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Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,852, 6 ta' Mejju, 2022

Taqsima B

L.N. 131 of 2022

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (Cross-Border Distribution of Funds) Regulations, 2022

IN EXERCISE of the powers conferred by article 12(1)(n) 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 (Cross-Border Distribution of Funds) Regulations, 2022.

(2) The purpose of these regulations is to implement Article 14 of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014, and to provide for ancillary matters related thereto.

Interpretation.

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

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

"Alternative Investment Funds or AIFs" 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, and shall include EuVECA, EuSEF and ELTIF;

"Cross-Border Distribution of Funds Regulation" means Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 as 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;

"European long-term investment fund" or "ELTIF" shall

have the same meaning as assigned to it in Regulation (EU) 2015/750 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds;

"EuSEF" shall have the same meaning assigned to it in Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds;

"EuSEF manager" means a manager of a qualifying social entrepreneurship fund as defined in point (c) of Article 3(1) of Regulation (EU) No 346/2013 and registered in accordance with Article 15 of the said Regulation;

"EuVECA" shall have the same meaning assigned to it in Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital fund;

"EuVECA manager" means a manager of a qualifying venture capital fund as defined in point (c) of the first paragraph of Article 3 of Regulation (EU) No 345/2013 and registered in accordance with Article 14 of the said Regulation;

"Home Member State" means the Member State in which the AIFM, the EuVECA manager, the EuSEF manager or the UCITS management company has its registered office;

"UCITS" shall have the same meaning as assigned to it in the Act; and

"UCITS management company" shall have the same meaning as assigned to it in the Act.

(2) Words and expressions used in these regulations shall have the same meaning 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 Cross-Border Distribution of Funds Regulation, and any reference in these regulations to the competent authority shall be read and construed accordingly.

Applicability of the Cross-Border Distribution of Funds Regulation to the competent authority.

4. (1) The competent authority shall exercise all the functions, obligations and powers and shall satisfy all the requirements imposed on competent authorities by the Cross-Border Distribution of Funds Regulation.

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(2) Without prejudice to sub-regulation (1), the competent authority may, for the better implementation of the Cross-Border Distribution of Funds Regulation, exercise any of the powers assigned to it under the Act and any regulations, Investment Services Rules and, or Conduct of Business Rules issued thereunder.

Power to issue Rules.

5. For the better carrying out of the provisions of the Cross-Border Distribution of Funds Regulation and of these regulations, the competent authority may, from time to time, issue and publish Investment Services Rules and, or Conduct of Business Rules within the meaning of article 6(2)(b) of the Act. Such rules may lay down additional requirements and conditions in relation to AIFMs, EuVECA managers, EuSEF managers and UCITS management companies as the competent authority may deem appropriate, including on:

(a) the operation of the Cross-Border Distribution of Funds Regulation or of these regulations;

(b) any matter relating to the functions, obligations and powers of the competent authority under the Cross-Border Distribution of Funds Regulation; or

(c) any other matter arising in connection with the Cross-Border Distribution of Funds Regulation or these regulations.

Powers of the competent authority.

6. The competent authority shall supervise compliance by the AIFMs, EuVECA managers, EuSEF managers and UCITS management companies with the requirements prescribed in the Cross-Border Distribution of Funds Regulation.

Administrative penalties.

7. (1) Without prejudice to any other powers assigned to the competent authority in terms of these regulations, where a person's conduct amounts to a breach of any of the provisions of the Cross-Border Distribution of Funds Regulation, these regulations or any Investment Services Rules or Conduct of Business Rules issued thereunder and implementing the Cross-Border Distribution of Funds Regulation, the competent authority may by notice in writing and without recourse to a court hearing, impose on such person as the case may be, an administrative penalty as follows:

(a) in the case of a legal person, the administrative penalty 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, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant 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 penalty of up to a maximum of five million euro (€5,000,000);

(c) as an alternative to paragraphs (a) and (b), an administrative penalty up to a maximum equivalent to twice the amount of the benefit derived from the infringement or breach, where that benefit can be determined, even if it exceeds the maximum amounts provided for under paragraphs (a) and (b).

(2) Administrative penalties or other measures that may be imposed by the competent authority on licence holders or others, as may be specified, may be imposed in the form of a fixed penalty, a daily penalty, or both.

(3) The imposition by the competent authority of an administrative penalty in terms of this regulation shall be without prejudice to any other consequence arising from the act or omission of the offender under civil or criminal law:

Provided that in all cases where the competent authority imposes an administrative penalty in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

(4) The competent authority may, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of these regulations, Investment Services Rules or Conduct of Business Rules issued thereunder, and the penalty or administrative measure imposed. The competent authority shall withhold such public disclosure where it deems that such disclosure would seriously jeopardize the financial markets, be detrimental to the interests of investors or cause disproportionate damage to the parties involved.

(5) Where the competent authority has made a public statement in terms of sub-regulation (4), it shall simultaneously report that fact to ESMA.

(6) The competent authority shall annually provide ESMA with aggregated information about all the administrative measures and

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sanctions imposed in accordance with this regulation and shall upon request provide the necessary information on the application of administrative measures and imposition of penalties in the case of breaches of the provisions adopted in the implementation of the Cross-Border Distribution of Funds Regulation.

Right of appeal. Cap. 330.

8. A right of appeal to the Financial Services Tribunal, as established under article 21 of the Malta Financial Services Authority Act, shall lie from any decision which the competent authority may take under these regulations and under the Cross-Border Distribution of Funds Regulation, and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

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