

L.N. 290 of 2023**INVESTMENT SERVICES ACT
(CAP. 370)****Investment Services Act (Exemption) (Amendment)
Regulations, 2023**

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:-

1. (1) The title of these regulations is the Investment Services Act (Exemption) (Amendment) Regulations, 2023 and these regulations shall be read and construed as one with the Investment Services Act (Exemption) Regulations, hereinafter referred to as "the principal regulations".

Citation and scope.

S.L. 370.02.

(2) The scope of these regulations is to exempt Notified Professional Investor Funds from the requirement for a licence for investment services in terms of the Investment Services Act and to provide for matters consequential or ancillary thereto, and to partly transpose Article 2(1) of 'Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU' and to implement Article 4 of the 'Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive'.

Cap. 370.

2. Sub-regulation (1) of regulation 2 of the principal regulations shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) immediately after the definition "List of Notified AIFs", there shall be added the following new definition:

S.L. 370.34. "'List of Notified PIFs" shall be construed as a reference to the List of Notified PIFs which is held by the competent authority on its website in terms of the Investment Services Act (Notified CISOs) Regulations;" and

(b) immediately after the definition "professional investor", there shall be added the following new definition:

B 2456

""professional investor fund"" or ""PIF"" means a collective investment scheme which qualifies as a professional investor fund in terms of the Investment Services Rules;"

Amends
regulation 3 of
the principal
regulations.

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

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

S.L. 370.34. "(ia) acting as trustee or custodian in terms of paragraph 5(c) of the First Schedule to the Act, in relation to a collective investment scheme established as a professional investor fund that has been included by the competent authority on the List of Notified PIFs in terms of the Investment Services Act (Notified CISs) Regulations, where the competent authority is satisfied that such person is of sufficient standing and repute; or";

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

S.L. 370.34. "(iaa) providing the services of management of investments and, or investment advice, in terms of paragraphs 4 and, or 6 of the First Schedule to the Act to a collective investment scheme established as a professional investor fund that has been included by the competent authority on the List of Notified PIFs in terms of the Investment Services Act (Notified CISs) Regulations, where the competent authority is satisfied that such person is of sufficient standing and repute; or";

(c) in sub-paragraph (iv) of paragraph (h) of sub-regulation (1) thereof, immediately after the words "in terms of the Investment Services Rules," there shall be added the words "or a collective investment scheme which has been included by the Competent Authority in the List of Notified AIFs in terms of the Investment Services Act (Notified CISs) Regulations,";

(d) the proviso to paragraph (m) of sub-regulation (1) thereof shall be substituted by the following new proviso:

"Provided that for the purposes of this paragraph, an investment service shall be deemed to be provided in an incidental manner in the course of a professional activity where the following conditions are satisfied:

(i) a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity;

(ii) the provision of investment services to the clients of the main professional activity does not aim to provide a systematic source of income to the person providing the professional activity; and

(iii) the person providing the professional activity does not market or otherwise promote his ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.";

(e) sub-paragraph (d) of the first proviso of paragraph (p) of sub-regulation (1) thereof shall be substituted by the following new sub-paragraph:

"d. those persons notify annually the competent authority that they make use of this exemption and upon request report to the competent authority the basis on which they consider that their activity under sub-paragraphs (i) and (ii) is ancillary to their main business:";

(f) in sub-regulation (2) thereof, for the words "paragraphs (f), (g), (h), (l), (q), (t) and (z)" there shall be substituted the words "paragraphs (h), (l), (q) and (z)".

4. Sub-regulation (1) of regulation 5 of the principal regulations shall be amended as follows:

Amends
regulation 5 of
the principal
regulations.

(a) in paragraph (d) thereof, for the words "Investment Services Act (List of Notified AIFs) Regulations;", there shall be substituted the words "Investment Services Act (Notified CISs) Regulations;"

S.L. 370.34.

(b) immediately after paragraph (d) thereof, there shall

B 2458

be added the following new paragraph:

S.L. 370.34. "(da) a scheme established as a professional investor fund that has been included by the competent authority on the List of Notified PIFs in terms of the Investment Services Act (Notified CISs) Regulations;"

Amends
regulation 6 of
the principal
regulations.

5. In paragraph (c) of sub-regulation (1) of regulation 6 of the principal regulations, for the words "in terms of the Investment Services Rules.", there shall be substituted the words "in terms of the Investment Services Rules;" and immediately thereafter there shall be added the following new paragraph:

S.L. 370.34. "(d) a collective investment scheme established as a professional investor fund that has been included by the competent authority on the List of Notified PIFs in terms of the Investment Services Act (Notified CISs) Regulations;"
