

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

Taqsimha B

L.N. 21 of 2022

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

**Investment Services Act (Provision of Investment Services and
Activities by Third-Country Firms) (Amendment) 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 Investment Services Act (Provision of Investment Services and Activities by Third-Country Firms) (Amendment) Regulations, 2022, and these regulations shall be read and construed as one with the Investment Services Act (Provision of Investment Services and Activities by Third-Country Firms) Regulations, hereinafter referred to as the "principal regulations".

Citation, scope and commencement.

S.L. 370.43.

(2) The scope of these regulations is to amend Regulations 4, 5, 8 and to add new Regulation 7A within to transpose Article 64 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. The marginal note of regulation 4 of the principal regulations shall be substituted by the following:

Amends regulation 4 of the principal regulations.

"Application for a licence and obligation to provide information."

3. Paragraph (b) of sub-regulation (1) of regulation 5 of the principal regulations shall be substituted by the following:

Amends regulation 5 of the principal regulations.

"(b) the branch of the third-country firm will be able to comply with the provisions referred to in regulation 6 and with the provisions of regulation 7A."

Addition of regulation 7A to the principal regulations.

4. Immediately after regulation 7 of the principal regulations, there shall be added the following new regulation:

"Reporting obligations of the branch of the third-country firm.

7A. The branch of the third-country firm that is authorised in accordance with regulation 5 shall report to the competent authority referred to in regulation 7 the following information on an annual basis:

(a) the scale and scope of the services and activities carried out by the branch in Malta;

(b) for third-country firms performing the activity listed in point (3) of Section A of Annex I to MiFID, their monthly minimum, average and maximum exposure to EU counterparties;

(c) for third-country firms providing one or both of the services listed in point (6) of Section A of Annex I to MiFID, the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the previous 12 months;

(d) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);

(e) a detailed description of the investor protection arrangements available to the clients of the branch, including the rights of those clients resulting from the investor-compensation scheme referred to in paragraph (f) of regulation 3(3);

(f) their risk management policy and arrangements applied by the branch for the services and activities referred to in paragraph (a);

(g) the governance arrangements, including key function holders for the activities of the branch;

(h) any other information considered by the competent authority to be necessary to enable comprehensive monitoring of the activities of the branch."

Amends regulation 8 of the principal regulations.

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

(a) in sub-regulation (1) thereof, for the words "relating to the provision of that service or activity.", there shall be

substituted the words "relating to the provision of that service or activity:", and immediately thereafter there shall be added the following new proviso:

"Without prejudice to intragroup relations, where a third-country firm, including through an entity acting on its behalf or having close links with such third-country firm or any other person acting on behalf of such entity, solicits clients or potential clients in Malta, it shall not be deemed to be a service provided at the own exclusive initiative of the client."; and

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

"(2) An initiative by such clients shall not entitle the third-country firm to market new categories of investment products or investment services to that client otherwise than through the branch, where one is required in accordance with Maltese law."
