consolidated basis in co-operation with the European regulatory authorities; and

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(c) planning and co-ordination of supervisory activities in co-operation with the European regulatory authorities involved, and if necessary with ESCB central banks, in preparation for and during emergency situations, including adverse developments in investment firms or in financial markets using, where possible, existing channels of communication for facilitating crisis management. These include exceptional measures referred to in regulation 9(3)(e), the preparation of joint assessments, the implementation of contingency plans and communication to the public.

(2) Where European regulatory authorities do not co-operate with the competent authority, to the extent required in carrying out the tasks in this regulation, the competent authority may refer the matter to the EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

(3) Where the competent authority does not act as consolidating supervisor and either the consolidating supervisor fails to carry out the tasks referred to in Article 112(1) of the CRD or any European regulatory authority does not co-operate with the consolidating supervisor to the extent required in carrying out the tasks in Article 112(1) of the CRD, it may refer the matter to the EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

Notifications in emergency situations.

5. (1) Where an emergency situation, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or where significant branches as referred to in regulation 14 are established and where the competent authority is the consolidating supervisor, it shall, subject to confidentiality requirements in the Malta Financial Services Authority Act and any other applicable law, alert as soon as is practicable the EBA and the authorities referred to in Articles 58(4) and 59 of the CRD and it shall communicate to the said authorities all the information that is essential for the pursuance of their tasks.

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(2) To the extent possible, the competent authority shall use existing channels of communication with ESCB central banks.

(3) Where the competent authority is the consolidating supervisor, it shall, when it needs information which has already been given to a European regulatory authority, contact this authority, whenever possible, in order to prevent duplication of reporting to the

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various authorities involved in supervision.

Written co-ordination and co-operation agreements with European regulatory authorities.

6. (1) Where the competent authority is the consolidating supervisor, it shall have written co-ordination and co-operation arrangements in place with European regulatory authorities responsible for supervising the other members of the group.

(2) Under the arrangements made pursuant to sub-regulation (1), additional tasks may be entrusted to the competent authority as consolidating supervisor and procedures for the decision-making process and for co-operation with other European regulatory authorities may be specified.

(3) Where the competent authority is responsible for the licensing of the subsidiary of a parent undertaking which is an investment firm, it may, by bilateral agreement in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate its responsibility for supervision of such subsidiary to the European regulatory authority which authorised and supervises the parent undertaking so that the latter assume responsibility for supervising the subsidiary in accordance with the CRD. The competent authority shall forward the content of such agreements to the EBA.

Establishment of the colleges of supervisors by the consolidating supervisor.

7. (1) Where the competent authority is the consolidating supervisor, it shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in regulation 4, regulation 5(1) and (2) and regulation 8, and it shall also, subject to the confidentiality requirements of sub-regulation (3) and compatibility with European Union law, ensure appropriate co-ordination and co-operation with third country regulatory authorities where appropriate.

(2) When forming part of a college of supervisors, the competent authority shall contribute towards the provision of a framework for the consolidating supervisor, EBA and other European regulatory authorities or third country regulatory authorities forming part of that college, to carry out the following tasks:

(a) exchange information with European regulatory authorities and third country regulatory authorities forming part of that college and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;

(b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;

(c) determining supervisory examination programmes referred to in Article 99 of the CRD based on a risk assessment of the group in accordance with Article 97 of the CRD;

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(d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 114 and Article 117(3) of the CRD;

(e) consistently applying the prudential requirements under the CRD and the CRR across all entities within a group of investment firms, without prejudice to the options and discretions available in European Union law; and

(f) applying Article 112(1)(c) of the CRD taking into account the work of other fora that may be established in that area.

(3) The competent authority, when forming part of a college of supervisors, shall co-operate closely with EBA and all the European regulatory authorities and third country regulatory authorities forming part of the relevant college of supervisors. The confidentiality requirements under the Malta Financial Services Authority Act and the Act shall not prevent the competent authority from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authority under the provisions of the Act, and any regulations or Rules made thereunder transposing the requirements of the CRD, and under the CRR.

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(4) Where the competent authority is the consolidating supervisor of these regulations, it shall establish and manage the colleges of supervisors based on written arrangements referred to in regulation 6, determined after consultation with European regulatory authorities and third country regulatory authorities concerned.

(5) The competent authority may form part of a college of supervisors when:

(a) it is responsible for the supervision of subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company; and

(b) Malta is the host Member State where significant branches as referred to in regulation 14 are established.

(6) Where the competent authority is the consolidating supervisor, it shall chair the meetings of the college and shall decide which European regulatory authorities and third country regulatory authorities, where relevant, participate in a meeting or in an activity of the college. The decision shall take into account the relevance of the

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supervisory activity to be planned or co-ordinated for those authorities, and in particular, the potential impact on the stability of the financial system in the Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time and the obligations referred to in regulation 14(6) and (7).

(7) The competent authority, as consolidating supervisor, shall keep all members of the college fully informed, in advance, of the organisation of the meetings of the college, about the main issues to be discussed and the activities to be considered and shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

(8) The competent authority as consolidating supervisor shall, subject to the confidentiality requirements of the Malta Financial Services Authority Act and the Act, inform the EBA of the activities of the college of supervisors, including in emergency situations, and communicate to the EBA all the information that is of particular relevance for the purposes of supervisory convergence. Cap. 330.

(9) In the case of disagreement between the competent authorities on the functioning of the supervisory colleges, the competent authority may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(10) Without prejudice to the provisions of sub-regulation (6), when the competent authority is the consolidating supervisor it may invite the following entities to participate in the college which it shall chair:

(a) the European regulatory authorities responsible for the supervision of subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company;

(b) the European regulatory authorities of a host member state where significant branches, as referred to in Article 51 of the CRD, are established;

(c) ECSB central banks, where appropriate; and

(d) third-country regulatory authorities where appropriate, subject to confidentiality requirements that are equivalent, in the opinion of the competent authority and all the European regulatory authorities concerned, to the requirements under Chapter 1, Section II of the CRD, and where applicable,

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Articles 54 and 53 of the MiFID Directive.

Joint decisions on specific prudential requirements.

8. (1) The competent authority, whether acting as consolidating supervisor or as a competent authority responsible for the supervision of subsidiaries of an EU parent institution, an EU parent financial holding company or EU parent mixed financial holding company, within a college of supervisors, shall do everything within its power to reach a joint decision with the other competent authorities forming part of the said college:

(a) on the application of Articles 73 and 97 of the CRD to determine the adequacy of the consolidated level of own funds held by the group of investment firms with respect to its financial situation and risk profile and the required level of own funds for the application of Article 104(1)(a) of the CRD to each entity within the group of investment firms and on a consolidated basis;

(b) on measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 of the CRD and relating to the need for investment firm-specific liquidity requirements in accordance with Article 105 of the CRD.

(2) For the purposes of the joint decision referred to in sub-regulations (1), the competent authority as consolidated supervisor shall submit –

(a) a report containing the risk assessment of the group of investment firms in accordance with the Act, and any regulations or Rules made thereunder transposing the requirements of Articles 73 and 97 and Article 104(1)(a) of the CRD; and

(b) a report containing the assessment of the liquidity risk profile of the group of investment firms in accordance with the Act, and any regulations or Rules made thereunder transposing the requirements of Articles 86 and 105 of the CRD, to the other relevant European regulatory authorities.

(2A) The joint decision referred to in sub-regulation (1)(a) shall be reached within four (4) months after submission of the report referred to in sub-regulation (2)(a).

(2B) The joint decision referred to in sub-regulation (1)(b) shall be reached within one (1) month after submission of the report referred to in sub-regulation (2)(b).

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(3) Where the competent authority is the consolidating supervisor, it shall provide the EU parent institution concerned with the joint decision referred to in sub-regulation (1), set out in a document containing full reasons. In the event of disagreement, the competent authority shall at the request of any of the other European regulatory authorities concerned consult the EBA. The competent authority as consolidating supervisor of these regulations may consult the EBA on its own initiative.

(4) In the absence of such a joint decision between the competent authorities within the time periods referred to in Article 113(2) of the CRD, a decision on the application of the relevant provisions of the Act and any regulations or Rules made thereunder transposing the requirements of Articles 73, 86, 97, 104(1)(a) and 105 of the CRD shall be taken on a consolidated basis by the competent authority as consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant European regulatory authorities:

Provided that:

(a) if at the end of the time periods referred to above any of the European regulatory authorities concerned have referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority as consolidated supervisor shall defer its decision and await any decision the EBA may take in accordance with Article 19(3) of the said Regulation, and shall take its decision in conformity with the decision of the EBA;

(b) where the competent authority is not acting as consolidated supervisor but is responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or an EU parent mixed financial holding company, it may refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. Such referral shall not be made after the end of the time periods referred to above in this regulation or after a joint decision has been reached.

(5) Where the competent authority is responsible for the supervision of a subsidiary of an EU parent credit institution or an EU parent financial holding company or an EU parent mixed financial holding company and in the absence of a joint decision in terms of this regulation, the competent authority shall decide on the application of the relevant provisions of the Act, and any regulations or Rules made thereunder transposing the requirements of Articles 73, 86, 97, 104(1)(a) and 105 of the CRD, on an individual or sub-consolidated

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basis, after duly considering the views and reservations expressed by the consolidating supervisor:

Provided that if at the end of the time periods referred to in this regulation any of the European regulatory authorities concerned have referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority shall defer its decision and await any decision that the EBA shall take in accordance with Article 19(3) of the said Regulation, and shall take its decision in conformity with the decision of the EBA.

(6) The competent authority may, in the event of disagreement, refer a dispute to the EBA on its own initiative but prior to a joint decision being made, and provided that no referral shall be made once the specified time periods have expired.

(7) (a) The joint and separate decisions referred to in this regulation shall be set out in a document containing the fully reasoned decisions and shall take into account the risk assessment, views and reservations of the competent authority or the European regulatory authorities as applicable, expressed during the time periods referred to therein.

(b) The competent authority as consolidating supervisor shall provide these documents to the European regulatory authorities concerned and to the EU parent institution. Where the EBA has been consulted the competent authority shall consider its advice and explain any significant deviation therefrom.

(c) The joint decision referred to in sub-regulation (1) and the decisions taken by the competent authority or European regulatory authorities in terms of sub-regulations (4) and (5) shall be recognised as determinative and shall be applied by the competent authority in Malta.

(8) The joint and separate decisions referred to in sub-regulation (1) shall be updated on an annual basis or, in exceptional circumstances, where the competent authority is responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial company or an EU parent mixed financial holding company, it may make a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Articles 104(1)(a) and 105 of the CRD. In the latter case, the update may be addressed on a bilateral basis between the competent authority and the consolidating supervisor:

Provided that where the competent authority is the

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consolidating supervisor, it shall update the decisions at the request of the European regulatory authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial company or an EU parent mixed financial holding company. The competent authority may address the update to the European regulatory authority making the request, on a bilateral basis.

Co-operation with other authorities.

9. (1) The competent authority shall co-operate closely with European regulatory authorities. Such co-operation shall include the provision to such authorities of any information which is essential or relevant for the exercise of their respective supervisory tasks under the CRD, and the CRR. The competent authority shall communicate on request all relevant information and shall communicate on its own initiative all essential information.

(2) The competent authority shall co-operate with the EBA for the purposes of the CRD and the CRR in accordance with Regulation (EU) No 1093/2010. Such co-operation shall include the provision to the EBA of all information necessary to carry out its duties under the CRD and the CRR and under Regulation (EU) No 1093/2010, in accordance with Article 35 of Regulation (EU) No 1093/2010.

(3) For the purpose of sub-regulation (1) information shall be regarded as essential if it could materially influence the assessment of the financial soundness of an investment firm or a financial institution in another Member State and shall include, in particular, the following items:

(a) identification of the group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries and significant branches belonging to the group, and the parent undertakings, in accordance with the relevant provisions of the Act and any regulations or Rules made thereunder transposing the requirements of Article 14(3), 74(1) and 109(2) of the CRD;

(b) identification of the European regulatory authorities of the regulated entities in the group, as the case may be;

(c) procedures for the collection of information from the investment firms in a group and the verification of that information;

(d) adverse developments in investment firms or in other entities of a group, which could seriously affect the investment firms; and

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(e) significant penalties and exceptional measures taken by the competent authority in accordance with the CRD, including the imposition of a specific own fund requirement under Article 104 of the CRD and the imposition of any limitation on the use of Advanced Measurement Approach for the calculation of the own funds requirements under Article 312(2) of the CRR.

(4) Where the competent authority is acting as consolidating supervisor, it shall provide European regulatory authorities who supervise subsidiaries of parent undertakings with all relevant information. In determining the extent of relevant information, the importance of those subsidiaries within the financial system in those Member States shall be taken into account.

(5) Where the competent authority is responsible for the supervision of an investment firm controlled by an EU parent institution, it shall whenever possible contact the consolidating supervisor when it needs information regarding the implementation of approaches and methodologies set out in the CRD and the CRR that may already be available to that consolidating supervisor.

(6) Where the competent authority intends to decide on significant penalties or exceptional measures to be imposed by it, including the imposition of a specific own funds requirement under the Investment Services Act (Supervisory Review) Regulations, and the imposition of any limitation on the use of the advanced measurement approaches for the calculation of the own funds requirements under Article 312(2) of the CRR, and where any such decision is of importance for the supervisory tasks of the European regulatory authorities concerned, the competent authority shall consult with the said European regulatory authorities before taking any such decision:

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Provided that where the competent authority intends to decide on such significant penalties or exceptional measures, it shall always consult the consolidating supervisor and may decide not to consult European regulatory authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision. In such cases, the competent authority shall, without delay, inform the European regulatory authorities after taking its decision.

(7) The competent authority may refer to the EBA any of the following situations:

(a) where a European regulatory authority has not communicated essential information;

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(b) where a request for co-operation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

Exchange of information.

10. (1) The competent authority shall ensure that there are no legal impediments preventing the exchange, between undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries of an investment firm, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis, of any information which would be relevant for the purposes of supervision in accordance with the relevant provisions of the Act, and any regulations or Rules made thereunder transposing the requirements of Article 110 and Chapter 3 of the CRD.

(2) Where a subsidiary that is an investment firm licensed in terms of the Act is not included in supervision on a consolidated basis under one of the cases provided for in Article 19 of the CRR, the competent authority may ask the parent undertaking of such investment firm for information which may facilitate supervision of that subsidiary.

(3) The competent authority, as consolidating supervisor, may ask the subsidiaries of an investment firm, a financial holding company or mixed financial holding company which are not included within the scope of supervision on a consolidated basis for information which would be relevant for the purpose of supervising those subsidiaries. In such a case, the procedures for transmitting and verifying the information set out in regulation 16 shall apply.

(4) Where a parent undertaking and any of its subsidiaries that are investment firms are situated in different Member States, the competent authority shall communicate to the European regulatory authorities concerned all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

(5) The competent authority, as consolidating supervisor, may invite the European regulatory authorities of the parent undertaking to ask the parent undertaking to provide any information which would be relevant for the purposes of supervision on a consolidated basis. Such information shall be transmitted to the competent authority by the European regulatory authority concerned.

(6) Where a parent undertaking is situated in Malta and the competent authority does not itself exercise supervision on a consolidated basis in terms of regulation 3, it shall, upon request by the

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European regulatory authority responsible for exercising such supervision, require the parent undertaking to provide any information relevant for the purposes of supervision on a consolidated basis and the competent authority shall transmit such information to the European regulatory authority making the request.

(7) The competent authority shall exchange the information referred to in sub-regulation (4) with other European regulatory authorities, on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of information shall not imply that the competent authority is required to play a supervisory role in relation to those investment firms or undertakings standing alone.

(8) The competent authority shall exchange the information referred to in regulation 19 with the European regulatory authorities concerned, on the understanding that the collection or possession of information does not imply that the competent authority plays a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not subsidiaries of an investment firm, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis.

Co-operation with European regulatory authorities and the Commission.

11. (1) Where an investment firm, financial holding company, mixed financial holding company or mixed-activity holding company is situated in Malta and controls one or more subsidiaries authorised in another Member State which are insurance undertakings or other undertakings providing investment services, the competent authority shall co-operate closely with European regulatory authorities and with other authorities entrusted with the public task of supervising insurance undertakings in other Member States. Without prejudice to its responsibilities, the competent authority shall provide the authorities referred to in this sub-regulation with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

(2) Information received, within the framework of supervision on a consolidated basis, and in particular any exchange of information between the competent authority and European regulatory authorities which is provided for in the CRD, shall be subject to professional secrecy requirements at least equivalent to those pursuant to the Malta Financial Services Authority Act and the Act.

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(3) The competent authority as consolidating supervisor shall establish a list of the financial holding companies or mixed financial

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holding companies referred to in Article 11 of the CRR. Such a list shall be communicated to the European regulatory authorities, to the EBA and to the Commission.

Request for verification of information.

12. (1) The competent authority, in applying the provisions of the Act, and of any regulations or Rules made thereunder transposing the requirements of the CRD, and the CRR, may, in specific cases, request a European regulatory authority to verify information concerning an investment firm, a financial holding company, a mixed financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company, a subsidiary which is an insurance company or other undertaking providing investment services which is subject to authorisation, or a subsidiary of an investment firm, a financial holding company or mixed financial holding company which is not included within the scope of supervision on a consolidated basis, situated in another Member State. The competent authority may carry out the verification itself, or if it so wishes participate in the verification.

(2) Where the competent authority receives a request from a European regulatory authority to verify information referred to in sub-regulation (1), it shall, within the framework of its competence, act upon it by either carrying out the verification itself, by allowing the European regulatory authority making the request to carry out such verification or by allowing an auditor or expert to carry out such verification. The European regulatory authority making the request may participate in the verification where it does not carry out the verification itself.

Third country consolidated supervision.

13. (1) Where an investment firm licensed in terms of the Act, the parent undertaking of which is an investment firm or a financial holding company or mixed financial holding company, the head office of which is established in a third country, is not subject to consolidated supervision, the competent authority shall assess whether the investment firm is subject to consolidated supervision by a third country regulatory authority which is equivalent to that governed by the principles laid down in this regulation and the requirements of Part One, Title II, Chapter 2 of the CRR.

(2) The competent authority as consolidating supervisor, if sub-regulation (4) were to apply, shall carry out the assessment at the request of the parent undertaking or of any of the regulated entities authorised in the Union or on its own initiative. The competent authority shall consult the other European regulatory authorities.

(3) In carrying out the assessment referred to in sub-regulation (1), the competent authority shall take into account any guidance

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issued by the European Banking Committee as to whether the consolidated supervision arrangements of third country regulatory authorities are likely to achieve the objectives of consolidated supervision as defined in this regulation, in relation to investment firms licensed in terms of the Act, the parent undertaking of which has its head office in a third country. For this purpose, the competent authority shall consult the EBA before making a decision.

(4) In the absence of such equivalent supervision, the competent authority shall apply the provisions of the Act, and of any regulations or Rules made thereunder transposing the requirements of the CRD, and the CRR to the investment firm *mutatis mutandis* or apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of investment firms. Such supervisory techniques shall be agreed upon by the competent authority, as consolidating supervisor, after consultation with other European regulatory authorities involved. The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as set out in this regulation and shall be notified to other European regulatory authorities involved, the EBA and the Commission.

(5) The competent authority may in particular require the establishment of a financial holding company or mixed financial holding company with its head office in the European Union, and apply the provisions on consolidated supervision to the consolidated position of that financial holding company or the consolidated position of the investment firms of that mixed financial holding company.

(6) The competent authority may, in terms of Article 48 of the CRD, request the Commission to submit proposals to the Council to negotiate agreements with one or more third countries regarding the means of exercising supervision on a consolidated basis over the following:

(a) investment firms the parent undertakings of which have their head offices in a third country;

(b) investment firms situated in third countries the parent undertakings of which, whether investment firms, financial holding companies or mixed financial holding companies, have their head offices in the Union.

Part II - Establishment of Significant Branches

Establishment of significant branches (Host Authority).

14. (1) Where an investment firm, other than a EU investment firm subject to Article 95 of the CRR, authorised in another Member State has established a branch in Malta, the competent

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authority may make a request to the European regulatory authority which is the consolidating supervisor, where Article 112(1) applies, or to the European regulatory authority of the home Member State of such investment firms, for that branch to be considered as significant.

(2) The request referred to in sub-regulation (1) shall provide reasons for considering the branch to be significant with particular regard to the following:

(a) whether the market share of the branch in terms of deposits exceeds 2% in Malta;

(b) the likely impact of a suspension or closure of the operations of the investment firm on systemic liquidity and the payment, clearing and settlement systems in Malta; and

(c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of Malta.

(3) The competent authority shall do everything within its power to reach a joint decision with the European regulatory authority of the home Member State and, where Article 112(1) applies, with the European regulatory authority which is the consolidating supervisor, on the designation of a branch as being significant.

(4) If no joint decision is reached within two months of receipt of a request under sub-regulation (1), the competent authority shall take its own decision within a further period of two months on whether the branch is significant. In taking its decision, the competent authority shall take into account any views and reservations of the European regulatory authority which is the consolidating supervisor or the European regulatory authority of the home Member State.

(5) The decisions referred to in sub-regulations (3) and (4) shall be set out in a document containing full reasons and shall be transmitted to the European regulatory authorities concerned. It shall be recognised as determinative and applied by the European regulatory authorities in the Member States concerned.

(6) Where the European regulatory authority of the home Member State does not consult the competent authority, or where, following such consultation, the competent authority maintains that operational steps required by the Act and any regulations or Rules made thereunder transposing the requirements of Article 86(11) of the CRD, are not adequate, the competent authority may refer the matter to the EBA and request its assistance in accordance with Article 19 of

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Regulation (EU) No 1093/2010.

Establishment of significant branches (Home Authority).

15. (1) Where the competent authority is responsible for the supervision of an investment firm licensed in terms of the Act or, other than an investment firm subject to Article 95 of the CRR, which has established a branch in another Member State or is the consolidating supervisor, it may receive a request from the European regulatory authority of the host Member State where the branch is established, for such branch to be considered as significant. This request shall provide reasons for considering the branch to be significant with particular regard to the following:

(a) whether the market share of the branch in terms of deposit exceeds 2% in the host Member State;

(b) the likely impact of a suspension or closure of the operations of the investment firm on systemic liquidity and the payment and clearing and settlement systems in the host Member State; and

(c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

(2) The competent authority shall do everything within its power to reach a joint decision on the designation of a branch as significant, with the European regulatory authority of the host Member State where the branch is established and, where Article 112(1) of the CRD applies, the European regulatory authority which is the consolidating supervisor.

(3) The competent authority shall communicate to the European regulatory authority of the host Member State, where a significant branch is established, the following information referred to in regulation 9(3)(d) and (e) and carry out the tasks referred to in regulation 4(1)(c) in co-operation with the European regulatory authority of the host Member State.

(4) Where the competent authority becomes aware of an emergency situation as referred to in regulation 5(1), it shall alert as soon as practicable:

(a) ESCB central banks, when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system, and it shall communicate all information that is essential for the pursuance

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of their tasks;

(b) the ESRB where such information is relevant for the exercise of its statutory tasks; and

(c) departments of government administrations in other Member States responsible for law on the supervision of investment firms, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments.

(5) The competent authority shall communicate to the European regulatory authority of the host Member State where the significant branch is established, the results of the risk assessment carried out in terms of the Investment Services Act (Supervisory Review) Regulations with respect to the investment firm licensed in Malta with such a branch and, where applicable, joint decisions on investment firm specific prudential requirements taken pursuant to the provisions of the Act and any regulations or Rules made thereunder transposing the requirements of Article 113(2) of the CRD. The competent authority shall also communicate decisions required by the Act and any regulations or Rules made thereunder transposing the requirements of Articles 104 and 105 of the CRD in so far as those assessments and decisions are relevant to the branch. S.L. 370.15.

(6) The competent authority shall consult the European regulatory authority of the host Member State where the significant branch is established about operational steps required by the Act and any regulations or Rules made thereunder transposing the requirements of Article 86(11) of the CRD, where relevant for liquidity risks in the host Member State's currency.

Establishment of significant branches (General).

16. The designation of a branch as being significant shall not affect the rights and responsibilities of the competent authority under the Act, and any regulations or Rules made thereunder transposing the requirements of the CRD.

Colleges of supervisors in the context of branches.

17. (1) Where regulation 7 does not apply and the competent authority supervises an investment firm licensed in Malta with significant branches in other Member States, it shall establish and chair a college of supervisors to facilitate the co-operation in terms of regulation 15(3) to (6) and in terms of the Act and any regulations or Rules made thereunder transposing the requirements of Article 50 of the CRD. The establishment and functioning of the college shall be based on written arrangements determined after consulting the European regulatory authorities concerned by the competent authority. The competent authority shall decide which European regulatory authorities participate in a meeting or in an activity of the college.

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(2) In its decision the competent authority shall take account of the relevance of the supervisory activity to be planned or co-ordinated for those European regulatory authorities, in particular, the potential impact on the stability of the financial system in the Member States concerned, and, in particular, in emergency situations based on the information available at the relevant time and the obligations referred to in regulation 15(3) to (5).

(3) The competent authority shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The competent authority shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

Prudential supervision of an investment firm. S.L. 370.10.

18. (1) The prudential supervision of an investment firm, including that of the activities it carries out in accordance the European Passporting Rights for Investment Firms Regulations shall be the responsibility of the competent authority when such an investment firm is licensed in Malta, without prejudice to those provisions of the CRD and MiFID which give responsibility to the European regulatory authorities of the host Member State.

(2) Sub-regulation (1) shall not prevent supervision on a consolidated basis in terms of regulation 3.

(3) Where the branch of an investment firm authorised in a Member State other than Malta, is established in Malta, any measures taken by the competent authority with respect to such branch shall not allow discriminatory or restrictive treatment on the basis that the investment firm to which the branch belongs is authorised in another Member State.

Part III - Supervision of Mixed Activity Holding Companies and their subsidiaries and of Mixed Financial Holding Companies

Supervision of mixed activity holding companies and their subsidiaries.

19. (1) Where the parent undertaking of one or more investment firms licensed in terms of the Act is a mixed-activity holding company, the competent authority shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via subsidiaries that are investment firms, require them to supply any information which would be relevant for the purpose of supervising those subsidiaries.

(2) The competent authority may carry out on-the-spot inspections, or have on-the-spot inspections carried out by external inspectors, to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding

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company or one of its subsidiaries is an insurance undertaking, the procedure set out in regulation 11 may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than Malta but is the parent undertaking of an investment firm licensed in terms of the Act, on-the-spot verifications of information shall be carried out in accordance with the procedure set out in regulation 12.

(3) Without prejudice to Part Four of the CRR, where the parent undertaking of one or more investment firms licensed in terms of the Act is a mixed-activity holding company, the competent authority shall exercise general supervision over transactions between the investment firms and the mixed-activity holding company and its subsidiaries.

Supervision of mixed financial holding companies.

20. (1) Where a mixed financial holding company is subject to equivalent provisions under the Act and any regulations or Rules made thereunder transposing the requirements of the CRD, and under Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerates, in particular in terms of risk-based supervision, the competent authority may, as consolidating supervisor, after consulting the other European regulatory authorities responsible for the supervision of subsidiaries, apply only the latter Directive to that mixed financial holding company.

(2) Where a mixed financial holding company is subject to equivalent provisions under the Act and any regulations or Rules made thereunder transposing the requirements of the CRD, and under Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), in particular in terms of risk-based supervision, the competent authority as consolidating supervisor may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provisions under the Act, and any regulations or Rules made thereunder transposing the requirements of the CRD relating to the most significant financial sector as defined in regulation 3 of the Financial Conglomerates Regulations. S.L. 330.06.

(3) The competent authority, as consolidating supervisor, shall inform the EBA and the EIOPA of the decisions taken under sub-regulations (1) and (2).

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