

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,774, 27 ta' Jannar, 2022

Taqsimha B

L.N. 24 of 2022

**INVESTMENT SERVICES ACT
(CAP. 370)**

**Supervisory Consolidation (Investment Firms Directive)
Regulations, 2022**

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 Supervisory Consolidation (Investment Firms Directive) Regulations, 2022. Citation, scope and commencement.

(2) The scope of these regulations is to transpose Articles 46, 47, 48, 49, and 55 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.

(3) These regulations shall come into force on such date as the Minister may by notice in the Gazette establish.

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

"the Act" the Investment Services Act; Cap. 370.

"ancillary services undertaking" shall have the same meaning as that assigned to it in point (1) of Article 3 of the IFR;

"consolidated basis" shall have the same meaning as that assigned to it in point (12) of Article 4(1) of the IFR;

"consolidated situation" shall have the same meaning as that assigned to it in point (11) of Article 4(1) of the IFR;

"the competent authority" means the Malta Financial Services Authority established by article 3 of the Malta Financial Services Authority Act; Cap. 330.

"consolidating supervisor" shall have the same meaning as that assigned to it in point (41) of Article 4(1) of the CRR;

"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 and the prudential supervision 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 implementing 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 implementing measures that have been or may be issued thereunder;

"EBA" means the European Banking Authority as established by Regulation (EU) No 1093/2010;

"EEA" means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent Act;

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010;

"EU investment firm" means a firm as defined in point (1) of Article 4(1) of MIFID;

"European regulatory authority" means an authority which is situated in a country or territory outside Malta that is a Member State and is empowered by law or regulation to supervise investment firms;

"financial holding company" shall have the same meaning as that assigned to it in point (20) of Article 4(1) of the CRR;

"financial institution" shall have the same meaning as that assigned to it in point (14) of Article 4(1) of the IFR;

"home Member State" shall have the same meaning as that assigned to it in point (55)(a) of Article 4(1) of the MIFID;

"host Member State" shall have the same meaning as that assigned to it in point (56) of Article 4(1) of the MIFID ;

"investment firm" means a person who holds an investment services licence issued by the competent authority under the Investment Services Act and which is subject to the requirements

of the IFD and IFR;

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

"mixed financial holding company" shall have the same meaning as that assigned to it in point (40) of Article 4(1) of the IFR;

"parent financial holding company in a Member State" shall have the same meaning as that assigned to it in point (30) of Article 4(1) of the CRR;

"parent institution in Malta" means an institution in Malta which has an institution or a financial institution as a subsidiary or which holds a participation in such an institution or financial institution, and which is not itself a subsidiary of another institution authorised in Malta, or of a financial holding company or mixed financial holding company set up in Malta;

"parent mixed financial holding company in a Member State" shall have the same meaning as that assigned to it in point (32) of Article 4(1) of the CRR;

"parent undertaking" shall have the same meaning as that assigned to it in point (42) of Article 4(1) of the IFR;

"participation" shall have the same meaning as that assigned to it in point (35) of Article 4(1) of the CRR;

"Rules" means Rules for investment firms issued by the competent authority in terms of the Investment Services Act;

"subsidiary" shall have the same meaning as that assigned to it in point (51) of Article 4(1) of the IFR;

"third country" means a country that is not a Member State;

"third country regulatory authority" means an authority which is in a country or territory that is not a Member State and is empowered by law or regulation to supervise investment firms.

(2) Words and expressions in these regulations shall have the same meaning as that assigned to them in the Act.

Responsibility of the competent authority for consolidated supervision.

3. (1) The competent authority shall exercise supervision on a consolidated basis:

(a) where the parent undertaking is a parent institution in Malta or an EU parent institution, licensed in terms of the Act;

(b) where the parent of an investment firm licensed in terms of the Act is a parent financial holding company or a parent mixed financial holding company in a Member State or an EU parent financial holding company or an EU parent mixed financial holding company;

(c) where investment firms authorised in two or more Member States, and one of the investment firms is an investment firm licensed in terms of the Act, have as their parent the same parent financial holding company, the same parent mixed financial holding company in a Member State, the same EU parent financial holding company or the same EU parent mixed financial holding company established in Malta;

(d) where investment firms authorised in two or more Member States, one of which is Malta, have as their parent more than one financial holding company or mixed financial holding company with head offices in different Member States, one of which is Malta and the investment firm which is licensed in Malta has the largest balance sheet total;

(e) where the parent financial holding company or parent mixed financial holding company is established in a Member State other than Malta and it has more than one investment firm authorised in the European Union other than the Member State where the financial holding company is set up, one of which is licensed in Malta, and the investment firm licensed in Malta has the largest balance sheet total. That investment firm shall be considered to be controlled by an EU parent financial holding company or an EU parent mixed financial holding company.

(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, taking into account the investment firms and the relative importance of their activities in different countries, and appoint a European regulatory authority to exercise supervision on a consolidated basis. In these cases, before taking its decision, the competent authority shall give the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company or the institution 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.

(3) Where appropriate, the competent authority may exercise supervision on a consolidated basis where subsidiaries of an investment firm group headed by an investment firm authorised in a Member State, parent investment holding company authorised in a Member State, or parent mixed financial holding company authorised in a Member State, are located in a third country.

(4) Where appropriate, the competent authority may exercise supervision on a consolidated basis to facilitate the exercise of the tasks referred to in this regulation and to ensure co-ordination and co-operation with relevant third-country supervisory authorities in particular where this is needed for the purpose of applying point (c) of the first sub-paragraph of Article 23(1) and Article 23(2) of the IFR to exchange and update relevant information on the margin model with the supervisory authorities of the qualifying central counterparties (QCCPs).

4. (1) In addition to the obligations imposed by the provisions of the Act and any regulations or Rules made thereunder transposing the requirements of the IFD, and by the IFR, the competent authority acting as consolidating supervisor, shall carry out the following tasks:

Functions of the competent authority with respect to supervision on a consolidated basis.

(a) those referred to in regulation 5;

(b) the co-ordination of information requests where this is necessary for facilitating supervision on a consolidated basis, in accordance with Article 7 of the IFR;

(c) the co-ordination of information requests, in cases where several competent authorities of investment firms that are part of the same group need to request either from the competent authority of a clearing member's home Member State or from the competent authority of the qualifying central counterparties information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firms;

(d) the exchange of information between all competent authorities and with the EBA in accordance with Article 21 of Regulation (EU) No 1093/2010 and with the ESMA in accordance with Article 21 of Regulation (EU) No 1095/2010;

(e) reaching an agreement on the voluntary delegation between competent authorities of tasks and responsibilities, where appropriate;

(f) increasing the efficiency of supervision by seeking to avoid the unnecessary duplication of supervisory requirements.

Notifications in emergency situations.

Cap. 330.

Establishment of the colleges of supervisors by the consolidating supervisor.

5. Where an emergency situation, including a situation as described in article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised and where the competent authority is the consolidating supervisor, it shall, subject to confidentiality requirements in the Malta Financial Services Authority Act and any other applicable law, alert as soon as is practicable the EBA, ESRB and any relevant competent authorities and it shall communicate to the said authorities all the information that is essential for the pursuance of their tasks.

6. (1) Where the competent authority is the consolidating supervisor, it shall establish a college of supervisors and 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 laid down in Section 2 of Chapter I of Title IV of the IFD.

(2) Where the competent authority is the consolidating supervisor in terms of these regulations, it shall establish and manage the colleges of supervisors based on written arrangements referred to in regulation 6, determined after consultation with European regulatory authorities and third country regulatory authorities concerned.

(3) Where the competent authority is the consolidating supervisor, it shall chair the meetings of the college and shall decide which European regulatory authorities and third country regulatory authorities, where relevant, participate in a meeting or in an activity of the college. The decision shall take into account the relevance of the supervisory activity to be planned or co-ordinated for those authorities, and in particular, 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 and the obligations referred to in regulation 14(6) and (7).

(4) The competent authority, as consolidating supervisor, shall keep all members of the college fully informed, in advance, of the organisation of the meetings of the college, about the main issues to be discussed and the activities to be considered and shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

(5) In the case of disagreement between the competent authorities on the functioning of the supervisory colleges, the competent authority may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

7. (1) The competent authority shall co-operate closely with the competent authorities listed in regulation 6(1) and shall communicate on request all relevant information and shall communicate on its own initiative all relevant information.

Co-operation
with other
authorities.

(2) For the purpose of sub-regulation (1) relevant information shall include, in particular, the following items:

(a) identification of the investment group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries, and the parent undertakings, and of the competent authorities of the regulated entities in the investment firm group;

(b) procedures for the collection of information from the investment firms in a group and the verification of that information;

(c) any adverse developments in investment firms or in other entities of a group, which could seriously affect the investment firms;

(d) significant penalties and exceptional measures taken by the competent authority in accordance with the IFD; and

(e) the imposition of a specific own funds requirement under Article 39 of the IFD.

(3) The competent authority shall consult with European

regulatory authorities concerned before taking a decision that may be important for other competent authorities' supervisory tasks:

(a) changes in the shareholder, organisational or management structure of investment firms in the group, which require the approval or authorisation of the competent authority; and

S.L. 370.15.

(b) significant penalties or exceptional measures taken by the competent authority, including the imposition of a specific own funds requirement under the Investment Services Act (Supervisory Review) Regulations, and specific own funds requirements imposed in accordance with Article 39 of the IFD:

Provided that the competent authority shall always consult the consolidating supervisor for the purposes of paragraph (b) and may decide not to consult European regulatory authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision. In such cases, the competent authority shall, without delay, inform the European regulatory authorities after taking its decision.

(4) The competent authority may refer to the EBA any of the following situations:

(a) where a European regulatory authority has not communicated essential information;

(b) where a request for co-operation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

Third country consolidated supervision.

8. (1) Where an investment firm licensed in terms of the Act, the parent undertaking of which is an investment firm or a financial holding company or mixed financial holding company, the head office of which is established in a third country, is not subject to consolidated supervision, the competent authority shall assess whether the investment firm is subject to consolidated supervision by a third country regulatory authority which is equivalent to that governed by the principles laid down in this regulation and the requirements of Part One of the IFR.

(2) Where the assessment referred to in sub-regulation (1) concludes that no such equivalent supervision applies, the competent authority shall apply appropriate supervisory techniques which achieve the objectives of supervision in accordance with Articles 7 or 8 of the IFR. Those supervisory techniques shall be decided by the competent authority which would be the group supervisor had the

parent undertaking been established in the Union, after consulting the other competent authorities involved. Any measures taken pursuant to this paragraph shall be notified to the other competent authorities involved, to the EBA and to the Commission.

(3) The competent authority which would be the group supervisor had the parent undertaking been established in a Member State may, in particular, require the establishment of an investment holding company or mixed financial holding company in a Member State and apply Articles 7 or 8 of the IFR to that investment holding company or mixed financial holding company.
