No. 120

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Notes[1] in relation to Investment Services Act (Provision of Investment Services and Activities by Third-Country Firms) (Amendment) Regulations, 2021

1. Introduction

The title of these Regulations is the Investment Services Act (Provision of Investment Services and Activities by Third-Country Firms) (Amendment) Regulations, 2021 ('the Regulations').

The Investment Firms regulatory package of the European Union ("the IFD package"), composed of:

(i) 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 ("the IFR"); and

(ii) 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 ("the IFD"),

establishes a new prudential regime for investment firms.

The aim of the Regulations, therefore, is to partially transpose the IFD. The IFD package is a new prudential framework for smaller investment firms.

Thus, by way of background, the current prudential framework for investment firms, consisting of:

(i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ("the CRR"); and

(ii) 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ("the CRD"),

will now only apply automatically to credit institutions and to those investment firms which satisfy the criteria of Article 1(2)(a) and (b) of the IFR, and are therefore significant to the size of the country's economy.

It is important to note, however, that Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ("the MIFIR") and 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, as transposed into national law, ("the MIFID"), will continue to apply in their entirety to all investment firms irrespective of their classification.

The Regulations aim at creating an appropriate and proportional framework for investment firms based on their nature, size and investment services activities undertaken, amongst others.

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the Malta Financial Services Authority which is the competent authority for the purposes of the Investment Services Act.

[1]This Explanatory Note is in accordance with and for the purpose of article 3(2)(c) of the Small Business Act (Chapter 512 of the Laws of Malta).

2. Summary and background

The Regulations apply to current investment firms and to applicants for an investment services licence under the Investment Services Act.

The principal Regulations and thus Subsidiary Legislation 370.43 transposes MiFID. However, the IFD amends MiFID articles through Article 64, and therefore the principal Regulations need to be amended to reflect these amendments and to transpose the said Article 64. The aim of these amendments, therefore, is to partially transpose the IFD and be in line with European legislation.

3. Overview of the structure of the instrument

The Regulations consist of five regulations. The Regulations outline the scope of the legislation, amend a marginal note regarding licensing and the obligation to provide information, amend regulation 5 of the principal regulations to increase the requirements in relation branches, introduce a new regulation (regulation 7A in the principal Regulations) about reporting, and amend regulation 8 of the principal Regulations to clarify reverse solicitation.

4. Commentary on parts and articles

The Regulations amend three existing regulations and introduce a new one.

By means of regulation 3 of the Regulations, reference to article 7A is being added to regulation 5(1)(b) of the principal regulations, thereby adding reference to the newly introduced regulation 7A. By virtue of such amendment, branches shall now also comply with regulation 7A of the principal regulations as described below.

The amendments to regulation 8 intend to clarify the reverse solicitation regime to make it easier for the industry, the supervisor, and to further protect the investors.

The new regulation 7A introduces reporting obligations on branches of third country firms to empower the host supervisor, that is the MFSA, to effectively supervise branches of third country firms through the reporting obligations and protect local investors.

5. Concluding Section

The Regulations shall come into force on such date as the Minister for Finance and Employment may, by Notice in the Gazette, establish.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on (communications@mfsa.mt).

This Explanatory Note should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. This Explanatory Note is not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, this Explanatory Note does not purport to be an authoritative ruling on the interpretation of the law. For the avoidance of any doubt, this Explanatory Note does not have the force of law and, accordingly, in the event of any conflict between this Explanatory Note and the Regulations, the Regulations shall in all circumstances prevail.

User Guidelines in relation to Investment Services Act (Provision of Investment Services and Activities by Third-Country Firms) (Amendment) Regulations, 2021

The title of these Regulations is the Investment Services Act (Provision of Investment Services and Activities by Third-Country Firms) (Amendment) Regulations, 2021 ('the Regulations').

The Investment Firms regulatory package of the European Union ("the IFD package"), composed of:

(i) 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 ("the IFR"); and

(ii) 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 ("the IFD"),

establishes a new prudential regime for investment firms.

The Regulations aim at creating an appropriate and proportional framework for investment firms based on their nature, size and investment services activities undertaken, amongst others.

The Regulations apply to current investment firms and future holders of an investment services licence under the Investment Services Act.

Amendments to the Investment Services Act (Provision of Investment Services and Activities by Third-Country Firms) Regulations (the principal Regulations) were required in order to transpose Article 64 of the IFD.

The principal Regulations primarily set out the procedure on how a branch of a third-country firm established in Malta shall obtain a licence, and how such licence may be cancelled or revoked. The principal Regulations also outline the obligations of such branches, such as reporting, and that the competent authority supervising them is the Malta Financial Services Authority (MFSA). The principal Regulations also regulate reverse solicitation.

Essentially, the Regulations amend three existing regulations of the principal Regulations, and introduce a new regulation 7A in the principal Regulations on the 'reporting obligations of the branch of the third-country firm.'.

In virtue of regulation 3 of the Regulations, an amendment is being effected to paragraph (b) of regulation 5(1) of the principal Regulations, whereby reference to regulation 8 is also being added, thereby increasing the requirements on branches of a third-country firm.

Furthermore, in virtue of regulation 5 of the Regulations, the amendments to regulation 8 of the principal Regulations intend to clarify the reverse solicitation regime in order to make it easier for the industry, the supervisor, and to further protect the investors.

The new regulation 7A referred to further above, introduces reporting obligations on branches of third-country firms to empower the host supervisor, that is the MFSA, to effectively supervise branches of third-country firms through annual reporting obligations in order to protect investors.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on (communications@mfsa.mt).

These User Guidelines should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. These User Guidelines are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, these User Guidelines do not purport to be an authoritative ruling on the interpretation of the law. Furthermore, for the avoidance of any doubt, these User Guidelines do not have the force of law and, accordingly, in the event of any conflict between these User Guidelines and the Regulations, the Regulations shall in all circumstances prevail.

28th January, 2022

No. 121

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Notes[1] in relation to Investment Services Act (Supervisory Review Investment Firms Directive) Regulations, 2021

1. Introduction

The title of these Regulations is the Investment Services Act (Supervisory Review Investment Firms Directive) Regulations ('the Regulations').

The Investment Firms regulatory package of the European Union ("the IFD package"), composed of:

(i) 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 ("the IFR"); and

(ii) 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 ("the IFD"),

establishes a new prudential regime for investment firms.

The aim of the Regulations, therefore, is to partially transpose the IFD. The IFD package is a new prudential framework for smaller investment firms.

Thus, by way of background, the current prudential framework for investment firms, consisting of:

(i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ("the CRR"); and

(ii) 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ("the CRD"),

will now only apply automatically to credit institutions and to those investment firms which satisfy the criteria of Article 1(2)(a) and (b) of the IFR, and are therefore significant to the size of the country's economy.

It is important to note, however, that Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ("the MIFIR") and 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, as transposed into national law, ("the MIFID"), will continue to apply in their entirety to all investment firms irrespective of their classification.

The Regulations aim at creating an appropriate and proportional framework for investment firms based on their nature, size and investment services activities undertaken, amongst others.

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the Malta Financial Services Authority which is the competent authority for the purposes of the Investment Services Act.

[1]This Explanatory Note is in accordance with and for the purpose of article 3(2)(c) of the Small Business Act (Chapter 512 of the Laws of Malta).

2. Summary and background

The Regulations apply to current investment firms and to future holders of an investment services licence under the Investment Services Act.

The purpose of the Regulations is to partially transpose the IFD. The Articles of the IFD which are transposed in the Regulations are Articles 7, 8, 13, 14, 15, 34, 36, 37, 38, 39, 40, 41, 42, 43, and 45. In essence, the Regulations are practically replicating the Investment Services Act (Supervisory Review) Regulations (S.L. 370.15), which transposes the CRD.

These Regulations incorporate the supervisory aspects of the IFD and designate the MFSA as the competent authority for the purpose of implementing the IFD and exercising the functions and powers pursuant to the said Directive. These regulations also stipulate, in part, the relevant obligations of the Authority for the purpose of the IFD.

The Regulations provide for increased cooperation by the Authority in exercising its supervisory duties within the European System of Financial Supervision, and the Authority is required to consider the potential impact of its decisions on the stability of the financial system in other Member States particularly in emergency situations. The Regulations amplify the provisions of the Investment Services Act in relation to cooperation and exchange of information and coordination of on-the-spot checks and inspection of branches. In particular, the Regulations list the bodies with which information may be exchanged and the manner in which this should be carried out, in order to better meet the Authority's supervisory functions emanating from the IFD and the IFR.

3. Overview of the structure of the instrument

The Regulations consist of 14 regulations and two Schedules. The regulations specify who is subject to these Regulations, lay down definitions, outline the powers of the MFSA as competent authority, regulate cooperation with overseas regulators and other Member States, and allow for inspections of foreign branches established in Malta. Furthermore, the Regulations regulate the supervisory review and evaluation and internal models used by investment firms to satisfy the requirements of the IFD package, lay down what supervisory measures the MFSA can take and what specific liquidity requirements it can impose on investment firms.

Schedule I lists down the MFSA's minimum supervisory powers in terms of the Regulations, whereas Schedule II outlines the bodies with whom the MFSA may exchange information.

4. Commentary on parts and articles

The first six regulations do not impact the business environment as they lay down the scope and aim of the Regulations, the definitions, appoint the MFSA as the competent authority and list its powers under these Regulations, and also empowers the MFSA to cooperate and collaborate with foreign regulators and bodies in view of the IFD.

Regulation 7(2) empowers the MFSA to carry out on-the-spot checks and inspections in relation to branches of European investment firms established in Malta. The MFSA can then send any information acquired to the European regulatory authority of the Home Member state, that is, the Member State in which the European investment firm is authorised.

Regulation 8 provides for oversight of remuneration policies of Licence Holders, as regulated by Article 51 of the IFR. The MFSA will continue to collect this information, especially in relation to the gender pay gap, and use it to benchmark remuneration trends and practices and shall provide this information to the European Banking Authority ("EBA"). The MFSA will also continue to collect information on employees who earn more than one (1) million Euro or more per financial year, including data on their work responsibilities, the business area involved and the main elements of their salary, including bonuses, long-service awards and pension contributions.

Regulation 9 contains detailed provisions on the supervisory review and evaluation of Licence Holders by the Authority with reference to the requirements of the IFD and the IFR. This provision takes into account, for example, the size of the firm, risk profiles, and business model. It is up to the MFSA to decide the frequency and intensity of such reviews and evaluation. Class 3 firms may be subject to this review and evaluation depending on the situation after a decision taken by the MFSA, decided on a case-by-case basis.

Regulation 10 of the Regulations impact those investment firms which use internal models to calculate their net position risk. The MFSA has the power to permit the use of such models, and shall review these models at least every three years. The internal models used by the investment firms should be dynamic to cater for the ever changing market, and should be checked in accordance with the IFR and IFD.

In terms of regulation 11, the MFSA has the power to require an investment firm to take the necessary measures at an early stage to address relevant problems prescribed in regulation 11, for example where an investment firm is likely to breach the Investment Services Act, any of its Subsidiary Legislation, and/or Investment Services Rules or the provisions of the IFR. The list of powers is included in Schedule I of the Regulations.

Regulation 12 empowers the MFSA to apply specific liquidity requirements on licence holders on the basis of the supervisory examination and evaluation carried out by the MFSA as outlined therein.

5. Concluding Section

The Regulations shall come into force on such date as the Minister for Finance and Employment may, by Notice in the Gazette, establish.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on (communications@mfsa.mt).

This Explanatory Note should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. This Explanatory Note is not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, this Explanatory Note does not purport to be an authoritative ruling on the interpretation of the law. For the avoidance of any doubt, this Explanatory Note does not have the force of law and, accordingly, in the event of any conflict between this Explanatory Note and the Regulations, the Regulations shall in all circumstances prevail.

User Guidelines – In relation to Investment Services Act (Supervisory Review Investment Firms Directive) Regulations, 2021

The title of these new Regulations is the Investment Services Act (Supervisory Review Investment Firms Directive) Regulations, 2021

The Regulations apply to current investment firms and future holders of an investment services licence under the Investment Services Act.

The purpose of the Regulations is to partially transpose Directive (EU) 2019/2034 referred to below. The Articles of the said Directive which are transposed in the Regulations are Articles 7, 8, 13, 14, 15, 34, 36, 37, 38, 39, 40, 41, 42, 43, and 45. In essence, the Regulations are practically replicating the provisions of the Investment Services Act (Supervisory Review) Regulations (S.L. 370.15), which transposes 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ("the CRD").

The Investment Firms regulatory package of the European Union ("the IFD package"), composed of:

(i) 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 ("the IFR"); and

(ii) 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 ("the IFD"),

establishes a new prudential regime for investment firms.

The Regulations incorporate the supervisory aspects of the IFD and designate the Malta Financial Services Authority ("the MFSA" or "the Authority") as the competent authority for the purpose of implementing the IFD and the IFR, and exercising the functions and powers pursuant to the said Directive and EU Regulation. These regulations also stipulate, in part, the relevant obligations of the MFSA for the purpose of the IFD.

The Regulations provide for increased cooperation by the Authority in exercising its supervisory duties within the European System of Financial Supervision, and the Authority is required to consider the potential impact of its decisions on the stability of the financial system in other Member States particularly in emergency situations. The Regulations amplify the provisions of the Investment Services Act in relation to cooperation and exchange of information and coordination of spot checking and inspection of branches. In particular, the Regulations list the bodies with which information may be exchanged and the manner in which this should be carried out, in order to better meet the Authority's supervisory functions emanating from the IFD and the IFR.

The Regulations contain 14 regulations and two Schedules. regulation 1 specifies who is subject to these Regulations, whilst regulation 2 lays down definitions.

In virtue of regulation 7 of the Regulations, the MFSA is empowered to carry out on-the-spot checks and inspections in branches of European Investment Firms established in Malta. The MFSA can then send any information acquired, to the European regulatory authority of the home Member State, that is, the Member State where the investment firm is authorised.

In terms of regulation 8 of the Regulations, the MFSA has oversight of remuneration policies of Licence Holders, as regulated by Article 51 of the IFR. The MFSA will continue to collect this information, especially in relation to the gender pay gap, and use it to benchmark remuneration trends and practices and shall provide this information to the European Banking Authority ("EBA"). The MFSA will also continue to collect information on employees who earn more than one (1) million Euro or more per financial year, including data on their work responsibilities, the business area involved and the main elements of their salary, including bonuses, long-service awards and pension contributions.

The Regulations contain detailed provisions on the supervisory review and evaluation of licence holders by the Authority with reference to the requirements of the IFD and the IFR. This provision takes into account, for example, the size of the firm, risk profiles, and business model. It is up to the MFSA to decide the frequency and intensity of such reviews and evaluation. Class 3 firms may be subject to this review and evaluation depending on the situation after a decision taken by the MFSA, decided on a case-by-case basis.

Regulation 10 of the Regulations impact those investment firms which use internal models to calculate their net position risk. The MFSA has the power to permit The use of such models, and shall review these models at least every three years. The internal models used by the investment firms should be dynamic to cater for the ever changing market, and should be checked in accordance with the IFR and IFD.

In terms of the Regulations and particularly Schedule I of the Regulations, the MFSA has the power to impose supervisory measures on investment firms for the purposes of regulations 9, 10, 11(3) and 12 of the Regulations and for the purposes of the application of the IFR. Schedule I contains a list of such powers.

By virtue of regulation 12, the MFSA is empowered to apply specific liquidity requirements on Licence Holders on the basis of the supervisory examination and evaluation carried out by the Authority as outlined therein.

Schedule II of the Regulations outlines the bodies with whom the MFSA may exchange information.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on (communications@mfsa.mt).

These User Guidelines should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. These User Guidelines are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, these User Guidelines do not purport to be an authoritative ruling on the interpretation of the law. Furthermore, for the avoidance of any doubt, these User Guidelines do not have the force of law and, accordingly, in the event of any conflict between these User Guidelines and the Regulations, the Regulations shall in all circumstances prevail.

28th January, 2022

No. 122

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Notes[1] in relation to Investment Firms Directive (Administrative Penalties, Measures And Investigatory Powers) Regulations, 2021

1. Introduction

The title of these Regulations is the Investment Firms Directive (Administrative Penalties, Measures And Investigatory Powers) Regulations ('the Regulations').

The Investment Firms regulatory package of the European Union ("the IFD package"), composed of:

(i) 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 ("the IFR"); and

(ii) 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 ("the IFD"),

establishes a new prudential regime for investment firms.

The aim of the Regulations, therefore, is to partially transpose the IFD. The IFD package is a new prudential framework for smaller investment firms.

Thus, by way of background, the current prudential framework for investment firms, consisting of:

(i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ("the CRR"); and

(ii) 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ("the CRD"),

will now only apply automatically to credit institutions and to those investment firms which satisfy the criteria of Article 1(2)(a) and (b) of the IFR, and are therefore significant to the size of the country's economy.

It is important to note, however, that Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ("the MIFIR") and 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, as transposed into national law, ("the MIFID"), will continue to apply in their entirety to all investment firms irrespective of their classification.

The Regulations aim at creating an appropriate and proportional framework for investment firms based on their nature, size and investment services activities undertaken, amongst others.

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the Malta Financial Services Authority which is the competent authority for the purposes of the Investment Services Act.

[1]This Explanatory Note is in accordance with and for the purpose of article 3(2)(c) of the Small Business Act (Chapter 512 of the Laws of Malta).

2. Summary and background

The Regulations apply to current investment firms and to future holders for an investment services licence under the Investment Services Act.

The purpose of the Regulations is to partially transpose the IFD. The Articles of the IFD which have been transposed in the Regulations are Articles 18, 19, 20, 21, 22, and 23. In essence, the Regulations are somewhat replicating the Investment Services Act CRD (Administrative Penalties, Measures and Investigatory Powers) Regulations (S.L. 370.25), which transpose the CRD.

3. Overview of the structure of the instrument

The Regulations consist of 11 regulations. They lay down the scope of the Regulations and provide definitions of terms used in the Regulations. They also specify the MFSA's supervisory, investigative and information-gathering powers, and empower the MFSA to impose administrative measures and penalties in the situations laid down therein. Any person with respect to whom an administrative measure or penalty is imposed under the Regulations has a right to appeal in the Financial Services Tribunal.

4. Commentary on parts and articles

Regulation 1 of the Regulations relates to citation, scope and commencement of the Regulations, while regulation 2 provides a list of definitions of terms used within.

Regulation 3 empowers the MFSA to exercise supervisory powers and impose administrative penalties to ensure full compliance with the IFR and the IFD. This can also be done in collaboration with foreign regulators.

Regulation 4 lays down the instances when the MFSA can take supervisory action and impose administrative penalties, namely when a Licence Holder breaches the Investment Services Act, any Subsidiary Legislation issued thereunder, and/or any Investment Services Rules transposing the IFD, and/or for breaches of the IFR.

Regulation 5 vests the MFSA with investigative powers and information-gathering powers which are necessary for the exercise of its functions. The said regulation 5 provides an indicative list of such powers, such as the power to require information from natural and legal persons which are investment firms established in Malta, investment holding companies established in Malta, mixed financial holding companies established in Malta, mixed-activity holding companies established in Malta, persons belonging to such entities, and third parties who have been tasked by these entities to conduct certain functions outsourced to them. Investigations are carried out through the collection of information through various means, such as interviews and the submission and examination of documents. As has been the case for the past years, the MFSA also has the power to conduct onsite inspections.

Regulation 6 lists down the administrative penalties and measures which the MFSA can apply, such as issuing a public statement identifying the natural person, investment firm, financial holding company or mixed financial holding company and the nature of the breach, and also the imposition of administrative penalties. These penalties and measures must be determined by the MFSA in accordance with the circumstances of regulation 9 of the Regulations, such as the gravity and the duration of the breach the damage caused to third parties. As per regulation 7 of the Regulations, these measures and penalties shall be published on the MFSA's website and/or any other media as deemed appropriate. However, as stated further above, in the interest of natural justice, regulation 11 provides that any person in respect of whom a decision is taken by the MFSA under the Regulations has a right to appeal to the Financial Services Tribunal.

Furthermore, under regulation 10 of the Regulations, the MFSA shall establish mechanisms to encourage the reporting to it of potential or actual, breaches of the provisions of the Investment Services Act, regulations and Investment Services Rules issued thereunder transposing the requirements of the IFD, and of the provisions of the IFR.

5. Concluding Section

The Regulations shall come into force on such date as the Minister for Finance and Employment may, by Notice in the Gazette, establish.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on (communications@mfsa.mt).

This Explanatory Note should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. This Explanatory Note is not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, this Explanatory Note does not purport to be an authoritative ruling on the interpretation of the law. For the avoidance of any doubt, this Explanatory Note does not have the force of law and, accordingly, in the event of any conflict between this Explanatory Note and the Regulations, the Regulations shall in all circumstances prevail.

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Transposition Note for the transposition 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

Directive article number/s	**Transposing regulations** Investment Firms Directive (Administrative Penalties, Measures And Investigatory Powers) Regulations, 2021
Article 18	Regulations 3,4, 6, 9
Article 19	Regulation 5
Article 20	Regulation 7
Article 21	Regulation 8
Article 22	Regulation 10
Article 23	Regulation 11

User Guidelines in relation to Investment Firms Directive (Administrative Penalties, Measures and Investigatory Powers) Regulations 2021

The title of these new Regulations is the Investment Firms Directive (Administrative Penalties, Measures And Investigatory Powers) Regulations 2021 and are issued under the Investment Services Act (Cap. 370 of the Laws of Malta).

The Investment Firms regulatory package of the European Union ("the IFD package"), composed of:

(i) 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 ("the IFR"); and

(ii) 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 ("the IFD"),

establishes a new prudential regime for investment firms.

The Regulations apply to current investment firms and to future holders of an investment services licence under the Investment Services Act in case of breaches of the provisions of the IFR and/or the IFD as transposed in the Investment Services Act, Regulations, and/or Rules issued by the MFSA.

The purpose of the Regulations is to partially transpose the IFD. The Articles of the IFD which have been transposed in the Regulations are Articles 18, 19, 20, 21, 22, and 23. In essence, the Regulations are somewhat replicating the Investment Services Act CRD (Administrative Penalties, Measures and Investigatory Powers) Regulations (S.L. 370.25), which transposes the CRD.

The Regulations are composed of 11 regulations.

Regulation 1 of the Regulations lays down the citation, scope and commencement of the Regulations, while regulation 2 provides a list of definitions of terms used within.

Regulation 3 empowers the MFSA to exercise supervisory powers and impose administrative penalties to ensure full compliance with the IFR and the IFD. This can also be done in collaboration with foreign regulators.

Regulation 4 lays down the instances when the MFSA can take supervisory action and impose administrative penalties, namely when a Licence Holder breaches the Investment Services Act, any Subsidiary Legislation issued thereunder, and/or any Investment Services Rules transposing the IFD, and/or for beaches of the IFR.

Regulation 5 vests the MFSA with investigative powers and information-gathering powers which are necessary for the exercise of its functions. The said regulation 5 provides an indicative lists of such powers, such as the power to require information from natural and legal persons which are investment firms established in Malta, investment holding companies established in Malta, mixed financial holding companies established in Malta, mixed-activity holding companies established in Malta, persons belonging to such entities, and third parties who have been tasked by these entities to conduct certain functions outsources to them. Investigations are carried out through the collection of information through various means, such as interviews and the submission and examination of documents. As has been the case for the past years, the MFSA also has the power to conduct onsite inspections.

Regulation 6 lists down the administrative penalties and measures which the MFSA can apply, such as issuing a public statement identifying the natural person, investment firm, financial holding company or mixed financial holding company and the nature of the breach, and also the imposition of administrative penalties. These penalties and measures must be determined by the MFSA in accordance with the circumstances of regulation 9 of the Regulations, such as the gravity and the duration of the breach and the damages caused to third parties. As per regulation 7 of the Regulations, these measures and penalties shall be published on the MFSA's website and/or on any other media as deemed appropriate. However, in the interest of natural justice, regulation 11 provides that any person in respect of whom a decision is taken by the MFSA under the Regulations has a right to appeal to the Financial Services Tribunal.

Furthermore, under regulation 10 of the Regulations, the MFSA shall establish mechanisms to encourage the reporting to it of potential or actual, breaches of the provisions of the Investment Services Act, regulations and Investment Services Rules issued thereunder transposing the requirements of the IFD, and of the provisions of the IFR.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on (communications@mfsa.mt).

These User Guidelines should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. These User Guidelines are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, these User Guidelines do not purport to be an authoritative ruling on the interpretation of the law. Furthermore, for the avoidance of any doubt, these User Guidelines do not have the force of law and, accordingly, in the event of any conflict between these User Guidelines and the Regulations, the Regulations shall in all circumstances prevail.

28th January, 2022

No. 123

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Notes[1] in relation to Supervisory Consolidation (Investment Firms Directive) Regulations, 2021

1. Introduction

The title of these Regulations is the Investment Services Supervisory Consolidation (Investment Firms Directive) Regulations, 2021 ('the Regulations').

The Investment Firms regulatory package of the European Union ("the IFD package"), composed of:

(i) 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 ("the IFR"); and

(ii) 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 ("the IFD"),

establishes a new prudential regime for investment firms.

The aim of the Regulations, therefore, is to partially transpose the IFD. The IFD package is a new prudential framework for smaller investment firms.

Thus, by way of background, the current prudential framework for investment firms, consisting of:

(i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ("the CRR"); and

(ii) 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ("the CRD"),

will now only apply automatically to credit institutions and to those investment firms which satisfy the criteria of Article 1(2)(a) and (b) of the IFR, and are therefore significant to the size of the country's economy.

It is important to note, however, that Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ("the MIFIR") and 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, as transposed into national law, ("the MIFID"), will continue to apply in their entirety to all investment firms irrespective of their classification.

The Regulations aim at creating an appropriate and proportional framework for investment firms based on their nature, size and investment services activities undertaken, amongst others.

[1]This Explanatory Note is in accordance with and for the purpose of article 3(2)(c) of the Small Business Act (Chapter 512 of the Laws of Malta).

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the Malta Financial Services Authority which is the competent authority for the purposes of the Investment Services Act.

2. Summary and background

The Regulations apply to current investment firms and future holders of an investment services licence under the Investment Services Act.

The purpose of these regulations is to partially transpose the IFD. The Articles of the IFD transposed by the Regulations are the following: Articles 12, 46, 47, 48, 49, and 55.

The provisions of these Regulations are quasi-identical to the existing S.L.371.15. They have been, however, simplified to ensure proportionality, which is ultimately the aim of the IFD.

3. Overview of the structure of the instrument

The Regulations consist of 8 regulations. They lay down the scope of the Regulations and provide definitions of terms used in the Regulations. They also specify the MFSA's responsibilities and functions when it acts as the competent authority for consolidated supervision. They also establish the procedure for notification in emergency situations and the establishment of the colleges of supervisors by the MFSA when it is the consolidating supervisor. The Regulations also regulate co-operation with other authorities and third country consolidated supervision.

4. Commentary on parts and articles

Regulation 8 is the only regulation in these Regulations which affects the industry. The other Regulations outline the functions and powers of the Authority.

Regulation 8 deals with third country consolidated supervision. Where an investment firm licensed in Malta, 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 MFSA shall assess whether the investment firm is subject to consolidated supervision by a third country regulatory authority which is equivalent to that provided for in the Regulations and the IFR. If the MFSA concludes that it is not the case, the MFSA can take supervisory measures and apply supervisory techniques which achieve the results and purposes of the IFR and IFD, after consulting with other foreign competent authorities. The MFSA may require the establishment of an investment holding company or mixed financial holding company in Malta and apply Articles 7 and 8 of the IFR to such company.

5. Concluding Section

The Regulations shall come into force on such date as the Minister for Finance and Employment may, by Notice in the Gazette, establish.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on (communications@mfsa.mt).

This Explanatory Note should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. This Explanatory Note is not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, this Explanatory Note does not purport to be an authoritative ruling on the interpretation of the law. For the avoidance of any doubt, this Explanatory Note does not have the force of law and, accordingly, in the event of any conflict between this Explanatory Note and the Regulations, the Regulations shall in all circumstances prevail.

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Transposition Notes for the transposition 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

Directive article number/s	**Transposing regulations** Investment Services Act Supervisory Consolidation (Investment Firms Directive) Regulations, 2021
Article 46	Regulation 3
Article 47	Regulation 5
Article 48	Regulations 3, 4, 6
Article 49	Regulation 7
Article 55	Regulation 8

User Guidelines in relation to Investment Services Act - Supervisory Consolidation (Investment Firms Directive) Regulations 2021

The purpose of these regulations is to transpose and implement the relevant provisions of Directive (EU) 2019/2034 referred to hereunder.

By way of background, the Investment Firms regulatory package of the European Union ("the IFD package"), composed of:

(i) 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 ("the IFR"); and

(ii) 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 ("the IFD"),

establishes a new prudential regime for investment firms.

The Supervisory Consolidation (Investment Firms Directive) Regulations ("the Regulations") apply to current investment firms and to future licensed entities under the Investment Services Act.

The Articles of the IFD transposed in the Regulations are the following: 46, 47, 48, 49, and 55.

The provisions of these Regulations are quasi-identical to the existing SL 371.15. They have been, however, simplified to ensure proportionality, which is ultimately the aim of the IFD.

The Regulations are composed of 8 regulations. They lay down the scope of the Regulations and provide definitions of terms used in the Regulations. They also specify the MFSA's responsibilities and functions when it acts as the competent authority for consolidated supervision. They also establish the procedure for notification in emergency situations and the establishment of the colleges of supervisors by the MFSA when it is the consolidating supervisor. The Regulations also regulate co-operation with other authorities and third country consolidated supervision.

Regulation 8 is the only regulation in these Regulations which affects the industry. It deals with third country consolidated supervision. Where an investment firm licensed in Malta, 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 MFSA shall assess whether the investment firm is subject to consolidated supervision by a third country regulatory authority which is equivalent to that provided for in the Regulations and the IFR. If the MFSA concludes that it is not the case, the MFSA can take supervisory measures and apply supervisory techniques which achieve the results and purposes of the IFR and IFD, after consulting with other foreign competent authorities. The MFSA may require the establishment of an investment holding company or mixed financial holding company in Malta and apply Articles 7 and 8 of the IFR to such company.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on (communications@mfsa.mt).

These User Guidelines should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. These User Guidelines are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, these User Guidelines do not purport to be an authoritative ruling on the interpretation of the law. For the avoidance of any doubt, these User Guidelines do not have the force of law and, accordingly, in the event of any conflict between these User Guidelines and the Regulations, the Regulations shall in all circumstances prevail.

28th January, 2022

Nru. 124

ATT DWAR IL-ĦADDIEMA D-DEHEB U L-ĦADDIEMA L-FIDDA (ARĠENTIERA) (KAP. 46)

IL-KUMMISSARJU tat-Taxxi Interni jgħarraf illi, fid-data li tidher hawn taħt, il-prezz tad-deheb u l-fidda li fuqu huma bbażati l-valutazzjonijiet magħmulin mill-Konslu għall-Ħaddiema d-Deheb u l-Ħaddiema l-Fidda ġie ffissat għall-finijiet tal-artikolu 14 tal-imsemmi Att kif ġej:

No. 124

GOLDSMITHS AND SILVERSMITHS ACT (CAP. 46)

THE Commissioner of Inland Revenue notifies that, on the date shown hereunder, the price of gold and silver on which valuations made by the Consul for Goldsmiths and Silversmiths are based has been fixed for the purposes of article 14 of the said Act as follows:

Data *Date*	Deheb Pur Gramma *Pure Gold* *Grams*	Fidda Pura Gramma *Pure Silver* *Grams*
28.1.2022	€52.608	€0.681

Is-28 ta' Jannar, 2022

28th January, 2022