Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 21,685, 10 ta' Lulju, 2026

Taqsima B

L.N. 189 of 2026

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (Custodians of Collective Investment Schemes) (Amendment) Regulations, 2026

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 Investment Services Act (Custodians of Collective Investment Schemes) (Amendment) Regulations, 2026 and these regulations shall be read and construed as one with the Investment Services Act (Custodians of Collective Investment Schemes) Regulations, hereinafter referred to as the "principal regulations". S.L. 370.32.

(2) The scope of these regulations is to transpose the relevant provisions of Articles 1(1), 1(10), 2(1) and 2(8) of Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds.

Substitutes the Arrangement of the principal regulations.

2. The Arrangement of the principal regulations shall be substituted by the following new arrangement:

"Arrangement of Regulations

		Regulations
Part 1	Preliminary	1-2
Part 2	General requirements applicable to depositaries of collective investment schemes	3-14
Part 3	Requirements applicable to depositaries of UCITS	15-25
Part 4	Depositaries of AIFs	26
Part 4a	Requirements applicable to depositaries of AIFs	27-37
Part 4b	Requirements applicable to depositaries of specific AIFs	38-44

Part 5	Requirements applicable to depositaries of collective investment schemes other than UCITS and AIFs	45-47".

Amends regulation 1 of the principal regulations.

3. Sub-regulation (1) of regulation 1 of the principal regulations shall be substituted by the following new sub-regulation:

"(1) The title of these regulations is the "Investment Services Act (Depositaries of Collective Investment Schemes) Regulations.".

General amendment to the principal regulations.

4. The principal regulations shall be amended as follows:

(a) the word "Custodians", wherever it occurs, shall be substituted by the word "Depositaries";

(b) the word "custodians", wherever it occurs, shall be substituted by the word "depositaries";

(c) the word "custodian", wherever it occurs, shall be substituted by the word "depositary";

(d) the words "custody agreement", wherever they occur, shall be substituted by the word "depositary agreement";

(e) the word "Custodian's", wherever it occurs, shall be substituted by the word "Depositary's";

(f) the word "custodian's", wherever it occurs, shall be substituted by the word "depositary's".

Amends regulation 2 of the principal regulations.

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

(a) the definition "Category 2 Investment Services Licence" shall be substituted by the following new definition:

""central securities depository" or "CSD" shall have the same meaning as assigned to it in point (1) of Article 2(1) of Regulation (EU) No 909/2014;";

(b) immediately after the definition "the competent authority" there shall be added the following new definitions:

" "CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC

and 2006/49/EC, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"CRR" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"depositary" means an investment services licence holder that is licensed to provide depositary services to any collective investment scheme;

"depositary functions" means the functions which shall be carried out by a depositary in accordance with these regulations;

"depositary lite" means a depositary that is licensed to provide depositary services limitedly to collective investment schemes as referred to in regulation 4(3);

"depositary services" means the investment services established in item 5(c) of the First Schedule of the Act;";

(c) the definitions "custodian" and "Directive 2013/36/EU" shall be deleted;

(d) immediately after the definition "Directive 2006/73/EC" there shall be added the following new definitions:

" "European depositary" means an entity established in a Member State other than Malta that is subject to the provisions of Article 21 of the AIFMD, as transposed in national law;

"European regulatory authority" means the body or bodies designated by a Member State or an EEA State other than Malta in accordance with Article 44 of the AIFMD to carry out the duties provided for under the different provisions of the said Directive;

"Extraordinary Investor" means an investor which qualifies as an extraordinary investor in accordance with the Investment Services Rules;";

(e) immediately after the definition "financial instrument" there shall be added the following new definitions:

" "fund manager" means the entity responsible for the discretionary investment management of the assets of a collective investment scheme and it shall include an AIFM and a UCITS management company;

"home Member State" shall have the same meaning as assigned to it in paragraph (p) of Article 4(1) of the AIFMD with respect to an AIF, and that assigned to it in paragraph (q) of Article 4(1) of the AIFMD with respect to an AIFM;

"IFD" means 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, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"IFR" means Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"investment services licence holder" means a person licensed in accordance with article 6 of the Act to provide any of the investment services established in the First Schedule to the Act;";

(f) immediately after the definition "management body" there shall be added the following new definitions:

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

"MIFID" means 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 (recast), as

amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"Professional Investor Fund" or "PIF" means a collective investment scheme which qualifies as a professional investor fund in accordance with the Investment Services Rules;

"Qualifying Investor" means an investor which qualifies as a qualifying investor in accordance with the Investment Services Rules;";

(g) immediately after the definition "Regulation (EU) No. 231/2013" there shall be added the following new definition:

"Regulation (EU) No 909/2014" means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;".

Substitutes regulation 4 of the principal regulations.

6. Regulation 4 of the principal regulations shall be substituted by the following new regulation:

"Requirement of a licence.

4. (1) An entity shall be licensed under the Act to provide depositary services to a collective investment scheme.

(2) An entity may be licensed under the Act to provide depositary services to any type of collective investment scheme.

(3) Without prejudice to sub-regulation (2), an entity may be licensed under the Act to provide depositary services limitedly to:

S.L. 370.24.

(a) AIFs marketed in Malta in accordance with regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations;

(b) AIFs which have no redemption rights exercisable during the five (5) year period from the date of initial investment, and which generally do not invest in assets that shall be held in custody in terms of the Investment Services Rules; and, or

(c) Professional Investor Funds targeting Qualifying Investors and Extraordinary Investors.".

Amends regulation 8 of the principal regulations.

7. In the marginal note of regulation 8 the word "custody" shall be substituted by the word "appointment".

Amends regulation 17 of the principal regulations.

8. Regulation 17 of the principal regulations shall be amended as follows:

(a) sub-regulation (2) thereof shall be amended as follows:

(i) in paragraph (b) thereof the words "with Directive 2013/36/EU" shall be substituted by the words "with the CRD";

(ii) in paragraph (d) thereof the words "with Directive 2013/36/EU" shall be substituted by the words "with the CRD";

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

"(e) an investment firm or branch of an investment firm established in a Member State or EEA State other than Malta subject to capital adequacy requirements in accordance with the IFD and the IFR including capital requirements for operational risks and authorised in accordance with MIFID and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients, including custody and related services such as cash or collateral management in accordance with point (1) of Section B of Annex I of MIFID:

Provided that such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9(1) of the IFD, as transposed in the Investment Services Rules:

Provided further that the entity referred to in this paragraph shall be required to have a minimum of one (1) director who is resident in Malta on its board of directors.";

(b) in sub-regulation (3) thereof the words "a Category

4a Investment Services Licence issued in terms of the Act." shall be substituted by the words "a licence issued in accordance with article 6 of the Act to provide depositary services.";

(c) in paragraph (f) of sub-regulation (4) thereof the words "custodian functions" shall be substituted by the words "depositary functions";

(d) sub-regulation (5) thereof shall be deleted.

Amends regulation 18 of the principal regulations.

9. In sub-regulation (4) of regulation 18 of the principal regulations the words "custodian tasks" shall be substituted by the words "depositary functions".

Amends regulation 20 of the principal regulations.

10. In sub-paragraph (ii) of paragraph (b) of sub-regulation (2) of regulation 20 of the principal regulations the words "in accordance with Directive 2013/36/EU;" shall be substituted by the words "in accordance with the CRD;".

Amends regulation 22 of the principal regulations.

11. In sub-regulation (1) of regulation 22 of the principal regulations the words "the custody function has" shall be substituted by the words "its custody tasks have".

Amends regulation 23 of the principal regulations.

12. Regulation 23 of the principal regulations shall be amended as follows:

(a) in paragraph (c) of sub-regulation (2) thereof the words "its tasks, and continues" shall be substituted by the words "its tasks, except where such third party is a central securities depository acting in the capacity of an investor CSD as defined in the delegated act adopted pursuant to Articles 29(3) and 48(10) of Regulation (EU) No 909/2014, and continues";

(b) sub-regulation (6) thereof shall be substituted by the following new sub-regulation:

"(6) For the purposes of this regulation, the provision of services by a central securities depository acting in the capacity of an issuer CSD as defined in the delegated act adopted pursuant to Articles 29(3) and 48(10) of Regulation (EU) No 909/2014 shall not be considered a delegation of the depositary's depositary functions, and the provision of services by a central securities depository acting in the capacity of an investor CSD as defined in such delegated act shall be considered a delegation of the depositary's depositary functions.".

Amends regulation 26 of the principal regulations.

13. Regulation 26 shall be substituted by the following new regulation:

"Depositaries of AIFs.

26. A depositary shall be licensed under the Act to provide depositary services to any collective investment scheme, including AIFs or limitedly to collective investment schemes as referred to in regulation 4(3), including those AIFs referred to in paragraphs (a) and (b) thereof.

Substitutes the heading of Part 4a of the principal regulations.

14. The heading of Part 4a of the principal regulations shall be substituted by the following new heading:

"Part 4a
Requirements applicable to depositaries of AIFs".

Amends regulation 27 of the principal regulations.

15. Regulation 27 of the principal regulations shall be amended as follows:

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

(i) the words "custodians in possession of a Category 4a Investment Services Licence which provide" shall be substituted by the words "depositaries which provide";

(ii) in paragraph (a) thereof the words "AIFM; or" shall be substituted by the words "AIFM; and, or";

(b) in sub-regulation (2) thereof, the words "A Category 4a Investment Services Licence Holder shall" shall be substituted by the words "A depositary shall".

Amends regulation 29 of the principal regulations.

16. Regulation 29 of the principal regulations shall be amended as follows:

(a) in the second proviso to sub-regulation (1) thereof the words "Directive 2013/36/EU" shall be substituted by the words "the CRD";

(b) sub-regulation (2) thereof shall be amended as follows:

(i) the words "to hold a Category 4a Investment Services Licence issued in terms of the Act and to provide" shall be substituted by the words "to provide";

(ii) in paragraph (a) thereof the words "Directive

2013/36/EU" shall be substituted by the words "the CRD";

(iii) in paragraph (d) thereof the words "Directive 2013/36/EU" shall be substituted by the words "the CRD";

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

"(f) an investment firm or branch of an investment firm established in another Member State or EEA State subject to capital adequacy requirements in accordance with the IFD and the IFR including capital requirements for operational risks and authorised in accordance with MIFID and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with point (1) of Section B of Annex I of MIFID:

Provided that such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9 of the IFD, as transposed in the Investment Services Rules.".

17. Immediately after regulation 29, as amended, there shall be added the following new regulation:

Adds a new regulation to the principal regulations.

"Additional eligibility criteria.

29A. (1) Notwithstanding the provisions of regulation 29(1) and any other applicable law, the competent authority may allow a credit institution that is authorised in accordance with the CRD, as transposed in national law and established in a Member State other than Malta, to be appointed to provide depositary services to a Maltese AIF, provided that the following conditions are fulfilled:

(a) the competent authority has received a reasoned request from the AIFM to allow the appointment of a European depositary established in another Member State and that request demonstrates the lack of depositary services in Malta that are able to meet effectively the needs of the AIF having regard to its investment strategy; and

(b) the aggregate amount in the national depositary market of Malta of assets entrusted for safe-keeping, as referred to in regulation 32, on behalf of AIFs authorised or registered under the applicable national law in accordance with Article 4(1)(k)(i) of the AIFMD, as transposed in national law, and managed by an EU AIFM does not exceed fifty billion euro (€50,000,000,000) or the equivalent in any other currency:

Provided that for the purposes of paragraph (b), assets entrusted for safe-keeping by depositaries acting under regulation 7(1)(a) of the Investment Services Act (AIFM Third Country) Regulations, as well as the own assets of depositaries, shall not be taken into account for the purpose of determining whether the conditions established in paragraph (b) is met.

S.L. 370.24.

(2) Notwithstanding the conditions established in sub-regulation (1) being met, the competent authority shall allow the appointment of a European depositary established in a Member State other than Malta only after carrying out a case-by-case assessment of the lack of relevant depositary services in Malta having regard to the investment strategy of the AIF.

(3) Where the competent authority allows the appointment of a European depositary, it shall inform ESMA thereof.

(4) The provisions of this regulation shall be without prejudice to the application of the provisions of Article 21, other than Article 21(5)(a) of the AIFMD, as transposed in these regulations and the Investment Services Rules.

(5) Without prejudice to the powers and functions of the competent authority under the Act and any regulations made and Rules issued thereunder, where Malta is the home Member State of an AIF or, where an AIF is unregulated, the home Member State of the AIFM managing such AIF, and a European depositary is appointed in accordance with the provisions of this regulation in relation to such AIF, the competent authority shall, where it has reasonable grounds to suspect that acts contrary to the provisions of the AIFMD, as transposed in national law, are being or have been carried out by such European depositary, promptly notify ESMA and the European regulatory authority of the European depositary concerned thereof in as specific a manner as possible.

(6) Where a depositary established in Malta has been appointed in accordance with Article 21(5a) of the AIFMD, as transposed in national law, in relation to an AIF having as a home Member State a Member State other than Malta, or an AIF, being unregulated, that is managed by an AIFM having as a home Member State a Member State other than Malta, and the European regulatory authority of the AIFM managing such AIF has notified the competent authority in accordance with Article 50(5g) of the AIFMD, as transposed in national law, the competent authority shall take appropriate action and shall notify ESMA and such European regulatory authority of the outcome of the action taken.".

Amends regulation 31 of the principal regulations.

18. In paragraph (b) of sub-regulation (2) of regulation 31 of the principal regulations the words "Directive 2013/36/EU" shall be substituted by the words "the CRD".

Amends regulation 34 of the principal regulations.

19. Regulation 34 of the principal regulations shall be amended as follows:

(a) in paragraph (c) of sub-regulation (2) thereof the words "its tasks, and keeps" shall be substituted by the words "its tasks, except where that third party is a central securities depository acting in the capacity of an investor CSD as defined in the delegated act adopted pursuant to Articles 29(3) and 48(10) of Regulation (EU) No 909/2014, and keeps";

(b) sub-regulation (4) thereof shall be substituted by the following new sub-regulation:

"(4) For the purposes of Article 21 of the AIFMD, as transposed in these regulations and the Investment Services Rules, the provision of services by a central securities depository acting in the capacity of an issuer CSD as defined in the delegated act adopted pursuant to Articles 29(3) and 48(10) of Regulation (EU) No 909/2014 shall not be considered a delegation of the depositary's depositary functions, and the provision of services by a central securities depository acting in the capacity of an investor CSD as defined in such delegated act shall be considered a delegation of the depositary's depositary functions.".

Substitutes regulation 37 of the principal regulations.

20. Regulation 37 of the principal regulations shall be substituted by the following new regulation:

"Reporting obligations of the depositary.

37. (1) A depositary shall make available to the competent authority and, where the AIF and, or the AIFM are established in a Member State other than Malta, to the European regulatory authorities of such AIF and, or AIFM, on request, any information that it would have obtained while performing its duties.

(2) Where an AIF and, or an AIFM are established in a Member State other than Malta and a depositary has been appointed in accordance with Article 21(5a) of the AIFMD, as transposed in national law, in relation to such AIF, the competent authority shall share, without delay, with the European regulatory authorities of such AIF and, or AIFM any information relevant for the exercise of their supervisory powers.

(3) Where an AIF and, or an AIFM are established in Malta and a European depositary has been appointed in accordance with regulation 29A in relation to such AIF, the competent authority shall share, without delay, with the European regulatory authority of such European depositary any information relevant for the exercise of the supervisory powers of such European regulatory authority.".

Substitutes the heading of Part 4b of the principal regulations.

21. The heading of Part 4b of the principal regulations shall be substituted by the following new heading:

"Part 4b
Requirements applicable to depositaries of specific AIFs".

Amends regulation 38 of the principal regulations.

22. Regulation 38 shall be amended as follows:

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

(i) the words "custodians in possession of a Category 4b Investment Services Licence and which provide" shall be substituted by the words "depositaries lite which provide";

(ii) in paragraph (a) thereof the words "Rules; or" shall be substituted by the words "Rules; and, or";

(b) in sub-regulation (2) thereof the words "A Category 4b Investment Services Licence Holders shall" shall be substituted by the words "A depositary lite as referred to in sub-regulation (1) shall".

Amends regulation 39 of the principal regulations.

23. In regulation 39 of the principal regulations the words "a custodian in possession of either a Category 4a or a Category 4b Investment Services Licence is appointed to act as custodian" shall be substituted by the words "a depositary or a depositary lite is appointed to provide depositary services".

Amends regulation 40 of the principal regulations.

24. Regulation 40 of the principal regulations shall be amended as follows:

(a) the words "to apply for and obtain a Category 4b Investment Services Licence:" shall be substituted by the words "to provide depositary services to AIFs as referred to in regulation 38(1):";

(b) paragraph (a) thereof shall be substituted by the following new paragraph:

"(a) entities, other than UCITS management companies and AIFMs, that are licensed under the Act to provide, or hold themselves out as providing, any of the investment services stipulated in the First Schedule to the Act, other than those stipulated in items 3, 5, 7, 9 and 11, in or from Malta and to hold or control clients' money or customers' assets;".

Amends regulation 41 of the principal regulations.

25. In regulation 41 of the principal regulations the words "A Category 4b Investment Services Licence Holder" shall be substituted by the words "A depositary lite".

Amends regulation 42 of the principal regulations.

26. In regulation 42 of the principal regulations the words "A Category 4b Investment Services Licence Holder", wherever they occur, shall be substituted by the words "A depositary lite".

Amends regulation 43 of the principal regulations.

27. Regulation 43 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof the words "A 4b Investment Services Licence Holder" shall be substituted by the words "A depositary lite";

(b) in sub-regulation (2) thereof the words "A Category 4b Investment Services Licence Holder" shall be substituted by the words "A depositary lite".

Amends regulation 44 of the principal regulations.

28. In sub-regulation (1) of regulation 44 of the principal regulations the words "A 4b Investment Services Licence Holder" shall be substituted by the words "A depositary lite".

Amends regulation 46 of the principal regulations.

29. Regulation 46 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof the words "shall appoint as custodian an entity which is in possession of a Category 4a Investment Services Licence." shall be substituted by the words "shall appoint a depositary to provide depositary services to such scheme.";

(b) in sub-regulation (2) thereof the words "may appoint as custodian an entity which is in possession of a Category 4a or Category 4b Investment Services Licence:" shall be substituted by the words "may appoint a depositary or a depositary lite to provide depositary services to such scheme:".

Amends regulation 47 of the principal regulations.

30. Regulation 47 of the principal regulations shall be amended as follows:

(a) in sub-regulation (2) thereof the words "a Professional Investor Funds appoints a custodian holding a Category 4a Investment Services Licence," shall be substituted by the words "a Professional Investor Fund appoints a depositary,";

(b) sub-regulation (3) thereof shall be amended as follows:

(i) the words "to hold a Category 4a Investment Services Licence issued in terms of the Act and to provide" shall be substituted by the words "to provide";

(ii) in paragraph (a) thereof the words "Directive 2013/36/EU" shall be substituted by the words "the CRD";

(iii) in paragraph (d) thereof the words "Directive 2013/36/EU" shall be substituted by the words "the CRD";

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

"(f) an investment firm in Malta or a branch of an investment firm established in a Member State or EEA State other than Malta, subject to capital adequacy requirements in accordance with the IFD and the IFR including capital requirements for operational risks and authorised in accordance with MIFID and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients, including custody and related services such as cash or collateral management in accordance with point (1) of Section B of Annex I of MIFID:

Provided that such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9(1) of the IFD, as transposed in the Investment Services Rules.".

31. In regulation 48 of the principal regulations the words "A Category 4a Investment Services Licence Holder" shall be substituted by the words "A depositary". Amends regulation 48 of the principal regulations.

32. In regulation 49 of the principal regulations the words "A Category 4a Investment Services Licence Holder" shall be substituted by the words "A depositary". Amends regulation 49 of the principal regulations.

33. In regulation 50 of the principal regulations the words "or more entities in possession of a Category 4a or Category 4b Investment Services Licence" shall be substituted by the words "or more entities being depositaries or depositaries lite". Amends regulation 50 of the principal regulations.

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