Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 21,162, 7 ta' Diċembru, 2023
Taqsima B

L.N. 278 of 2023

RESIDUAL BALANCES FUND ACT (CAP. 618)

Residual Balances Fund Act (Compliance Review) Regulations, 2023

IN EXERCISE of the powers conferred by article 31(3) of the Residual Balances Fund Act, the Minister responsible for the regulation of financial services, in consultation with the Malta Financial Services Authority and the Financial Intelligence Analysis Unit, has made the following regulations:

Citation and scope.

1. (1) The title of these regulations is the Residual Balances Fund Act (Compliance Review) Regulations, 2023.

(2) The purpose of these regulations is to determine the nature, specifications and extent of any compliance review, the basis for a determination of a failure of the compliance review, as well as any other conditions forming part thereof.

Interpretation.

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

"the Act" means the Residual Balances Fund Act; Cap. 618.

"beneficial owner" shall have the meaning assigned to it in accordance with regulation 2(1) of the Prevention of Money Laundering and Funding of Terrorism Regulations and as further supplemented in any implementing procedures issued by the FIAU in accordance with regulation 17 of the Prevention of Money Laundering and Funding of Terrorism Regulations; S.L. 373.01.

"Member State" means a Member State of the European Union and includes an EEA State;

"sanctions" means financial sanctions which are binding on Malta, as established under the National Interest (Enabling Powers) Act; Cap. 365.

(2) Words and expressions used in these regulations which are also used in the Act but which are not defined herein, shall have the same meaning assigned to them in the Act.

Compliance review.

3. Without prejudice to any provisions of the Act, before releasing any transferred deposit liabilities to transferred depositors,

the Fund shall, following the submission of an application submitted in accordance with article 19(3) of the Act, conduct a compliance review in accordance with the provisions of these regulations.

Application.

4. (1) An application submitted in accordance with article 19(3) of the Act shall include the following information and documentation, as applicable:

(a) the application form drawn up by the Fund for the purposes of an application to be made in accordance with article 19(3) of the Act, as may be amended from time to time, duly completed and signed by the transferred depositor, together with the supporting documents set out in paragraphs (b) and (c) below, as applicable, and any other supporting documents as may be specified therein;

(b) where the transferred depositor is a body corporate, a body of persons, or any other form of legal entity or arrangement:

(i) an explanation and depiction of the ownership and control structure of the transferred depositor, together with any documentation necessary to verify the said structure;

(ii) a copy of the memorandum and articles of association or such other constitutive document of the transferred depositor;

(iii) a copy of the licence or certificate of registration of the transferred depositor; and

(iv) a copy of the passport, identification and, or residence card of the beneficial owners of the transferred depositor and, where necessary, any other document required to verify the name and surname, date of birth, nationality, citizenship and residential address of the beneficial owners of the transferred depositor;

(c) where the transferred depositor is a natural person, a copy of the passport, identification and, or residence card of the transferred depositor and, where necessary, any other document required to verify the name and surname, date of birth, nationality, citizenship and residential address of the transferred depositor; and

(d) details of the account to which any transferred deposit liabilities would be transferred should they be released in

accordance with the provisions of the Act and these regulations:

Provided that where the Fund is satisfied that it is not possible for the transferred depositor to provide any information or documentation mentioned in this sub-regulation, the Fund may require any such other information or documentation which is alternative or equivalent thereto:

Provided further that the Fund may determine such conditions as it may deem necessary for the purpose of ensuring that the information and documentation to be submitted in terms of this sub-regulation is complete, accurate and reliable, and the transferred depositor shall comply with any such conditions.

(2) The provisions of sub-regulation (1) shall be without prejudice to the powers of the Fund to require information, data and, or documentation under articles 4(3)(a), 5 and 19(5) of the Act.

Due diligence checks.

5. (1) As part of the compliance review, the Fund shall carry out due diligence checks which shall include:

(a) the identification and verification of the identity of the transferred depositor:

Provided that where the transferred depositor is a body corporate, a body of persons, or any other form of legal entity or arrangement, the Fund shall also verify the legal status of the transferred depositor:

Provided further that where the transferred depositor is a body corporate, a body of persons, or any other form of legal entity or arrangement incorporated and, or administered in any Member State, that is subject to the registration of beneficial owner information, the Fund shall also obtain proof that such beneficial ownership information has been duly registered with a designated beneficial ownership register;

(b) the identification, where applicable, of the beneficial owners, and the verification of the identity of the said beneficial owners;

(c) where a person purports to act on behalf of a transferred depositor, the verification that such person is duly authorised in writing to act on behalf of the transferred depositor, as well as the identification of that person and the verification of the identity of that person; and

(d) any additional due diligence checks which may be

deemed necessary by the Fund.

(2) Without prejudice to sub-regulation (1), where the transferred deposit liabilities due to a transferred depositor are equal to or more than ten thousand euro (€10,000) or an equivalent value in any other currency, the Fund may carry out additional due diligence checks which may include:

(a) an assessment of the purpose and nature of the business relationship between the transferring institution and the transferred depositor, as well as the business and risk profile of the transferred depositor;

(b) an inspection and scrutiny of transactions undertaken throughout the course of the relationship between the transferring institution and the transferred depositor to ensure that the transactions undertaken were consistent with the transferring institution's knowledge of the transferred depositor and of his business and risk profile including, where necessary, the source of the transferred deposit liabilities due to the transferred depositor;

(c) an examination of any form of link of the transferred depositor with other transferred depositors to detect any unusual or suspicious transaction patterns;

(d) a consideration of any adverse information which links the transferred depositor to financial crime, including whether the transferred depositor is subject to any sanction;

(e) the verification of the source of the transferred deposit liabilities due to the transferred depositor; and

(f) any additional due diligence checks which may be deemed necessary by the Fund.

(3) Without prejudice to sub-regulation (1) and notwithstanding sub-regulation (2), the Authority may, in consultation with the FIAU, require the Fund to carry out additional due diligence checks as part of the compliance review to be carried out in relation to the transferred deposit liabilities transferred by a particular transferring institution.

Unsatisfactory completion of the compliance review.

6. (1) The compliance review shall not be satisfactorily completed and consequently, the transferred deposit liabilities shall not be released if:

(a) the transferred depositor or, where the transferred

depositor is a body corporate, a body of persons, or any other form of legal entity or arrangement, anyone acting on its behalf fails to provide, without reasonable justification, the information and, or documentation requested by the Fund or required under the Act or these regulations;

(b) the transferred depositor or, where the transferred depositor is a body corporate, a body of persons, or any other form of legal entity or arrangement, anyone acting on its behalf fails to satisfy, without reasonable justification, any such condition as may be determined by the Fund in accordance with regulation 4(1);

(c) the transferred depositor or, where the transferred depositor is a body corporate, a body of persons, or any other form of legal entity or arrangement, anyone acting on its behalf furnishes the Fund with information which is false, inaccurate or misleading; and, or

(d) the transferred depositor is the subject of a sanction.

(2) Where the Fund decides that the compliance review has not been satisfactorily completed on any of the grounds mentioned in sub-regulation (1), it shall state in the notification to be issued in accordance with article 19(6) of the Act, the grounds on which such decision is based.

Delay of release of transferred deposit liabilities.

7. Where the Fund submits a report to the FIAU as provided for under article 26 of the Act in connection with a transferred depositor who, or which has applied to the Fund for the release of the transferred deposit liabilities due thereto and, or the said transferred deposit liabilities, the provisions of article 28 of the Prevention of Money Laundering Act shall apply *mutatis mutandis*.

Cap. 373.

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