Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 21,478, 29 ta' Lulju, 2025
Taqsima B

L.N. 152 of 2025

INVESTMENT SERVICES ACT (CAP. 370)

Supervisory Consolidation (Investment Firms Directive) (Amendment) Regulations, 2025

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:-

Citation and scope.

1. (1) The title of these regulations is the Supervisory Consolidation (Investment Firms Directive) (Amendment) Regulations, 2025 and these regulations shall be read and construed as one with the Supervisory Consolidation (Investment Firms Directive) Regulations, hereinafter referred to as the "principal regulations". S.L. 370.49.

(2) The scope of these regulations is to further transpose, in part, Articles 3, 46, 47, 48, and 49 of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU.

Amends regulation 2 of the principal regulations.

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

(a) the definition "ancillary services undertaking" shall be substituted by the following new definition:

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

(b) immediately after the definition "financial institution" there shall be added the following new definition:

" "group supervisor" means a competent authority responsible for the supervision of compliance with the group capital test of EU parent investment firms and investment firms controlled by EU parent investment holding companies or EU parent mixed financial holding companies;".

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Amends regulation 3 of the principal regulations.

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

(a) sub-regulation (1) thereof shall be amended as follows:

(i) the words "on a consolidated basis:" shall be substituted by the words "on a consolidated basis or supervision of compliance with the group capital test:";

(ii) paragraph (c) thereof shall be substituted by the following new paragraph:

"(c) where two (2) or more investment firms authorised in two (2) or more Member States, at least one of which is licensed in accordance with the Act, have as their parent the same EU parent investment holding company or the same EU mixed financial holding company which is established in Malta;";

(iii) paragraph (d) thereof shall be substituted by the following new paragraph:

"(d) where two (2) or more investment firms are authorised in two (2) or more Member States, one of which is licensed in accordance with the Act, having parent undertakings comprise more than one EU investment holding company or EU mixed financial holding company with head offices in different Member States and there being an investment firm in each of those Member States, and the investment firm with the largest balance sheet total is that licensed in terms of the Act; and";

(iv) paragraph (e) thereof shall be substituted by the following new paragraph:

"(e) where two (2) or more investment firms, one of which is licensed in accordance with the Act, having the same EU parent investment holding company or EU parent mixed financial holding company and none of those investment firms have been authorised in the Member State in which the EU parent investment holding company or EU parent mixed financial holding company are set up, and the investment firm licensed in terms of the Act has the largest balance sheet total.";

(b) sub-regulation (2) thereof shall be substituted by the following new sub-regulation:

"(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), (d) and (e) if their application would be inappropriate for the effective supervision on a consolidated basis or supervision of compliance with the group capital test, taking into account the investment firms and the relative importance of their activities in the relevant European Member States, and designate another European regulatory authority to exercise supervision on a consolidated basis or supervision of compliance with the group capital test. In these cases, before taking its decision, the competent authority shall give the EU parent investment holding company, EU parent mixed financial holding company or the investment firm 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.";

(c) in sub-regulation (3) thereof the words "the competent authority may" shall be substituted by the words "a college of supervisors may be established to".

Amends regulation 4 of the principal regulations.

4. In sub-regulation (1) of regulation 4 of the principal regulations the words "the competent authority acting as consolidating supervisor, shall" shall be substituted by the words "the college of supervisors shall provide a framework to the competent authority, as consolidating supervisor to".

Amends regulation 5 of the principal regulations.

5. In regulation 5 of the principal regulations the words "where entities of a group have been authorised and where the competent authority is the consolidating supervisor," shall be substituted by the words "where entities of an investment firm group have been authorised and where the competent authority is the group supervisor in accordance with regulation 3(1) and (2),".

Amends regulation 6 of the principal regulations.

6. Regulation 6 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof shall be substituted by the following new sub-regulation:

"(1) Where the competent authority is the group supervisor as determined in regulation 3, it may, if

appropriate, establish a college of supervisors to facilitate the tasks under Article 48 of the IFD as transposed in Maltese legislation and to ensure coordination and cooperation with third-country supervisory authorities in particular where this is needed for the purpose of applying Article 23(1)(c) and (2) of the IFR, to exchange and update relevant information on the margin model with the supervisory authorities of qualifying central counterparties (QCCPs).";

(b) immediately after sub-regulation (1) thereof, as substituted, there shall be added the following new sub-regulation:

"(1a) The competent authority shall also ensure that the following are members of the college of supervisors:

(a) the competent authorities responsible for the supervision of subsidiaries of an investment firm group headed by an EU investment firm, EU parent investment holding company or EU parent mixed financial holding company;

(b) where appropriate, third-country supervisory authorities, subject to confidentiality requirements that are equivalent in the opinion of all competent authorities to the requirements established in Section 2 of Chapter I of Title IV of the IFD.";

(c) sub-regulation (3) thereof shall be substituted by the following new sub-regulation:

"(3) Where the competent authority is the group supervisor, as determined in Regulation 3, it shall chair the meetings of the college and adopt decisions. Such decisions shall take into account the relevance of the supervisory activity to be planned or co-ordinated by the authorities as referred to in regulation (1a)(a) and (b), 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.";

(d) in sub-regulation (4) thereof the words "consolidating supervisor" shall be substituted by the words "group supervisor".

Amends regulation 7 of the principal regulations.

7. Regulation 7 of the principal regulations shall be amended as follows:

(a) in the proviso of paragraph (b) to sub-regulation (3) thereof the words "consolidating supervisor" shall be substituted by the words "group supervisor";

(b) sub-regulation (4) thereof shall be amended as follows:

(i) the words "The competent authority may refer to the EBA any of the following situations:" shall be substituted by the words "The competent authority and the group supervisor may refer to the EBA, in accordance with Article 19(1) of Regulation (EU) No 1093/2010, in any of the following situations:";

(ii) in paragraph (a) thereof the words "essential information;" shall be substituted by the words "essential information in accordance with sub-regulation (1) and (2), without undue delay;".

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