

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 21,266, 14 ta' Ġunju, 2024

Taqsima B

L.N. 132 of 2024

**MALTA DIGITAL INNOVATION AUTHORITY ACT
(CAP. 591)**

**Innovative Technology Arrangements and Services (ITAS)
Certification Regulations, 2024**

IN EXERCISE of the powers conferred by article 58 of the Malta Digital Innovation Authority Act, the Minister responsible for digital economy, acting on the advice of the Malta Digital Innovation Authority, has made the following regulations:-

1. (1) The short title of these regulations is the Innovative Technology Arrangements and Services (ITAS) Certification Regulations, 2024. Citation and scope.

(2) The scope of these regulations is to provide for a voluntary recognition framework for innovative technology arrangements and services and for innovative technology service providers, as shall be determined by the Authority for the purposes established in the Act, from time to time.

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

"the Act" means the Malta Digital Innovation Authority Act; Cap. 591.

"the Authority" means the Malta Digital Innovation Authority established by article 5 of the Act;

"innovative technology arrangements" means any applications and, or solutions or parts thereof which include software, code, computer protocols and other architectures which are used in the context of innovative technology;

"innovative technology services" means those services in relation to innovative technology arrangements which the Authority may, from time to time, define, authorize or regulate;

"officer" means an officer or any person who is appointed to carry out representative and fiduciary functions in the control and administration of a legal person or a legal organisation having separate legal personality, and any person who carries out such functions even if under another name, including a director,

manager or company secretary;

"service provider" or "innovative technology service provider" means a natural or legal person that renders innovative technology services, including a technical expert;

(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 as assigned to them in the Act.

Application for recognition.

3. Any person who intends to obtain recognition for any innovative technology arrangements or any innovative technology service may apply to the Authority by making use of the relevant prescribed forms issued by the Authority for such purpose and accessible through the website of the Authority, or in the absence of a prescribed form, by an application in writing providing the information required by the Authority for such purpose with reference to the subject matter of the application.

Transparency in considering applications.

4. The Authority shall act in an open and transparent manner when considering applications and shall seek to provide reasonable information on the progress of an application to the applicant and, in case of refusal, the reasons for refusing to accept an application under these regulations shall be communicated in writing to the applicant.

Innovative technology arrangements certification.

5. Without prejudice to the forms of recognition that the Authority may issue in accordance with the Act, there shall be a form of recognition to be issued by the Authority known as "innovative technology arrangements certification" or "ITA certification".

6. (1) The Authority shall, from time to time, and taking into account international and European Union legislation, determine the types of technologies and innovative technology arrangements to which the innovative technology arrangements certification shall apply.

(2) The Authority may determine different types and classes of innovative technology arrangements certification, including certification based on self-assessment methodologies, and set the levels of certification and elements to be assessed.

(3) The Authority may issue innovative technology arrangements certification to different innovative technology arrangements for one or more specific criteria with particular reference to: purposes, qualities, features, attributes, behaviours or aspects, as may be determined by the Authority, and which shall be specified in the ITA certification.

(4) An innovative technology arrangements certification for one or more specific purposes, qualities, features, attributes, behaviours or other aspects shall neither operate as a certification for different purposes, qualities, features, attributes, behaviours or other aspects, nor shall it bar other certifications or recognitions for other purposes, qualities, features, attributes, behaviours or other aspects.

(5) ITA certification may be issued on an in principle or conditional basis subject to the innovative technology arrangements satisfying the conditions or obligations imposed by the Authority.

(6) ITA certification issued under these regulations shall specify the details of how the innovative technology arrangements are identified and the innovative technology arrangements certification shall be given a unique number for purposes of such identification.

(7) The holder of the certified innovative technology arrangements shall post the innovative technology arrangements certification on the arrangement, in a specific location which shall be notified to the Authority, in an easily accessible and legible format in order that it can be viewed by all users of the innovative technology arrangements.

(8) When an innovative technology arrangements certification is issued in favour of an innovative technology arrangements, without specifying any elements as provided for in sub-regulation (3), it shall be presumed to refer to all parts of the innovative technology arrangements which are described as constituting the arrangement in the application, unless expressly stated otherwise, in which case it shall refer only to the specific criteria designated as the subject of the certification.

(9) Subject to the right of appeal provided for in the Act, it shall be the sole discretion of the Authority to determine whether innovative technology arrangements qualify for innovative technology arrangements certification under these regulations.

(10) The Authority may designate and make public, any international or other standards of recognition it may rely on when issuing certification under these regulations accessible through the website of the Authority.

(11) An applicant or holder of an innovative technology arrangements certification shall pay to the Authority such fees as may be prescribed by the Minister or the Authority in accordance with their powers at law in such manner as the said Minister or Authority may determine, from time to time, with the original application and

subsequently upon renewal, and which shall be accessible through the website of the Authority:

Provided that, the Authority reserves the right not to prescribe any fees in terms of this sub-regulation.

Variations of
purposes and
other features.

7. (1) Any person to whom an innovative technology arrangements certification has been issued following an application under these regulations shall not effect any material changes to the certified innovative technology arrangements without having obtained the prior written approval by the Authority of any such amendment or substitution;

(2) The term "material changes" in sub-regulation (1) shall include:

(a) any alterations to any innovative technology arrangements or parts thereof including, software, code or computer protocol to which the ITA certification applies, save for upgrades, maintenance, innovative evolution or the mere replacement of any supporting software which do not materially change the functionality, or have a material impact on the users of the innovative technology arrangements, or are not in breach of the regulatory principles of the Act or of the ITA certification;

(b) any development altering the rights of users;

(c) any changes introducing new risks, increasing any existing risks, or which may interfere with any risk mitigation mechanism in place;

(d) any development altering the rights, authorisation and powers of the Authority or any person authorised by the Authority;

(e) any alterations to the general purposes of the certified innovative technology arrangements or to matters on which the Authority has received assurances in connection with the issuing of the ITA certification;

(f) any alterations to matters which the Authority, in the ITA certification or documentation leading to the issuing of the ITA certification, specifically lists as requiring its authorisation prior to any changes being effected; or

(g) any other alterations that may be specified by the Authority and accessible through its website, from time to time.

(3) In addition to the above, in those circumstances in which an innovative technology service provider is, on a request of the Authority, providing services in relation to the process of the issuing of an ITA certification, the said service provider shall specify whether any envisaged substitution or amendment consists of a material change, in accordance with the meaning attributed to it in sub-regulation (2), or may have material impact on the users of the innovative technology arrangements or third parties, or affects the content of their review, assurances or declarations provided to the Authority for the purposes of the certification of the relevant innovative technology arrangements:

Provided that, to the extent that the changes result in additional elements which have not been reviewed and do not fall within the parameters of existing assurances and declarations issued by the said service provider, the said service provider shall carry out a review of the said additional elements, and provide the Authority with the relative assurances that the changes do not affect his previous declarations and evaluations of the certified innovative technology arrangements.

(4) The Authority may, prescribe mandatory notification in general or give directions as it may deem fit in the circumstances of the case.

8. Where prior authorisation to any envisaged changes is not required according to these regulations, the person to whom an innovative technology arrangements certification has been issued following an application under these regulations shall provide the Authority with the details of any changes in the certified innovative technology arrangements, or to the information that had been provided to the Authority in the application process provided for in terms of these regulations, within thirty (30) days of such changes materializing.

Duty to notify changes.

9. (1) All certificates under these regulations shall be valid for the period as established by the Authority and shall be presumed to expire on the first day after the lapse of the period of validity indicated on the certificate, unless renewed by the Authority in accordance with these regulations, in which case the expiry date shall be extended by the renewal period and the innovative technology arrangements certification shall lapse on the day after the said extended expiry date.

Renewals of certifications and registrations.

(2) It shall be the duty of the innovative technology arrangements certification holder to ensure that the said certification is valid and effective throughout the duration period and that subject to the confirmation by the Authority, the innovative technology arrangements certification shall be renewed at least within the last

three (3) months of its duration period and in any case prior to expiry.

Registration of
an innovative
technology
service
provider.

10. (1) The Authority shall be empowered to register persons providing innovative technology services for purposes that the Authority shall, from time to time, define and publish through guidelines and which shall be accessible through the website of the Authority setting out the functions and obligations of such registered innovative technology service providers within the framework of innovative technology recognition and certification.

(2) The registration of an innovative technology service provider may be made in relation to natural or legal persons, or legal organisations having separate legal personality, as the Authority may determine.

(3) The Authority shall determine the means of application for the purposes of registering innovative technology service providers, and the general and specific requirements for registration, including requirements relating to "fit and proper" tests that the innovative technology service providers must satisfy whether they are natural or legal persons, or legal organisations having separate legal personality.

(4) The Authority shall establish rules on the manner in which innovative technology services are to be provided by natural or legal persons, or legal organisations having separate legal personality, including where necessary, rules on the internal segregation of functions and on the responsibility for the recognised functions and which shall be accessible through the website of the Authority.

(5) The Authority may designate and make public and accessible through its website any international or other standards of service it may rely on when considering a registration of innovative technology service providers under these regulations.

(6) Without prejudice to the other requirements that may be published by the Authority through guidelines accessible through its website, the Authority shall not recognise an innovative technology services provider if the circumstances referred to in article 28 of the Act arise.

(7) The Authority shall grant the registration to recognised innovative technology service providers which shall specify the official name and surname, if applicable, and registered address and have a unique number for identification purposes and a list of the classes of services which the applicant has been registered to provide.

(8) The registered innovative technology service provider shall post the registration issued to it by the Authority on its website, if

applicable, as well as on any innovative technology arrangements to which it renders its services in a specific location, as may be further specified by the Authority. Said posting of the registration, which shall be in an easily accessible and legible format in order that it can be viewed and clearly understood by all users of the innovative technology arrangements, shall be notified to the Authority.

(9) When an innovative technology service provider is a legal person, or a legal organisation having separate legal personality the registration shall be issued in the name of the legal person or the legal organisation and where the service is carried out personally by such service provider, the registration shall be issued in the official name and surname of the said service provider.

(10) Innovative technology service providers registered under the provisions of these regulations shall be considered to be professionals who act as fiduciaries in relation to the information submitted to them by any customers and shall also be bound by the provisions of the Professional Secrecy Act and shall act accordingly.

Cap. 377.

(11) The Authority shall be empowered to require innovative technology arrangements that are seeking to be, or may have been certified by the Authority, to engage the services of registered innovative technology service providers to carry out specific functions in relation to the innovative technology arrangements certification or review process, as shall be specified by the Authority in its published guidelines accessible through its website.

11. (1) Registrations issued to innovative technology service providers under these regulations shall be valid for a period of three (3) years and shall expire accordingly unless renewed in terms of regulation 11(2), provided that the Authority may issue a registration for a different period, as it may deem reasonable.

Renewals of
registrations.

(2) It shall be the duty of the innovative technology service provider to ensure that the registration is valid and effective throughout the period of duration, and subject to the confirmation by the Authority, the registration shall be renewed at least within the last three (3) months of its period of duration and, in any case, prior to expiry.

12. (1) When an applicant for an innovative technology arrangements certification to be issued by the Authority is not habitually resident in Malta, it may be required by the Authority to appoint, a resident agent who:

Appointment of
resident agent.

(a) is habitually resident in Malta;

(b) is not interdicted or incapacitated or is an undischarged bankrupt;

(c) has not been convicted of any of the crimes affecting public trust or of theft or of fraud or money laundering or of knowingly receiving property obtained by theft or fraud; and

(d) has satisfied the Authority that he is a person capable of carrying out the functions provided for in terms of these regulations.

(2) A legal person and a legal organisation having a separate legal personality shall be considered as not being habitually resident in Malta for the purposes of this regulation if none of:

(a) the members of its board of administrators or secretary; and

(b) its senior officers, being the chief executive officer, the chief operations officer or its chief technology officer;

are habitually resident in Malta.

(3) Notices of the appointment, including the terms of engagement, resignation or removal of the resident agent shall be filed with the Authority in the prescribed form, and until such form is issued by the Authority, by means of a notification in writing and, where a notice of appointment is given, it shall be accompanied by the acceptance in writing of the resident agent of such appointment.

(4) The Authority may, at any time, refuse or reject any notice of an appointment which it considers is not in compliance with these regulations, and in such case, the innovative technology recognition holder or applicant, as the case may be, shall immediately propose another resident agent.

Functions of the resident agent.

13. (1) It shall be the function of the resident agent on behalf of the innovative technology certification applicant or holder to:

(a) act as the channel of communication between the innovative technology recognition holder or applicant and the Authority and other Maltese government departments and authorities;

(b) sign and file with the Authority and other Maltese government departments and authorities all declarations and forms as may be required in terms of Maltese law; and

(c) act as the legal representative of the innovative technology recognition holder or applicant for judicial proceedings in Malta, and any notice whether by the Authority or any other authority, that is sent to the resident agent at his last registered address with the Authority, shall be deemed to have been duly received by and notified to the innovative technology recognition holder or applicant.

(2) The resident agent shall not be held personally liable for non-compliance by the innovative technology recognition holder or applicant with any law, nor for any misrepresentation made in any submissions or documents issued by the innovative technology recognition holder or applicant, even if authenticated by the resident agent for the purposes of the application, certification, recognition or any other law, unless the resident agent has personally undertaken such liability for the compliance in writing or has himself wilfully or negligently made a false declaration.

(3) The resident agent shall neither be responsible for any court fees, legal expenses, or any related expenses in the event of any judicial proceedings filed against him in his capacity as legal representative of the innovative technology recognition holder or applicant or any of its officers, by whosoever they may have been filed.

14. (1) Without prejudice to the express powers entrusted to the resident agent by an innovative technology recognition holder or applicant in the said engagement, the resident agent shall have the power on behalf of the innovative technology certification holder or applicant, to:

Powers of
resident agent.

(a) sign and file applications, declarations, notices, returns and any other document that may be required in terms of Maltese law;

(b) apply for the recognition or certification of an innovative technology arrangement or for the registration of an innovative technology service provider under these regulations and for the revocation or cancellation of a recognition or certification or registration, and to perform any ancillary act in relation thereto;

(c) pay all relative fees and taxes payable in terms of Maltese law;

(d) do all other things as may be considered conducive or ancillary for the certification or other form of recognition or

registration under the Act, these regulations or for the maintenance of such recognition or registration;

(e) authenticate documents issued by the innovative technology recognition holder or applicant; and

(f) receive formal notification on behalf of the innovative technology recognition holder or applicant when notifications are required under the provisions of these regulations or any other law or any agreement:

Provided that it shall not be lawful for the certification of an innovative technology arrangements or the registration of an innovative technology service provider to be issued in the name of the resident agent, even if he is formally authorised for such purpose.

(2) The resident agent shall be deemed to have all the necessary powers to enter into binding undertakings with the Authority on matters relating to the recognition by the Authority on behalf of the innovative technology recognition holder or applicant and the Authority is authorised to act accordingly:

Provided that nothing in this Act shall imply any power of a resident agent to execute any document relating to an undertaking involving liability unless expressly authorised to do so in writing.

(3) The innovative technology recognition holder or applicant may restrict any of the above powers of the resident agent:

Provided that where the innovative technology recognition holder or applicant limits such powers, it shall file with the Authority a declaration to that effect in the prescribed form issued by the Authority and accessible through its website and such limitation shall not have effect with regard to third parties until it is so filed and recorded in the register of recognitions published by the Authority.

(4) Unless expressly prohibited from doing so in terms of his engagement, the resident agent may delegate and specifically appoint in writing another person to act in specific matters on his behalf provided that in so doing the resident agent shall not in any manner be relinquishing any of the functions, powers and responsibilities conferred on him under these regulations.

Resignation or
removal of
resident agent.

15. (1) A resident agent may resign from his position as a resident agent by giving at least thirty days' (30) notice, or such other shorter period as the innovative technology arrangements certification holder, or the Authority may consent to in writing.

(2) The innovative technology arrangements certification holder or applicant may remove the resident agent by giving at least thirty days' (30) notice, or such other shorter period as the Authority may consent to in writing.

(3) The Authority shall have the power to appoint, on a limited and temporary basis, a resident agent on behalf of the innovative technology arrangements certification holder in case the post of a resident agent is vacant for more than five (5) working days and the innovative technology arrangements certification holder has failed to fill that vacancy within said time. Such resident agent shall seek to establish contact with the persons who have duties in relation to the governance of the innovative technology arrangements in order that they shall appoint a resident agent of their choice:

Provided that in such case as provided in sub-regulation (4), the appointee shall be an advocate with a warrant to practice law in Malta.

(4) Where the ITA certification holder or applicant is in default of his obligations under these regulations in that the position of a resident agent is vacant and the Authority, pursuant to sub-regulation (3), did not appoint a temporary resident agent within the period stipulated in the guidelines accessible through the website of the Authority, the said Authority may, without prejudice to any other action that may be taken under these regulations, apply to the Civil Court, First Hall for the appointment of a curator to act as resident agent until such time as another resident agent is appointed by the Court or the innovative technology arrangements certification ceases to have effect.

16. The provisions of Part IX of the Act shall apply to decisions taken by the Authority pursuant to these regulations. Right to an effective judicial remedy.

17. Unless expressly stated in the Act or any European Union legislation or any other law, nothing in these regulations shall be considered as exempting any innovative technology arrangements or any innovative technology service provider from the provisions of any other law, including other regulatory laws requiring authorisations or approvals: No exemption from other laws.

Provided that, in the event that a requirement under these regulations is similar in scope to that under another law and has been satisfactorily satisfied by an applicant, the Authority may, if necessary with the written consent of the applicant, co-ordinate with the other national competent authorities and rely on the submissions and processes being carried out by the other authorities in carrying out its

duties under these regulations.
