

Consultation Procedure

Consultation on the proposed transposition of certain requirements of the Alternative Investment Fund Managers Directive

Explanatory Note

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received not only from Licence Holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

1. Background

On 1st July, 2011 the final text of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 also known as the [Alternative Investment Fund Managers Directive](#) ('AIFMD') was published in the Official Journal of the European Union. The AIFMD regulates the activity of alternative investment fund managers. The main aim of the Directive is that of creating a comprehensive and effective regulatory and supervisory framework for AIFM in the European Union. By 22nd July, 2013 Member States are required to adopt and publish the laws, regulations and administrative provisions necessary to comply with the provisions of the Directive.

2. Proposed new requirements to transpose certain articles of the AIFMD into Maltese Law

After having carried out a detailed analysis of the provisions of the AIFMD, the Authority is proposing certain amendments to the Investment Services Act and the adoption of the following draft regulations:

- Investment Services Act (Alternative Investment Fund Manager Passport) Regulations;
- Investment Services Act (Marketing of Alternative Investment Funds) Regulations;
- Investment Services Act (Alternative Investment Fund Manager Third Country) Regulations; and
- Investment Services Act (Alternative Investment Fund Managers) Regulations.

The transposition of the Directive will also require significant changes to the Investment Services Rules for Investment Services Providers. In this regard, the Authority is planning to issue the proposed revised Investment Services Rules for consultation in due course.

3. A Bill to amend the Investment Services Act

The purpose of the amendments to the Investment Services Act serve to align the Act with the requirements of the Alternative Investment Fund Manager Directive. The amendments introduce the concept of AIFM and AIF within the provisions of the Act.

4. Investment Services Act (Alternative Investment Fund Manager) Regulations

The purpose of these regulations is to transpose and implement Articles 46(4), Article 47 (4), (5), (6), (7), (9) and (10), Article 51 and Article 52(1) of the AIFM Directive. In particular, these Regulations aim at further enhancing the powers of the Authority in the application of the Directive.

5. Investment Services Act (Alternative Investment Fund Manager Passport) Regulations

The purpose of these proposed Regulations is to transpose the requirements of Articles 4(1)(a), (b), (c), (f), (h), (j)(i) and (ii), (k)(i) and (ii), (l), (p), (q) and (r)(i) and (ii), (w), (x), Article 33, Article 45(1) to (8) and Article 61(2) of the Directive.

These proposed draft Regulations provide for the procedure relating to the obtaining of regulatory approval for a Maltese AIFM to establish a branch or to provide services on a cross-border basis in another EU/EEA Member State and for a European AIFM to establish a branch or to provide management services on a cross-border basis in Malta.

Furthermore, the proposed Regulations stipulate which competent authority has regulatory jurisdiction to take action in the case of breaches of the relevant requirements by an AIFM which provides services on a cross-border basis or through the establishment of a branch in a Member State other than its Home Member State.

6. Investment Services Act (Marketing of Alternative Investment Funds) Regulations

The purpose of these proposed Regulations is to transpose the requirements of Articles 4(1)(a), (b), (ji) and (ii), (k) – (m), (w) - (y), (ag) and (aj), Articles 31, 32, Article 43 and Article 61(2) of the Directive.

The proposed Regulations outline:

- (a) the procedure which must be followed by a Maltese AIFM wishing to market the units or shares of a European AIF in Malta or in any other EU or EEA Member State; and
- (b) the procedure which must be followed by a European AIFM wishing to market the units or shares of a European AIF in Malta.

7. Investment Services Act (Alternative Investment Fund Manager Third Country) Regulations

The purpose of these proposed Regulations is to transpose the requirements of Articles 4(1)(a) - (c), (ji), (ii), (iv) and (v), (k), (l), (p), (q), (r), (w), (x), (z), (aa), (ab), (ag), (aj), (al) and (am) as well as Articles 34 to 37, 39 to 43, 45, 66(3) and (4), 67(6) and 68(6) of the Directive.

The proposed Regulations outline:

- (a) the conditions which must be fulfilled by Maltese AIFMs which manage or market units or shares of third country AIFs in Malta or in any EU or EEA Member State with and without a passport;
- (b) the conditions which must be fulfilled by European AIFMs wishing to market units or shares of third country AIFs in Malta;
- (c) the procedure which is applicable for the licencing by the competent authority of third country AIFMs wishing to manage European AIFs and/or market AIFs managed by it in Malta and the choice of Malta as Member State of Reference or as alternative Member State of Reference;
- (d) the conditions which must be fulfilled by a third country AIFM licenced in Malta wishing to market units or shares of European AIFs in Malta or in any EU or EEA Member State with or without a passport;
- (e) the conditions which must be fulfilled by a third country AIFM authorised in any EU or EEA Member State other than Malta wishing to market units or shares of European AIFs in Malta with or without a passport;
- (f) the procedure relating to the obtaining of regulatory approval for a third country AIFM licenced in Malta wishing to establish a branch or to provide services on a cross-border basis in another EU/EEA Member State and for a third country AIFM

licenced in any EU or EEA Member State wishing to establish a branch or to provide management services on a cross-border basis in Malta; and

- (g) which competent authority has regulatory jurisdiction to take action in the case of breaches of the relevant requirements by a third country AIFM which provides services on a cross-border basis or through the establishment of a branch in a Member State other than its Home Member State.

8. Marketing of AIFs to retail investors:

Article 43 of the AIFMD grants Member States the option to allow the marketing of AIFs to retail investors. Should a Member State decide to exercise this option the AIFMD allows the imposition by the Member State of stricter requirements on the AIFM or the AIF than the requirements applicable to AIFs marketed to professional investors.

In Malta certain types of AIFs are already allowed to market their units to retail investors. These are non-UCITS retail collective investment schemes and overseas based Non-UCITS Schemes. Malta has therefore decided to take the option of allowing marketing to retail investors subject to a specific authorisation requirement, and compliance with on-going obligations emanating from Investment Services Rules on marketing. The Investment Services Rules will be issued for consultation in due course.

Contacts

Any queries or requests for clarifications in respect of the above should be addressed to: Dr. Sarah Pulis, Securities and Markets Supervision Unit Tel: 25485232 or by e-mail on spulis@mfsa.com.mt or Dr. Isabelle Agius, Regulatory Development Unit Tel: 25485359 or by e-mail on iagius@mfsa.com.mt

Interested parties are kindly asked to submit any comments which they may have in relation to the attached draft Regulations in writing to Mr. Christopher Buttigieg, Deputy Director – Securities and Markets Supervision Unit, by e-mail on cpbuttigieg@mfsa.com.mt by not later than the 30th September 2012.

Communications Unit
Malta Financial Services Authority
MFSA Ref: 02-2012
3rd September 2012

BILL

entitled

AN ACT to amend various financial services laws.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title. **1.** The short title of this Act is the (Second) Various Financial Services Laws (Amendment) Act, 2012.

PART I

AMENDMENTS TO THE MALTA FINANCIAL SERVICES AUTHORITY ACT

Amendments to the Malta Financial Services Authority Act. Cap. 330. **2.** This Part amends the Malta Financial Services Authority Act and shall be read and construed as one with the Malta Financial Services Authority Act, hereinafter in this Part referred to as “the Principal Act”.

Amendment of article 4 of the principal Act. **3.** In subarticle (2) of article 4 of the principal Act, for the words “international organisations and other entities”, there shall be substituted the words “international organisations, with the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and colleges of supervisors, the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board (ESRB) and other entities”.

PART II

AMENDMENTS TO THE INVESTMENT SERVICES ACT

Amendments to the Investment Services Act. Cap. 370. **4.** This Part amends the Investment Services Act and shall be read and construed as one with the Investment Services Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 2 of the principal Act. **5.** Article 2 of the principal Act shall be amended as follows:

(1) Sub-article (1) thereof shall be amended as follows:

(a) immediately before the definition “collective investment scheme”, there shall be inserted the following new definitions:

“Alternative Investment Fund or AIF” means a collective investment undertaking, including subfunds thereof, which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not qualify as a UCITS Scheme in terms of the UCITS Directive;

“Alternative Investment Fund Manager or AIFM” means a legal person whose regular business is the management of one or more AIFs;

“AIFM Directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;”;
and

(b) for the definition “European regulatory authority”, there shall be substituted the following:

“ "European regulatory authority" means the body or bodies designated by a Member State or EEA State other than Malta in accordance with Article 44 of the AIFM Directive, Article 48 of the MIFID Directive and Article 97 of the UCITS Directive to carry out each of the duties provided for under the different provisions of the said Directives;”.

(2) In sub-article (3) thereof, for the words, “implement the provisions of the MIFID Directive and the UCITS Directive”, there shall be substituted the words, “implement the provisions of the AIFM Directive, the MIFID Directive and the UCITS Directive, and any EU Regulations or Directives on financial services”.

Amendment of article 2A of the principal Act.

6. Article 2A of the principal Act shall be amended as follows:

(1) in sub-article (2) thereof, for the words, “The competent authority shall also carry out the duties as competent authority for all purposes of the MIFID Directive and the UCITS Directive”, there shall be substituted the words, “The competent authority shall also carry out the duties as competent authority for all purposes of the AIFM Directive, the MIFID Directive and the UCITS Directive”; and

(2) in sub-article (3) thereof:

(i) for the words, “any other duty arising from this Act, the MIFID Directive or the UCITS Directive;”, there shall be substituted the words, “this Act, the AIFM Directive, the MIFID Directive or the UCITS Directive;”;

(ii) in paragraph (d) thereof, for the words, “at European Union level.”, there shall be substituted the words, “at European Union level;”;

(iii) immediately after paragraph (d) thereof, there shall be inserted the following new paragraphs:

(e) subject to the conditions laid down in Article 35 of Regulation (EU) No 1095/2010, provide ESMA and the ESRB with aggregated information relating to the activities of AIFMs under their responsibility;

(f) provide ESMA and other European regulatory authorities with any information required for the purposes of carrying out its duties under the AIFM Directive.”

Amendment of article 12 of the principal Act. **7.** In paragraph (k) of sub-article (1) of article 12 of the principal Act, for the words, “the MIFID Directive and the UCITS Directive;”, there shall be substituted the words, “the AIFM Directive, the MIFID Directive, and the UCITS Directive;”.

Amendment of article 13 of the principal Act. **8.** Sub-article (1) of article 13 of the principal Act shall be amended as follows:

(a) in paragraph (iv) thereof, for the words, “article 11(1); or”, there shall be substituted the words, “article 11(1);”;

(b) paragraph (v) thereof shall be renumbered as paragraph (vi); and

(c) immediately after paragraph (iv) thereof, there shall be inserted the following new paragraph:

“(v) an auditor of a licence holder; or”.

Amendment of article 15 of the principal Act. **9.** Subarticle (2) of Article 15 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words “or any other requirement,”, there shall be substituted the words “or any other requirement, including any requirement emanating from European Union legislation,”;

(b) in paragraph (c) thereof, for the words “in relation to the holder of a licence be removed or removed and replaced;”, there shall be substituted the words “in relation to the holder of a licence be prohibited, temporarily or otherwise, suspended from carrying out activities licensable under the Act, or removed or removed and replaced”; and

(c) in paragraph (f) thereof, for the words, “the implementation of the MIFID Directive and the UCITS Directive;”, there shall be substituted the words “the implementation of the AIFM Directive, the MIFID Directive and the UCITS Directive;”.

Amendment of article 16A of the principal Act.

10. In sub-article (6) of article 16A of the principal Act, for the words, “sanctions imposed in accordance with this article.”, there shall be substituted the words, “sanctions imposed in accordance with this article and shall upon request provide the necessary information on the application of administrative measures and imposition of penalties in the case of breaches of the provisions adopted in the implementation of the AIFM Directive.”.

Amendment of article 16B of the principal Act.

11. In article 16B of the principal Act, for the words, “any provisions which transpose the MIFID Directive and the UCITS Directive;”, there shall be substituted the words, “any provisions which transpose the AIFM Directive, the MIFID Directive and the UCITS Directive;”.

Amendment of article 17 of the principal Act.

12. Article 17 of the principal Act shall be amended as follows:

(a) In subarticle (2) thereof:

(i) for the words “MIFID Directive and the UCITS Directive”, wherever they appear in such subarticle (2), there shall be substituted the words “AIFM Directive, the MIFID Directive and the UCITS Directive”;

(ii) for the words “Investment Services Rules issued thereunder.”, there shall be substituted the words “Investment Services Rules issued thereunder.”, and immediately thereafter there shall be added the following new proviso:

“Provided that the competent authority shall communicate information to other European regulatory authorities where this is relevant for monitoring and responding to the potential implications of the activities of an individual AIFM or AIFMs collectively, for the stability of systemically relevant investment firms and the orderly functioning of markets on which AIFMs are active. ESMA and the ESRB shall be informed accordingly.”;

(ii) in sub-article (9) thereof:

- for the words “contrary to the provisions of the MIFID Directive or the UCITS Directive”, there shall be substituted the words “contrary to the provisions of the AIFM Directive, the MIFID

Directive or the UCITS Directive”; and

- for the words “and to ESMA.”, there shall be substituted the words “and to ESMA:”, and immediately thereafter there shall be added the following new proviso:

“Provided that where the said suspected acts have been or are suspected to have been committed by an AIFM in breach of the AIFM Directive, the competent authority shall also inform the home Member State and the host Member State of the AIFM, as the case may be, in as specific a manner as possible.”; and

(b) in sub-article (11) thereof, for the words “contrary to the provisions of the MIFID Directive or the UCITS Directive”, there shall be substituted the words “contrary to the provisions of the AIFM Directive, the MIFID Directive or the UCITS Directive”.

Amendment of article 17A of the principal Act.

13. Article 17A of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “or in an investigation:”, there shall be substituted the words “or in an investigation in the territory of the latter within the framework of their powers:”;

(b) in subarticle (2) thereof:

(i) for the words “in terms of Article 101(5) of the UCITS Directive”, there shall be substituted the words “in terms of Article 54(2) of the AIFM Directive and Article 101(5) of the UCITS Directive”; and

(ii) for the words “overall control of such Member State.”, there shall be substituted the words “overall control of such Member State on whose territory the said verification or investigation is being conducted.”; and

(c) in paragraph (b) of subarticle (3) thereof, for the words “in terms of Article 101(5) of the UCITS Directive”, there shall be substituted the words “in terms of Article 54(2) of the AIFM Directive and Article 101(5) of the UCITS Directive”.

Amendment of article 17B of the principal Act.

14. In article 17B of the principal Act, for the words “designated as contact points under Article 56 (1) of the MIFID Directive, or with European regulatory authorities”, there shall be substituted the words “designated as contact points under Article 44 of the AIFM Directive, or with European regulatory authorities designated as contact points under Article 56(1) of the MIFID Directive, or with European regulatory authorities”.

Amendment of article 17E of the principal Act.

15. Article 17E of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “The competent authority

shall cooperate with ESMA for the purposes of”, there shall be substituted the words “The competent authority shall cooperate with ESMA for the purposes of the AIFM Directive,”;

- (b) subarticle (2) thereof shall be renumbered as subarticle (3), and immediately after sub-article (1) thereof there shall be inserted the following new subarticle:

“(2) In the case of a disagreement between the competent authority and a European regulatory authority on an assessment, action or omission pertaining to either authority, in areas where the AIFM Directive requires cooperation or coordination between authorities from more than one Member State, the competent authority may refer the matter to ESMA.”; and

- (c) in subarticle (3) thereof, as renumbered, for the words “provide ESMA with all information necessary to carry out its duties under”, there shall be substituted the words “provide ESMA with all information necessary to carry out its duties under the AIFM Directive,”.

OBJECTS AND REASONS

The object of this Bill is to transpose the provisions of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

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**Investment Services Act
(CAP. 370)**

Investment Services Act (Alternative Investment Fund Managers) Regulations, 2012

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance, the Economy and Investment, 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 (Alternative Investment Fund Managers) Regulations, 2012.

(2) The purpose of these regulations is to transpose and implement Articles 46(4), Article 47 (4), (5), (6), (7), (9) and (10), Article 51 and Article 52(1) of the AIFM Directive.

(3) Words and expressions used in these regulations which are also used in the Act but which are not defined herein shall have the same meaning as in the Act.

Interpretation

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

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"the Act" means the Investment Services Act;

"the AIFM Directive" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 as amended from time to time, and includes any implementing measures that may be issued thereunder ;

“Directive 95/46/EC” means the Directive of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of the 24 November 2010;

“ESRB” means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of the 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board and Council Regulation (EU) No 1096/2010 of the 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board

"overseas regulatory authority" means an authority in a country or territory outside Malta that is not a Member State or EEA State which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act.

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Transfer of data to an overseas regulatory authority.

3. (1) Where the competent authority is satisfied that a transfer of any data and the analysis of such data is necessary for the purpose of the AIFM Directive, the competent authority may transfer to an overseas regulatory authority such data and analysis on a case-by-case basis, where the conditions laid down in Directive 95/46/EC are met.

(2) The competent authority may, where it deems fit, expressly authorise the said overseas regulatory authority to transfer such data to another overseas regulatory authority. Such authorisation shall be provided in writing.

Transfer of personal data to a European regulatory authority or overseas regulatory authority, and retention of

4. (1) When transferring personal data to a European regulatory authority or to an overseas regulatory authority in accordance with its obligations under the AIFM Directive, the competent authority shall transfer such data in accordance with Directive 95/46/EC.

(2) When receiving personal data from a European regulatory authority or from an overseas regulatory authority under the provisions of the AIFM Directive, the competent authority shall retain

personal data. such personal data for a maximum period of five years.

Competent authority to have necessary powers to ensure orderly functioning of markets.

5. In cases where the activity of one or more AIFs in the market for a financial instrument could jeopardise the orderly functioning of that market, the competent authority shall have all the powers necessary to take all measures required in order to ensure the orderly functioning of markets.

Request which may be made by ESMA.

6. (1) If any of the activities of the AIFMs cause or aggravate a substantial threat to the orderly functioning and integrity of the financial market or to the stability of the whole or a part of the financial system in the European Union and there are cross border implications, and if the competent authority fails to take measures to address such threat or if the measures taken do not sufficiently address the threat, ESMA may, subject to the requirements set out in sub-regulations (2) and (3) request the competent authority to take any of the following measures, as appropriate:

- (a) to prohibit the marketing in the European Union of units or shares of AIFs managed by non-EU AIFMs or of non-EU AIFs managed by EU AIFMs without the authorisation required in Article 37 of the AIFM Directive, or without the notification required in Articles 35, 39 and 40 of the AIFM Directive, or without being allowed to do so by the competent authority in accordance with Article 42 of the AIFM Directive;
- (b) to impose restrictions on non-EU AIFMs relating to the management of an AIF in case of excessive concentration of risk in a specific market on a cross-border basis;
- (c) to impose restrictions on non-EU AIFMs relating to the management of an AIF where its activities potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions;

(2) The measures adopted by the competent authority in terms of sub-regulation (1) shall:

- (a) effectively address the threat to the orderly functioning and the integrity of the financial market or to the stability of the whole or a part of the financial system in the European Union or significantly improve its ability to monitor the threat;

(b) not create a risk of regulatory arbitrage; and

(c) not have a detrimental effect on the efficiency of the financial markets, including reducing liquidity in those markets or creating uncertainty for market participants, in a way that is disproportionate to the benefits of the measures.

(3) Before requesting the competent authority to take or renew any measure referred to in sub-regulation (1), ESMA shall consult, where appropriate, the ESRB and other relevant authorities.

(4) ESMA shall review the measures undertaken by the competent authority in terms of this regulation at appropriate intervals and at least every three months and if a measure is not renewed after that three-month period, it shall automatically expire. Any renewal shall be carried out in the process referred to in this regulation.

(5) If Malta is the Member State of reference in terms of the Investment Services Act (Alternative Investment Fund Manager Third Country) Regulations, 2012, of the non-EU AIFM against whom a measure in terms of this regulation was imposed, the competent authority may request ESMA to reconsider its decision in the manner set out in the second subparagraph of Article 44(1) of Regulation (EU) No 1095/2010.

L.N. ___ of 2012

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

**Investment Services Act (Alternative Investment Fund Manager
Passport) Regulations, 2012**

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

PRELIMINARY

Citation,
commencement and
scope.

1. (1) The title of these regulations is the Investment Services Act (Alternative Investment Fund Manager Passport) Regulations, 2012.

(2) These regulations shall come into force on the 22nd July 2013.

(3) These regulations shall apply to Maltese Alternative Investment Fund Managers providing services in an EU Member State or EEA State, other than Malta, through the establishment of a branch or under the freedom to provide services, and to European Alternative Investment Fund Managers providing services in Malta through the establishment of a branch or under the freedom to provide services.

(4) These regulations transpose and implement, in part, the provisions of Article 4(1)(a), (b), (c), (f), (h), (j)(i) and (ii), (k)(i) and (ii), (l), (p), (q) and (r)(i) and (ii), (w), (x), Article 33, Article 45(1) to (8) and Article 61(2) of the AIFM Directive and they shall be interpreted and applied accordingly.

Interpretation.

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

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“Act” means the Investment Services Act;

“the AIFM Directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No

1095/2010 as amended from time to time, and includes any implementing measures that may be issued thereunder;

“Alternative Investment Funds or AIFs” means collective investment schemes, including subfunds thereof which:

- (a) raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
- (b) do not qualify as UCITS Schemes in terms of the UCITS Directive.

“Alternative Investment Fund Manager or AIFM” means a legal person whose regular business is managing one or more AIFs;

“branch” when relating to an AIFM means a place of business which is a part of an AIFM, which has no legal personality and which provides the services for which the AIFM has been authorised; all the places of business established in the same Member State or EEA State by an AIFM with its registered office in another Member State or EEA State or in a third country shall be regarded as a single branch;

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"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act, which body shall also carry out the duties as competent authority for all purposes of the AIFM Directive;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of the 24 November 2010;

“established” means:

- (a) in relation to an AIF, the place where the AIF is authorised or registered or if the AIF is not authorised or registered, the place where the AIF has its registered office;
- (b) in relation to an AIFM, the place where the AIFM has its registered office.

“European AIF” means:

(a) an AIF which is authorised or registered in an EU Member State or EEA State, other than Malta, under the applicable national law; or

(b) an AIF which is not authorised or registered in an EU Member State or EEA State but has its registered office and, or head office in an EU Member State or EEA State other than Malta;

“European AIFM” means an AIFM which has its registered office in a European Member State or EEA State, other than Malta;

“European AIFM home Member State or EEA State” means the Member State or EEA State, other than Malta, in which the European AIFM has its registered office;

“European AIFM host Member State or EEA State” means:

(a) a Member State or EEA State, other than the home Member State or EEA State, in which a European AIFM manages European AIFs; or

(b) a Member State or EEA State, other than the home Member State or EEA State, in which a European AIFM markets units or shares of a European AIF.

“European regulatory authority” means:

(a) the body or bodies designated by a Member State or an EEA State to act as a supervisory authority in relation to the European AIFM concerned in that Member State or EEA State and to carry out the duties provided for in the AIFM Directive; or

(b) the body or bodies designated by a Member State or an EEA State to act as a supervisory authority in relation to the European AIF concerned in that Member State or EEA State and to carry out the duties provided for in the AIFM Directive;

“home Member State of the AIF” means

(a) the Member State or EEA State in which the AIF is authorised or registered under applicable national law, or in case of multiple authorisations or registrations, the Member State or EEA State in which the AIF has been authorised or

registered for the first time; or

(b) if the AIF is neither authorised nor registered in a Member State or EEA State, the Member State or EEA State in which the AIF has its registered office and, or head office;

“Maltese AIF” means:

(a) an AIF which is authorised or registered in Malta, in accordance with Maltese law; or

(b) an AIF which is not authorised or registered in Malta but has its registered office and, or head office in Malta;

“Maltese AIFM” means an AIFM which is licenced in terms of the Act and which has its registered office in Malta;

“Maltese AIFM host Member State or EEA State”

(a) a Member State or EEA State, other than Malta where the home Member State or EEA State, in which the European AIFM manages European AIFs is Malta;

(b) a Member State or EEA State, other than Malta where the home Member State or EEA State, in which the European AIFM markets units or shares of a European AIF is Malta.

“managing AIFs” means performing at least investment management functions referred to in Point 1(a) or (b) of Annex I of the Directive for one or more AIFs;

“marketing” means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF that it manages to or with investors domiciled or with a registered office in the European Union;

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“Tribunal” means the Financial Services Tribunal established in terms of the Malta Financial Services Authority Act.

(2) Words and expressions used in these Regulations which are also used in the Act but which are not defined herein shall have the same meaning as in the Act.

(3) In the event that any of these regulations conflict with the provisions of the AIFM Directive, the latter shall prevail.

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT BY MALTESE AIFMS

Freedom of establishment of Maltese AIFMs – Direct management of a European AIF

3. (1) A Maltese AIFM may manage a European AIF directly provided the Maltese AIFM is authorised to manage that type of AIF.

(2) A Maltese AIFM intending to manage a European AIF for the first time shall communicate the following information to the competent authority:

(a) the Member State or EEA State in which it intends to manage AIFs directly;

(b) a programme of operations stating the particular services which the Maltese AIFM intends to perform and identifying the AIFs it intends to manage.

(3) The competent authority shall within one month of receiving the complete documentation submitted in accordance with subregulation (2) above transmit the complete documentation to the European regulatory authority of the Maltese AIFM host Member State or EEA State. The competent authority shall also enclose a statement to the effect that the Maltese AIFM is licensed in terms of the Act:

Provided that such transmission shall occur only if the Maltese AIFM's management of the European AIF complies and will continue to comply with the provisions of the AIFM Directive and if the Maltese AIFM otherwise complies with the provisions of the AIFM Directive.

(4) The competent authority shall immediately notify the Maltese AIFM about the transmission of the notification pursuant to subregulation (3) above.

(5) Upon receipt of the transmitted notification referred to in subregulation (4), the Maltese AIFM may start to provide its services in the host European Member State or EEA State.

(6) In the event of a change to any of the information communicated in accordance with subregulation (2), the Maltese AIFM shall give written notice of such change to the competent authority at least one month before implementing planned changes, or immediately after an unplanned change has occurred.

(7) Where, pursuant to a planned change, the Maltese AIFM's management of the European AIF would no longer comply with the provisions of the AIFM Directive or the Maltese AIFM would otherwise no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the Maltese AIFM

without undue delay that it is not to implement the change.

(8) Where the Maltese AIFM proceeds with the implementation of the planned change, notwithstanding the notification made pursuant to subregulations (6) and (7), or if an unplanned change has taken place pursuant to which the Maltese AIFM's management of the European AIF no longer complies with the provisions of the AIFM Directive or the Maltese AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any regulations issued thereunder.

(9) If the planned changes are acceptable because they do not affect the compliance by the Maltese AIFM's management of the European AIF with the provisions of the AIFM Directive, or the compliance by the Maltese AIFM with the provisions of the AIFM Directive, the competent authority shall, without undue delay inform the European regulatory authority of the Maltese AIFM host Member State or EEA State of those changes.

Freedom of
establishment of
Maltese AIFMs –
Establishment of a
branch

4. (1) A Maltese AIFM may manage a European AIF through the establishment of a branch in another EU Member State or EEA State, provided the Maltese AIFM is authorised to manage that type of AIF.

(2) A Maltese AIFM intending to manage a European AIF in another EU or EEA Member State for the first time and establish a branch shall communicate the following information to the competent authority:

(a) the Member State or EEA State in which it intends to establish a branch;

(b) a programme of operations stating the particular services which the Maltese AIFM intends to perform and identifying the AIFs it intends to manage;

(c) the organisational structure of the branch;

(d) the address in the home Member State or EEA State of the AIF from which documents may be obtained;

(e) the names and contact details of the persons responsible for the management of the branch.

(3) The competent authority shall within two months of receiving the complete documentation submitted in accordance with subregulation (2) above, transmit the said complete documentation to the European regulatory authority of the host Member State or EEA State where the Maltese AIFM intends establishing a branch. The

competent authority shall also enclose a statement to the effect that the Maltese AIFM is licensed in terms of the Act:

Provided that such transmission shall occur only if the Maltese AIFM's management of the European AIF complies and will continue to comply with the provisions of the AIFM Directive and the Maltese AIFM itself otherwise complies with the provisions of the AIFM Directive.

(4) The competent authority shall immediately notify the Maltese AIFM about the transmission pursuant to subregulation (3).

(5) Upon receipt of the transmission notification referred to in subregulation (4), the Maltese AIFM may start to provide its services in the host Member State or EEA State.

(6) In the event of a change to any of the information communicated in accordance with subregulation (2), the Maltese AIFM shall give written notice of such change to the competent authority at least one month before implementing planned changes, or immediately after an unplanned change has occurred.

(7) Where, pursuant to a planned change, the Maltese AIFM's management of the European AIF would no longer comply with the provisions of the AIFM Directive or the Maltese AIFM itself would otherwise no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the Maltese AIFM without undue delay that it shall not implement the change.

(8) Where the Maltese AIFM proceeds with the implementation of the planned change, notwithstanding the notification received pursuant to subregulations (6) and (7), or if an unplanned change has taken place pursuant to the which the Maltese AIFM's management of the European AIF no longer complies with the provisions of the AIFM Directive or the Maltese AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any regulations issued thereunder.

(9) If the planned changes are acceptable because they do not affect the compliance of the Maltese AIFM's management of the European AIF with the provisions of the AIFM Directive, or the compliance by the Maltese AIFM of the provisions of the AIFM Directive, the competent authority shall, without undue delay inform the European regulatory authority of the AIFM host Member State or EEA State of those changes.

5. (1) The competent authority shall be responsible for the prudential supervision of a Maltese AIFM, whether the Maltese AIFM manages and, or markets AIFs in another Member State or EEA State

or not, without prejudice to the provisions of the AIFM Directive conferring responsibility for supervision on the European regulatory authority of the host Member State or EEA State of the Maltese AIFM.

(2) The supervision of the Maltese AIFM's compliance with Articles 12 and 14 of the AIFM Directive shall be the responsibility of the European regulatory authority of the host Member State or EEA State where the Maltese AIFM manages and, or markets AIFs through a branch in that Member State or EEA State.

(3) By virtue of subregulation (2), a Maltese AIFM managing or marketing AIFs in a Member State or EEA State other than Malta whether or not through a branch, may be required by the European regulatory authority of the host Member State or EEA State to provide information necessary for the supervision of its compliance with the applicable regulatory requirements for which that European regulatory authority is responsible.

(4) Where a Maltese AIFM is managing and, or marketing AIFs in a Member State or EEA State other than Malta, whether or not through a branch, and is in breach of one of the regulatory requirements for which the European regulatory authority is responsible for ensuring compliance, the competent authority shall receive notification from the European regulatory authority of the host Member State or EEA State of its request made to the Maltese AIFM to put an end to that breach.

(5) If the Maltese AIFM refuses to provide the European regulatory authority with information falling under its responsibility, or fails to take the necessary steps to put an end to breach referred to in subregulation (4), the European regulatory authority shall inform the competent authority thereof.

(6) Where the competent authority receives a notification from a European regulatory authority pursuant to subregulation (5), the competent authority shall, at the earliest opportunity:

(a) take all appropriate measures to ensure that the Maltese AIFM concerned provides the information requested by the European regulatory authority of the host Member State or EEA State, pursuant to subregulation (3) or puts an end to the breach referred to in subregulation (4);

(b) request the necessary information from the relevant supervisory authorities in third countries:

Provided that the competent authority shall communicate to the European regulatory authority of the host Member State or EEA State the nature of the measures taken pursuant to this subregulation.

(7) Where a Maltese AIFM continues to refuse to provide the information requested by the European regulatory authority in the host Member State or EEA State pursuant to subregulation (3) or persists in breaching the legal or regulatory provisions referred to in subregulation (4) in force in the host Member State or EEA State, despite the measures taken by the competent authority pursuant to subregulations (5) and (6), or due to the inadequacy or unavailability of such measures in Malta, the competent authority shall be notified of any measures that may have been taken by the European regulatory authority of the host Member State or EEA State against the Maltese AIFM to prevent or penalise further irregularities by the Maltese AIFM.

(8) Where the European regulatory authority of the host Member State or EEA State of the Maltese AIFM has clear and demonstrable grounds for believing that such Maltese AIFM is in breach of regulatory provisions in relation to which such European regulatory authority has no responsibility for supervising compliance, the competent authority shall receive notification of such breach from the European regulatory authority in the host Member State or EEA State. The competent authority shall take appropriate measures including if necessary, request additional information from the relevant supervisory authorities in third countries.

(9) Where despite the measures taken by the competent authority, or due to the inadequacy of such measures or because the competent authority fails to act within a reasonable time, a Maltese AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant AIF, the financial stability or the integrity of the market in the host Member State or EEA State, the competent authority shall receive notification by the European regulatory authority of the host Member State or EEA State of any measures taken in order to protect the investors of the relevant AIF, the financial stability and integrity of the market in the European Member State or EEA State including the possibility of preventing the Maltese AIFM concerned to further market the units or shares of the relevant AIF in the host Member State or EEA State.

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT BY EUROPEAN AIFMS

Freedom of establishment of European AIFMS – Direct management of a European AIF

6. (1) A European AIFM may manage a Maltese AIF directly in Malta provided the European AIFM is authorised to manage that type of AIF.

(2) A European AIFM intending to manage Maltese AIFs in Malta for the first time shall communicate the following information to the European regulatory authority in its home Member State or EEA State and shall thereafter be exempt from the provisions of

Article 3 of the Act:

(a) the intention to manage AIFs directly in Malta;

(b) a programme of operations stating the particular services which the European AIFM intends to perform and identifying the AIFs it intends to manage.

(3) The competent authority shall within one month from submission by the European AIFM to the European regulatory authority of the complete documentation in accordance with subregulation (2) above, receive the complete documentation from the European regulatory authority of the European AIFM's home Member State or EEA State. The competent authority shall receive a statement to the effect that the European AIFM is authorised by the European regulatory authority in terms of the AIFM Directive:

Provided that such transmission shall occur only if the European AIFM's management of the Maltese AIF complies and will continue to comply with the provisions of the AIFM Directive and the European AIFM otherwise complies with the provisions of the AIFM Directive.

(4) Upon notification by the European regulatory authority of the home Member State or EEA Member State to the European AIFM that the transmission referred to in subregulation (3) has occurred, the European AIFM may start to provide its services in Malta.

(5) The competent authority shall not impose any additional requirements on the European AIFM concerned in respect of matters which are covered by the AIFM Directive.

(6) In the event of a change to any of the information communicated in accordance with subregulation (2), which changes do not affect the compliance by the European AIFM's management of the Maltese AIF with the provisions of the AIFM Directive or the compliance by the European AIFM of the provisions of the AIFM Directive, the competent authority shall receive notification of such changes from the European regulatory authority of the home Member State or EEA State of the European AIFM.

Freedom of
establishment of
European AIFMs –
Establishment of a
branch.

7. (1) A European AIFM may manage a Maltese AIF in Malta through the establishment of a branch provided the European AIFM is authorised to manage that type of AIF.

(2) A European AIFM intending to manage a Maltese AIF in Malta for the first time through the establishment of a branch shall communicate the following information to the European regulatory authority in its home Member State or EEA State and shall thereafter be exempt from the provisions of Article 3 of the Act:

(a) the intention to manage AIFs directly in Malta;

(b) a programme of operations stating the particular services which the European AIFM intends to perform and identifying the AIFs it intends to manage;

(c) the organisational structure of the branch;

(d) the address in the home Member State or EEA State of the AIF from which documents may be obtained;

(e) the names and contact details of the persons responsible for the management of the branch.

(3) The competent authority shall within two months from submission by the European AIFM of the complete documentation in accordance with subregulation (2), receive the complete documentation from the European regulatory authority of the European AIFM's home Member State or EEA State. The competent authority shall receive a statement to the effect that the European AIFM is authorised by the European regulatory authority in terms of the AIFM Directive:

Provided that such transmission shall occur only if the European AIFM's management of the Maltese AIF complies and will continue to comply with the provisions of the AIFM Directive and the European AIFM otherwise complies with the provisions of the AIFM Directive.

(4) Upon notification by the European regulatory authority of the home Member State or EEA Member State to the European AIFM that the transmission referred to in subregulation (3) has occurred, the European AIFM may start to provide its services in Malta.

(5) The competent authority shall not impose any additional requirements on the European AIFM concerned in respect of matters which are covered by the AIFM Directive.

(6) In the event of a change to any of the information communicated in accordance with subregulation (2), which changes do not affect the compliance by the European AIFM's management of the Maltese AIF with the provisions of the AIFM Directive or the compliance by the European AIFM of the provisions of the AIFM Directive, the competent authority shall receive notification of such changes from the European regulatory authority of the home Member State or EEA State of the European AIFM.

8. (1) The competent authority may require a European AIFM managing or marketing AIFs in Malta, whether or not through a

branch, to provide the information necessary for the supervision of the European AIFM's compliance with the applicable regulatory provisions for which the competent authority is responsible:

Provided that the requirements imposed shall not be more stringent than those which the competent authority imposes on Maltese AIFMs for monitoring compliance with the same provisions.

(2) Where the competent authority ascertains that a European AIFM managing and, or marketing Maltese, and, or European AIFs in Malta, whether or not through a branch, is in breach of one of the provisions in relation to which the competent authority is responsible for supervising compliance, the competent authority shall require the European AIFM concerned to put an end to that breach and shall proceed to notify the European regulatory authority of the home Member State or EEA State thereof.

(3) If the European AIFM concerned refuses to provide the competent authority with information for which such authority is responsible, or fails to take the necessary steps to put an end to the breach identified in subregulation (2), the competent authority shall inform the European regulatory authority of its home Member State or EEA State thereof.

Provided that the competent authority shall be notified by the European regulatory authority of the nature of any measures taken.

(4) Where a European AIFM continues in its refusal to provide information requested by the competent authority in terms of subregulation (1), or persists in breaching the legal or regulatory provisions referred to in subregulation (2) in force in Malta, despite the measures taken by the European regulatory authority of the home Member State or EEA State or due to the inadequacy or unavailability of such measures in the said Member State or EEA State, the competent authority may, after informing the European regulatory authority of the home Member State or EEA State of the European AIFM, take appropriate measures, including those laid down in Articles 46 and 48 of the AIFM Directive, to prevent or penalise further irregularities and, in so far as necessary, to prevent the European AIFM from initiating any further transactions in Malta. Where the function carried out in Malta by the European AIFM is the management of AIFs, the competent authority may require that the European AIFM cease managing those AIFs.

(5) Where the competent authority has clear and demonstrable grounds for believing that a European AIFM is in breach of the obligations arising from provisions in relation to which the competent authority has no responsibility for supervising compliance, the competent authority shall refer those finding to the European regulatory authority of the home Member State or EEA State of the European AIFM, which shall take appropriate measures, including if necessary, request additional information from the relevant

supervisory authorities in third countries.

(6) Where a European AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant AIF, the financial stability or the integrity of the Maltese market, despite the measures taken by the European regulatory authority in the home Member State or EEA State of the European AIFM, or due to the inadequacy of such measures in the European Member State or EEA State or because the European regulatory authority fails to act within a reasonable time, the competent authority may, after informing the European regulatory authority in the home Member State or EEA State, take all appropriate measures needed in order to protect the investors of the relevant AIF, the financial stability and integrity of the Maltese market, including the possibility of preventing the European AIFM concerned to further market the units or shares of the relevant AIF in Malta.

(7) The supervision of a European AIFM's compliance with Articles 12 and 14 of the AIFM Directive shall be the responsibility of the competent authority where the European AIFM manages and, or markets AIFs through a branch established in Malta.

TRANSITORY PROVISIONS

Transitory
Provisions

9. Regulations 3 and 4 shall not apply to the marketing of units or shares of AIFs that are subject to a current offer to the public under a prospectus that has been drawn up and published in accordance with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC before 22 July 2013 for the duration of the validity of that prospectus.

L.N. ___ of 2012

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

**Investment Services Act (Marketing of Alternative Investment Funds)
Regulations, 2012**

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

PRELIMINARY

Citation,
commencement and
scope.

1. (1) The title of these regulations is the Investment Services Act (Marketing of Alternative Investment Funds) Regulations, 2012.

(2) These regulations shall come into force on the 22nd July 2013.

(3) These regulations provide the requirements applicable to the cross-border marketing of Alternative Investment Funds in Malta or in any other Member State or EEA State.

(4) These regulations transpose and implement, in part, the provisions of Article 4(1)(a), (b), (j)(i) and (ii), (k), (l), (m),(p), (w), (x), (y), (ag) and (aj), Articles 31, 32, Article 43 and Article 61(2) of the AIFM Directive and they shall be interpreted and applied accordingly.

Interpretation.

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

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“Act” means the Investment Services Act;

“Alternative Investment Funds or AIFs” means collective investment schemes, including subfunds thereof which:

(c) raise capital from a number of investors with a view to investing it in accordance with a defined

investment policy for the benefit of those investors; and

- (d) do not qualify as UCITS Schemes in terms of the UCITS Directive.

“Alternative Investment Fund Manager or AIFM” means a legal person whose regular business is managing one or more AIFs;

“the AIFM Directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 as amended from time to time, and includes any implementing measures that may be issued thereunder;

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"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act, which body shall also carry out the duties as competent authority for all purposes of the AIFM Directive;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of the 24 November 2010;

“established” means:

- (c) in relation to an AIF, the place where the AIF is authorised or registered or if the AIF is not authorised or registered, the place where the AIF has its registered office;
- (d) in relation to an AIFM, the place where the AIFM has its registered office.

“European AIF” means:

- (a) an AIF which is authorised or registered in a Member State or EEA State, including Malta, under the applicable national law;
- (b) an AIF which is not authorised or registered in a Member State or EEA State but has its registered office and, or head office in a Member State or EEA State including Malta;

“European AIFM” means an AIFM which has its registered office in a Member State or EEA State other than Malta;

“European AIFM home Member State or EEA State” means the Member State or EEA State in which the European AIFM has its registered office;

“European AIFM host Member State or EEA State” means:

- (a) a Member State or EEA State, other than the home Member State or EEA State, in which a European AIFM manages European AIFs; or
- (b) a Member State or EEA State, other than the home Member State or EEA State, in which a European AIFM markets units or shares of a European AIF.

“European regulatory authority” means the body or bodies designated by a Member State or an EEA State, other than Malta, to act as a supervisory authority in relation to the European AIFM concerned in that Member State or EEA State and to carry out the duties provided for in the AIFM Directive;

“feeder AIF” means an AIF which:

- (a) invests at least 85% of its assets in units or shares of another AIF hereinafter referred to as the master AIF;
- (b) invests at least 85% of its assets in more than one master AIFs where those master AIFs have identical investment strategies; or
- (c) has otherwise an exposure of at least 85% of its assets to such a master AIF.

“home Member State of the AIF” means

(a) the Member State or EEA State in which the AIF is authorised or registered under applicable national law, or in case of multiple authorisations or registrations, the Member State or EEA State in which the AIF has been authorised or registered for the first time; or

(b) if the AIF is neither authorised nor registered in a Member State or EEA State, the Member State or EEA State in which the AIF has its registered office and, or head office;

“Maltese AIFM” means an AIFM which is licensed in terms of the Act and which has its registered office in Malta;

“Maltese AIFM host Member State or EEA State” means:

(a) a Member State or EEA State, other than Malta, in which a Maltese AIFM manages European AIFs; or

(b) a Member State or EEA State, other than Malta, in which a Maltese AIFM markets units or shares of a European AIF;

“master AIF” means an AIF which a feeder AIF invests in or has an exposure in accordance with the definition of “feeder AIF”;

“managing AIFs” means performing at least investment management functions referred to in point 1(a) or (b) of Annex I of the AIFM Directive for one or more AIFs;

“marketing” means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF that it manages to or with investors domiciled or with a registered office in the European Union;

“professional investor” shall have the meaning assigned to “professional client” in the Investment Services Rules;

“retail investor” means an investor who is not a professional investor;

“third country” means a country which is not a Member State or an EEA State;

“third country AIF” means an AIF which is not a European AIF;

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“Tribunal” means the Financial Services Tribunal established in terms of the Malta Financial Services Authority Act.

(2) Words and expressions used in these regulations which are also used in the Act but which are not defined herein shall have the same meaning as in the Act.

(3) In the event that any of these regulations conflict with the provisions of the AIFM Directive, the latter shall prevail.

MARKETING OF UNITS OR SHARES OF EUROPEAN AIFS BY MALTESE AIFMS TO PROFESSIONAL INVESTORS IN MALTA

Marketing of units or shares of European AIFs by a Maltese AIFM in Malta.

3. (1) A Maltese AIFM may market to professional investors in Malta, units or shares of a European AIF, which it manages and such European AIF, where registered in a Member State or EEA State other than Malta, shall thereafter be exempt from the provisions of article 4 of the Act, provided that prior to commencement of its marketing in Malta the conditions prescribed in this regulation are met:

Provided that without prejudice to regulation 6, European AIFs managed and marketed by a Maltese AIFM shall be marketed only to professional investors.

(2) Where the European AIF is a feeder AIF, the right to market referred to in subregulation (1) is subject to the condition that the master AIF is also a European AIF which is managed by an AIFM authorised by a Member State or an EEA State.

(3) The Maltese AIFM shall submit to the competent authority a notification in respect of each European AIF which it intends to market. Such notification shall comprise the documentation and information prescribed hereunder:

(a) a notification letter, including a programme of operations identifying the European AIFs which the Maltese AIFM intends to market and the information on where the AIFs are established;

(b) the European AIF's prospectus or equivalent rules or instruments of incorporation;

(c) identification of the custodian of the European AIF;

(d) a description of, or any information on, the European AIF available to investors;

(e) information on where the master AIF is established if the AIF is a feeder AIF in terms of subregulation (2) above;

(f) any additional information concerning the disclosure obligations prescribed in Investment Services

Rules, for each European AIF which the Maltese AIFM intends to market;

(g) where relevant, information on the arrangements established to prevent units or shares of the European AIF from being marketed to retail investors, including in the case where the Maltese AIFM relies on activities of independent entities to provide investment services in respect of the European AIF.

(4) Within twenty working days following receipt of a complete notification file pursuant to subregulation (3), the competent authority shall inform the Maltese AIFM whether it may start marketing the European AIF identified in the notification referred to in subregulation (3).

(5) In the case where the AIF identified in the notification referred to in subregulation (3) has been set up in an EU or EEA Member State other than Malta, the competent authority shall proceed to inform the European Regulatory Authority of the home Member State or EEA State of the AIF that the Maltese AIFM may start marketing the units or shares of the said AIF in Malta.

(6) In the case of a positive decision by the competent authority, the Maltese AIFM may start marketing the European AIF in Malta from the date of notification by the said competent authority to that effect.

(7) The competent authority shall prevent the marketing in Malta of a European AIF only if the Maltese AIFM's management of the European AIF does not or will not comply with the provisions of the AIFM Directive, or the Maltese AIFM does not or will not comply with the provisions of the AIFM Directive.

(8) In the event of a material change to any of the particulars communicated in accordance with subregulation (3), the Maltese AIFM shall give written notice thereof to the competent authority at least one month prior to the implementation of such change in the case of changes planned by the Maltese AIFM, or immediately after an unplanned change has occurred.

(9) Where, pursuant to a planned change, the management of the Maltese AIFM would no longer comply with the provisions of the AIFM Directive or the Maltese AIFM would otherwise no longer comply with the provisions of the AIFM Directive, the competent authority shall immediately inform the Maltese AIFM that it shall not implement the change.

(10) Where the Maltese AIFM proceeds with the implementation of the planned change, notwithstanding the

notification received pursuant to subregulation (9), or if an unplanned change has taken place pursuant to which the management of the European AIF by the Maltese AIFM no longer complies with the provisions of the AIFM Directive or the Maltese AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any regulations issued thereunder including, if necessary, the express prohibition of marketing of the European AIF.

MARKETING OF UNITS OR SHARES OF EUROPEAN AIFS BY MALTESE AIFMS TO PROFESSIONAL INVESTORS IN A MEMBER STATE OR EEA STATE OTHER THAN MALTA

Marketing of units or shares of European AIFs by a Maltese AIFM in an EU or EEA Member State other than Malta.

4. (1) A Maltese AIFM may market to professional investors in a Member State or EEA State other than Malta, units or shares of a European AIF which it manages as soon as the conditions prescribed in this regulation are met:

Provided that, without prejudice to Article 43(1) of the AIFM Directive, European AIFs managed and marketed by the Maltese AIFM shall be marketed only to professional investors.

(2) Where the European AIF is a feeder AIF, the right to market referred to in subregulation (1) is subject to the condition that the master AIF is also a European AIF which is managed by a Maltese AIFM.

(3) The Maltese AIFM shall submit to the competent authority a notification in respect of each European AIF which it intends to market. Such notification shall comprise the documentation and information prescribed hereunder:

- a) a notification letter, including a programme of operations identifying the European AIFs which the Maltese AIFM intends to market and the information on where the European AIFs are established;
- b) the European AIF's prospectus or equivalent rules or instruments of incorporation;
- c) identification of the custodian of the European AIF;
- d) a description of, or any information on, the European AIF available to investors;
- e) information on where the master AIF is established if the European AIF is a feeder AIF in terms of

subregulation (2);

f) any additional information concerning the disclosure obligations prescribed in the Investment Services Rules for Investment Services Providers for each European AIF which the Maltese AIFM intends to market;

g) an indication of the Member State or EEA State in which the Maltese AIFM intends to market the units or shares of the European AIF to professional investors;

h) information about arrangements made for the marketing of European AIFs and, where relevant, information on the arrangements established to prevent units or shares of the European AIFs from being marketed to retail investors, including in the case where the Maltese AIFM relies on activities of independent entities to provide investment services in respect of the AIF:

Provided that the notification letter to the competent authority by the Maltese AIFM as referred to above shall be provided in a language customary in the sphere of international finance.

(4) The competent authority shall, no later than twenty working days after the date of receipt of a complete notification file pursuant to subregulation (3), transmit the complete notification file to the European regulatory authority of the Member State or EEA State where the Maltese AIFM intends marketing the European AIF.

(5) The competent authority shall also enclose a statement to the effect that the Maltese AIFM concerned is authorised to manage European AIFs with a particular investment strategy:

Provided that the statement referred to above shall be provided in a language customary in the sphere of international finance.

(6) The competent authority shall transmit the complete notification file only if the Maltese AIFM's management of the European AIF complies with and will continue to comply with the provisions of the AIFM Directive and if the Maltese AIFM otherwise complies with the provisions of the AIFM Directive.

(7) Upon transmission of the notification file, the competent authority shall, without delay, notify the Maltese AIFM thereof. The Maltese AIFM may start marketing the European AIF in the Maltese AIFM's host Member State or EEA State as from the date of such notification.

(8) In so far as they are different, the competent authority shall also inform the European regulatory authority of the home Member

State or EEA State of the European AIF that the Maltese AIFM may start marketing the units or shares of the European AIF in the host Member State or EEA State of the Maltese AIFM.

(9) The European regulatory authority of the host Member State or EEA State of the Maltese AIFM shall be responsible for ensuring compliance with the laws in force in such Member State or EEA State with regards to information about arrangements made for the marketing of European AIFs and, where relevant, information on the arrangements established to prevent units or shares of the European AIF from being marketed to retail investors, including in the case where the Maltese AIFM relies on activities of independent entities to provide investment services in respect of the European AIF.

(10) In the event of a material change to any of the particulars communicated in accordance with subregulation (3), the Maltese AIFM shall give written notice thereof to the competent authority at least one month prior to the implementation of such planned change, or immediately after an unplanned change has occurred.

(11) Where, pursuant to a planned change, the Maltese AIFM's management of the European AIF would no longer comply with the provisions of the AIFM Directive or the Maltese AIFM would otherwise no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the Maltese AIFM without undue delay that it shall not implement the change.

(12) Where the Maltese AIFM proceeds with the implementation of the planned change, notwithstanding the notification received pursuant to subregulations (10) and (11), or if an unplanned change has taken place pursuant to which the Maltese AIFM's management of the European AIF no longer complies with the provisions of the AIFM Directive or the Maltese AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any regulations issued thereunder including, if necessary, the express prohibition of marketing of the European AIF.

(13) If the changes are acceptable because they do not affect the compliance of the Maltese AIFM's management of the European AIF with the provisions of the AIFM Directive, or the compliance by the Maltese AIFM with the provisions of the AIFM Directive, the competent authority shall, without delay inform the European regulatory authority of the host Member State of the Maltese AIFM of those changes.

MARKETING OF UNITS OR SHARES OF EUROPEAN AIFS BY EUROPEAN AIFMS TO PROFESSIONAL INVESTORS IN MALTA

Marketing of units or shares of European AIFs by a European AIFM in Malta.

5. (1) A European AIFM may market to professional investors in Malta, units or shares of a European AIF that it manages and such European AIF, where registered in a Member State or EEA State other than Malta, shall thereafter be exempt from the provisions of article 4 of the Act, provided that prior to commencement of its marketing in Malta, the following conditions are met:

Provided that without prejudice to regulation 6, European AIFs managed and marketed by a European AIFM shall be marketed only to professional investors.

(2) Where the European AIF is a feeder AIF, the right to market referred to in subregulation (1) is subject to the condition that the master AIF is also a European AIF which is managed by a European AIFM.

(3) The European AIFM shall submit to the European regulatory authority in its home Member State or EEA State a notification in respect of each European AIF which it intends to market. Such notification shall comprise the documentation and information prescribed hereunder:

- (a) a notification letter, including a programme of operations identifying the European AIFs which the European AIFM intends to market and the information on where the AIFs are established;
- (b) the European AIF's prospectus or equivalent rules or instruments of incorporation;
- (c) identification of the custodian of the European AIF;
- (d) a description of, or any information on, the European AIF available to investors;
- (e) information on where the master AIF is established if the AIF is a feeder AIF in terms of subregulation (2);
- (f) any additional information referred to in Article 23(1) of the AIFM Directive for each European AIF which the European AIFM intends to market;

- (g) the indication that the European AIFM intends marketing the units or shares of the European AIF to professional investors in Malta;
- (h) information about arrangements made for the marketing of European AIFs and, where relevant, information on the arrangements established to prevent units or shares of the European AIFs from being marketed to retail investors, including in the case where the European AIFM relies on activities of independent entities to provide investment services in respect of the AIF:

Provided that the notification letter to the European regulatory authority by the European AIFM as referred to above shall be provided in a language customary in the sphere of international finance.

(4) The competent authority shall, no later than twenty working days after the date of receipt of a complete notification file pursuant to subregulation (3), receive from the European regulatory authority of the AIFM's home Member State or EEA State the complete notification file.

(5) The notification file transmitted to the competent authority shall also include a statement to the effect that the European AIFM concerned is authorised to manage European AIFs with a particular investment strategy:

Provided that the statement referred to above shall be provided in a language customary in the sphere of international finance.

(6) The competent authority shall only receive the complete notification file if the European AIFM's management of the European AIF complies with and will continue to comply with the provisions of the AIFM Directive and if the European AIFM otherwise complies with the provisions of the AIFM Directive.

(7) Upon transmission of the notification file to the competent authority, the European AIFM may start marketing the European AIF in Malta as from the date of such notification of transmission thereof.

(8) The competent authority shall be responsible for the supervision of the compliance of the European AIFM with the information provided relating to the arrangements made for the marketing of European AIFs and, where relevant, information on the arrangements established to prevent units or shares of the European AIFs from being marketed to retail investors, including in the case

where the European AIFM relies on activities of independent entities to provide investment services in respect of the European AIF.

MARKETING OF AIFS TO RETAIL INVESTORS IN MALTA

Marketing of AIFs by AIFMs to retail investors in Malta.

6. (1) An AIF shall not be marketed to retail investors in Malta unless it is in possession of an authorisation for this purpose from the Competent Authority.

(2) Regulations 3 and 5 shall, in so far as applicable, apply *mutatis mutandis* and reference to the term "professional investor" shall be deemed to be a reference to "retail investors", subject to such variations or modifications as may be prescribed.

(3) Where an AIF is to be marketed to retail investors in Malta, the AIF and its AIFM shall be subject to Investment Services Rules, which shall prescribe the following:

- (a) the types of AIF with respect to which an application for marketing to retail investors may be made to the Competent Authority;
- (b) the manner and form of an application for an authorisation to market an AIF to retail investors in Malta, including the imposition of an application fee (if any);
- (c) the conditions for authorisation for marketing to retail investors;
- (d) the on-going obligations applicable to the marketing of an AIF to retail investors in Malta, including the imposition of a supervision fee (if any); and
- (e) any other relevant matter determined by the competent authority.

(4) In the Investment Services Rules, the competent authority may impose stricter requirements on the AIFM or the AIF than the requirements applicable to the AIFs marketed to professional investors in Malta in accordance with the provisions of the AIFM Directive. The competent authority shall not, however, impose stricter or additional requirements on European AIFs established in Member State or EEA State other than Malta and marketed on a cross-border basis than on AIFs marketed in Malta.

(5) The competent authority shall, by 22 July 2014, inform the European Commission and ESMA of:

(a) the types of AIF which AIFMs may market to retail investors in Malta; and

(b) any additional requirements that the competent authority imposes for the marketing of AIFs to retail investors:

Provided that the competent authority shall also inform the European Commission and ESMA of any subsequent changes with regard to subregulation (4).

TRANSITORY PROVISIONS

Transitory
Provision.

7. Regulations 3 and 4 of these regulations shall not apply to the marketing of units or shares of European AIFs that are subject to a current offer to the public under a prospectus that has been drawn up and published in accordance with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC before 22 July 2013 for the duration of validity of that prospectus.

DRAFT

L.N. ___ of 2012

INVESTMENT SERVICES ACT
(CAP. 370)

Investment Services Act (Alternative Investment Fund Manager Third
Country) Regulations, 2012

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IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

PRELIMINARY

Citation,
commencement and
scope.

1. (1) The title of these regulations is the Investment Services Act (Alternative Investment Fund Manager Third Country) Regulations, 2012.

(2) These regulations transpose and implement, in part, the provisions of Article 4(1)(a) – (c), (h), (j)(i), (ii), (iv) and (v), (k), (l), (p), (q), (r), (w), (x), (z), (aa), (ab), (ag), (aj), (al) and (am), as well as Articles 34 to 37, 39 to 43, 45, 66(3), 67(6) and 68(6) of the AIFM Directive and they shall be interpreted and applied accordingly.

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

Interpretation.

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

Cap. 370.

“Act” means the Investment Services Act;

“Alternative Investment Funds or AIFs” means collective investment schemes within the meaning of Article 2 of the Act and which do not qualify as UCITS Schemes in terms of the UCITS Directive;

“Alternative Investment Fund Manager or AIFM” means a legal person whose regular business is managing one or more AIFs;

“the AIFM Directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 as amended from time to time, and includes any implementing measures that may be issued thereunder ;

“branch” when relating to an AIFM means a place of business which is a part of an AIFM, which has no legal personality and which provides the services for which the AIFM has been authorised; all the places of business established in the same Member State or EEA State by an

AIFM with its registered office in another Member State or EEA State or in a third country shall be regarded as a single branch;

Cap. 330.

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act, which body shall also carry out the duties as competent authority for all purposes of the AIFM Directive;

"ESMA" means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of the 24 November 2010;

"established" means:

- (e) in relation to an AIF, the place where the AIF is authorised or registered or if the AIF is not authorised or registered, the place where the AIF has its registered office;
- (f) in relation to an AIFM, the place where the AIFM has its registered office;
- (g) in relation to legal representatives that are legal persons, the place where the legal representative has its registered office or branch;
- (h) in relation to legal representatives that are natural persons, the place where the legal representative is domiciled.

"European AIF" means:

- (a) an AIF which is authorised or registered in a Member State or EEA State, including Malta, under the applicable national law;
- (b) an AIF which is not authorised or registered in a Member State or EEA State but has its registered office and, or head office in a Member State or EEA State, including Malta;

"European AIFM" means an AIFM which has its registered office in a European Member State or EEA State other than Malta;

"European AIFM home Member State or EEA State" means the Member State or EEA State in which the AIFM has its registered office; for third country AIFMs, all references to

‘home Member State of the AIFM’ shall be read as the Member State of Reference as provided for in these regulations;

“European regulatory authority” means:

(c) the body or bodies designated by a Member State or an EEA State to act as a supervisory authority in relation to the European AIFM concerned in that Member State or EEA State or to carry out the duties provided for in the AIFM Directive; or

(d) the body or bodies designated by a Member State or an EEA State to act as a supervisory authority in relation to the European AIF concerned in that Member State or EEA State or to carry out the duties provided for in the AIFM Directive;

“FATF” means the Financial Action Task Force established in 1989;

“home Member State of the AIF” means

(a) the Member State or EEA State in which the AIF is authorised or registered under applicable national law, or in case of multiple authorisations or registrations, the Member State or EEA State in which the AIF has been authorised or registered for the first time; or

(b) if the AIF is neither authorised nor registered in a Member State or EEA State, the Member State or EEA State in which the AIF has its registered office and, or head office;

“host Member State or EEA State of the AIFM” means:

(a) a Member State or EEA State, other than the home Member State or EEA State, in which the European AIFM manages European AIFs;

(b) a Member State or EEA State, other than the home Member State or EEA State, in which a European AIFM markets units or shares of a European AIF;

(c) a Member State or EEA State other than the home Member State in which a European AIFM markets units or shares of a third country AIF;

(d) a Member State or EEA State, other than the Member State of Reference, in which a third country AIFM manages European AIFs;

(e) a Member State or EEA State other than the Member State of Reference, in which a third country AIFM markets units or shares of a European AIF;

(f) a Member State or EEA State, other than the Member State of Reference, in which a third country AIFM markets units or shares of a third country AIF.

“Maltese AIFM” means an AIFM which is licensed in terms of the Act and has its registered office in Malta;

“managing AIFs” means performing at least investment management functions referred to in the Investment Services Rules for one or more AIFs;

“marketing” means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF that it manages to or with investors domiciled or with a registered office in a Member State or EEA State;

“Member State of reference” shall mean the Member State determined in accordance with these regulations;

“OECD” means the Organisation for Economic Co-operation and Development established in 1961;

“professional investor” shall have the meaning assigned to “professional client” in the Investment Services Rules;

“retail investor” means an investor who is not a professional investor;

“supervisory authorities” in relation to third country AIFs means the national authorities of a third country which are empowered by law or regulation to supervise AIFs;

“supervisory authorities” in relation to third country AIFMs means the national authorities of a third country which are empowered by law or regulation to supervise AIFMs;

“third country” means a country which is not a Member State or an EEA State;

“third country AIF” means an AIF which is not a European AIF;

“third country AIFM” means an AIFM which is not a European AIFM;

Cap. 330.

“Tribunal” means the Financial Services Tribunal established in terms of the Malta Financial Services Authority Act.

(2) Words and expressions used in these Regulations which are also used in the Act but which are not defined herein shall have the same meaning as in the Act.

(3) In the event that any of these regulations conflict with the provisions of the AIFM Directive, the latter shall prevail.

MALTESE AIFMS MANAGING THIRD COUNTRY AIFS NOT MARKETED IN ANY MEMBER STATE OR EEA STATE

Conditions to be fulfilled by Maltese AIFMs managing third country AIFs which are not marketed in any Member State or EEA State.

3. A Maltese AIFM may manage a third country AIF which is not marketed in any Member State or EEA State provided that:

(a) the Maltese AIFM complies with all the requirements prescribed in the AIFM Directive with the exception of Articles 21 and 22 of the said Directive detailing the appointment of the custodian and the prescribed contents of the AIF’s annual report respectively; and

(b) appropriate cooperation arrangements are in place between the competent authority and the supervisory authority of the third country where the third country AIF is established, in order to ensure at least an efficient exchange of information that allows the competent authority to carry out its duties in accordance with the provisions of the AIFM Directive.

MALTESE AIFMS MARKETING THIRD COUNTRY AIFS AND EUROPEAN FEEDER AIFS IN ANY MEMBER STATE OR EEA STATE

Conditions for the marketing by a Maltese AIFM in a Member State or EEA State of third country AIFs.

4. (1) Without prejudice to Article 43 of the AIFM Directive, a Maltese AIFM may market to professional investors in any Member State or EEA State, units or shares of third country AIFs it manages and of European feeder AIFs that do not fulfil the requirements prescribed in the second subparagraph of Article 31(1) of the AIFM Directive, as soon as the conditions prescribed hereunder are met:

Provided that where a Maltese AIFM intends to market units or shares of a third country AIF in Malta to professional investors, such third country AIF shall be exempt from the provisions of Article 4 of the Act.

(2) The Maltese AIFM shall comply with all the requirements

prescribed in the AIFM Directive with the exception of Chapter VI thereof as transposed in the Investment Services Act (Alternative Investment Fund Managers Passport) Regulations, 2012 and the Investment Services Act (Marketing of Alternative Investment Funds) Regulations, 2012.

(3) In addition, the Maltese AIFM shall also ensure that:

- (a) appropriate cooperation arrangements are in place between the competent authority and the supervisory authority of the third country where the third country AIF is established in order to ensure at least an efficient exchange of information, taking into account the provisions of the Act, which allows the competent authority to carry out its duties in accordance with the provisions of the AIFM Directive;
- (b) the third country where the third country AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;
- (c) the country where the third country AIF is established has signed an agreement with the competent authority and with each other Member State or EEA State in which the units or shares of the third country AIF are intended to be marketed, which fully complies with the standards prescribed in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

(4) Where a European regulatory authority of another Member State or EEA State disagrees with the assessment made on the application of paragraphs (a) and (b) of subregulation (3) of this regulation by the competent authority, the European regulatory authority concerned may refer the matter to ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2012.

Conditions for the marketing in Malta by Maltese AIFMs of third country AIFs.

5. (1) Where a Maltese AIFM intends to market units or shares of a third country AIF in Malta, the Maltese AIFM shall submit a notification to the competent authority in respect of each third country AIF that it intends to market:

Provided that, without prejudice to regulation 26, third country AIFs managed and marketed by a Maltese AIFM shall be marketed only to professional investors;

Provided further that where a Maltese AIFM intends to market units or shares of a third country AIF in Malta to professional

investors, such third country AIF shall be exempt from the provisions of Article 4 of the Act.

(2) The notification referred to in subregulation (1) shall comprise the following documentation:

- (a) a notification letter, including a programme of operations identifying the third country AIFs which the Maltese AIFM intends to market and the information on where the third country AIFs are established;
- (b) the third country AIF's prospectus or equivalent rules or instruments of incorporation;
- (c) identification of the custodian of the third country AIF;
- (d) a description of, or any information on, the third country AIF available to investors;
- (e) information on where the master AIF is established if the third country AIF is a feeder AIF;
- (f) any additional information concerning the disclosure obligations prescribed by the Investment Services Rules for each third country AIF which the Maltese AIFM intends to market;
- (g) where relevant, information on the arrangements established to prevent units or shares of the third country AIF from being marketed to retail investors, including in the case where the Maltese AIFM relies on activities of independent entities to provide investment services in respect of the third country AIF.

(3) The competent authority shall, no later than twenty working days after the receipt of a complete notification filed pursuant to subregulation (2), inform the Maltese AIFM whether it may start marketing the third country AIF identified in the said notification in Malta:

Provided that in the case of a positive decision, the Maltese AIFM may start marketing the third country AIF in Malta as of the date of the notification by the competent authority to that effect.

(4) The competent authority shall prevent the Maltese AIFM from marketing the third country AIF in Malta only if the Maltese AIFM's management of the third country AIF does not or will not comply with the provisions of the AIFM Directive or the Maltese AIFM otherwise does not or will not comply with the provisions of the AIFM Directive.

(5) The competent authority shall also inform ESMA that the Maltese AIFM may start marketing the units or shares of the third country AIF in Malta.

(6) In the event of a material change to any of the particulars communicated in accordance with subregulation (2) of this regulation, the Maltese AIFM shall give written notice thereof to the competent authority at least one month prior to the implementation of such planned change, or immediately after an unplanned change has occurred.

(7) Where, pursuant to a planned change, the Maltese AIFM's management of the third country AIF would no longer comply with the provisions of the AIFM Directive, or the Maltese AIFM would no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the Maltese AIFM without undue delay that it shall not implement the change.

(8) Where the Maltese AIFM proceeds with the implementation of the planned change, notwithstanding the notification received pursuant to subregulations (6) and (7) of this regulation, or if an unplanned change has taken place pursuant to which the Maltese AIFM's management of the third country AIF no longer complies with the provisions of the AIFM Directive or the Maltese AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any regulations issued thereunder, including, if necessary, the express prohibition of marketing of the third country AIF.

(9) If the changes are acceptable because they do not affect the compliance of the Maltese AIFM's management of the third country AIF with the provisions of the AIFM Directive, or the compliance by the Maltese AIFM with the provisions of the AIFM Directive, the competent authority shall, without delay inform ESMA in so far as the changes concern the termination of the marketing of certain AIFs or additional AIFs marketed.

Conditions for the marketing by a Maltese AIFM in a Member State or EEA State other than Malta of third country AIFs.

6. (1) Where a Maltese AIFM intends to market units or shares of a third country AIF in a Member State or EEA State other than Malta, the Maltese AIFM shall submit a notification to the competent authority in respect of every third country AIF that it intends to market:

Provided that, without prejudice to Article 43 of the AIFM Directive, third country AIFs managed and marketed by a Maltese AIFM shall be marketed only to professional investors;

(2) The notification referred to in subregulation (1) shall

comprise the following documentation:

- (a) a notification letter, including a programme of operations identifying the third country AIFs which the Maltese AIFM intends to market and the information on where the third country AIFs are established;
- (b) the third country AIF's prospectus or equivalent rules or instruments of incorporation;
- (c) identification of the custodian of the third country AIF;
- (d) a description of, or any information on, the third country AIF available to investors;
- (e) information on where the master AIF is established if the third country AIF is a feeder AIF;
- (f) any additional information concerning the disclosure obligations prescribed in Investment Services Rules for each third country AIF which the Maltese AIFM intends to market;
- (g) the indication of the Member State or EEA State in which it intends to market the units or shares of the third country AIF to professional investors;
- (h) information on the arrangements made for the marketing of the third country AIF and, where relevant, information on the arrangements established to prevent units or shares of the third country AIF from being marketed to retail investors, including in the case where the Maltese AIFM relies on activities of independent entities to provide investment services in respect of the third country AIF;

Provided that the notification letter by the Maltese AIFM referred to above shall be provided in a language customary in the sphere of international finance.

(3) The competent authority shall, no later than twenty working days after the receipt of a complete notification filed pursuant to subregulation (2) of this regulation, transmit the complete notification file to the European regulatory authority of the Member State or EEA State where the third country AIF is intended to be marketed.

(4) The competent authority shall also enclose a statement to the effect that the Maltese AIFM concerned is authorised to manage AIFs with a particular investment strategy:

Provided that the statement referred to above shall be provided in a language customary in the sphere of international finance.

(5) The competent authority shall proceed with the transmission of the complete notification file only if the Maltese AIFM's management of the third country AIF complies and will continue to comply with the provisions of the AIFM Directive and the Maltese AIFM otherwise complies with the provisions of the AIFM Directive.

(6) Upon transmission of the notification file, the competent authority shall, without delay, notify the Maltese AIFM thereof. The Maltese AIFM may start marketing the third country AIF in the host Member State or EEA State as from the date of such notification by the competent authority.

(7) The competent authority shall also inform ESMA that the Maltese AIFM may start marketing the units or shares of the third country AIF in the host Member State or EEA State of the Maltese AIFM.

(8) The European regulatory authority of the host Member State or EEA State of the Maltese AIFM shall be responsible for ensuring compliance with the laws in force in such Member State or EEA State with regards to information about arrangements made for the marketing of third country AIFs and, where relevant, information on the arrangements established to prevent units or shares of the third country AIF from being marketed to retail investors, including in the case where the Maltese AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

(9) In the event of a material change to any of the particulars communicated in accordance with subregulation (2) of this regulation, the Maltese AIFM shall give written notice thereof to the competent authority at least one month prior to the implementation of such a planned change, or immediately after an unplanned change has occurred.

(10) Where, pursuant to a planned change, the Maltese AIFM's management of the third country AIF or the Maltese AIFM would no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the Maltese AIFM without undue delay that it shall not implement the change.

(11) Where the Maltese AIFM proceeds with the implementation of the planned change, notwithstanding the notification received pursuant to subregulations (9) and (10) of this regulation, or if an unplanned change has taken place pursuant to which the Maltese AIFM's management of the third country AIF no

longer complies with the provisions of the AIFM Directive or the Maltese AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any regulations issued thereunder, including, if necessary, the express prohibition of marketing of the third country AIF.

(12) If the changes are acceptable because they do not affect the compliance of the Maltese AIFM's management of the third country AIF with the provisions of the AIFM Directive, or the compliance by the Maltese AIFM with the provisions of the AIFM Directive, the competent authority shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of certain AIFs or additional AIFs marketed and, if applicable, the European regulatory authority of the host Member State or EEA State of the Maltese AIFM.

MALTESE AIFMS MARKETING THIRD COUNTRY AIFs AND EUROPEAN FEEDER AIFs ONLY IN MALTA

Conditions for the marketing by a Maltese AIFM of third country AIFs in Malta.

7. (1) Without prejudice to regulation 26 of these regulations, a Maltese AIFM may market units or shares of a third country AIF it manages, and of European feeder AIFs that do not fulfil the requirements prescribed in the second subparagraph of Article 31(1) of the AIFM Directive, only in Malta to professional investors, provided that:

- (a) the Maltese AIFM complies with all the requirements prescribed in the AIFM Directive other than Article 21. The Maltese AIFM shall however ensure that one or more entities are appointed to carry out the duties referred to in Article 21(7), (8) and (9) of the AIFM Directive and the Maltese AIFM shall not perform those functions. The Maltese AIFM shall provide the competent authority with information about the identity of those entities responsible for carrying on the duties referred to in Article 21(7), (8) and (9) of the AIFM Directive;
- (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the competent authority and the supervisory authorities of the third country where the third country AIF is established in order to ensure an efficient exchange of information that allows the competent authority to carry out its duties in accordance with the provisions of the AIFM Directive;
- (c) the third country where the third country AIF is established is not listed as a Non-Cooperative Country

and Territory by FATF.

(2) Where a Maltese AIFM intends to market units or shares of a third country AIF it manages in Malta to professional investors, such third country AIF shall be exempt from the provisions of Article 4 of the Act.

(3) For the purposes of this regulation, the competent authority may impose stricter rules on the Maltese AIFM in respect of the marketing of units or shares of third country AIFs to investors in Malta.

EUROPEAN AIFMS MARKETING THIRD COUNTRY AIFS AND EUROPEAN FEEDER AIFS IN MALTA

Conditions for
marketing in Malta
by European
AIFMs of third
country AIFs.

8. (1) Where a European AIFM intends to market units or shares of a third country AIF in Malta, the European AIFM shall submit a notification to its European regulatory authority in respect of each third country AIF that it intends to market:

Provided that without prejudice to regulation 26, AIFs managed and marketed by a European AIFM shall be marketed in Malta only to professional investors;

Provided further that where a European AIFM intends to market units or shares of a third country AIF in Malta to professional investors, such third country AIF shall be exempt from the provisions of Article 4 of the Act.

(2) The notification referred to in subregulation (1) shall comprise the following documentation:

- (a) a notification letter, including a programme of operations identifying the third country AIFs which the European AIFM intends to market and the information on where the third country AIFs are established;
- (b) the third country AIF's prospectus or equivalent rules or instruments of incorporation;
- (c) identification of the custodian of the third country AIF;
- (d) a description of, or any information on, the third country AIF available to investors;
- (e) information on where the master AIF is established if the third country AIF is a feeder AIF;
- (f) any additional information concerning the disclosure obligations referred to in Article 23(1) of the AIFM

Directive for each third country AIF which the European AIFM intends to market;

- (g) the indication of Malta as being the Member State in which it intends to market the units or shares of the third country AIF to professional investors;
- (h) information on the arrangements made for the marketing of the third country AIF and, where relevant, information on the arrangements established to prevent units or shares of the third country AIF from being marketed to retail investors, including in the case where the European AIFM relies on activities of independent entities to provide investment services in respect of the third country AIF:

Provided that the notification letter by the European AIFM referred to above shall be provided in a language customary in the sphere of international finance.

(3) The competent authority shall, no later than twenty working days after the date of receipt of a complete notification file pursuant to subregulation (2), receive from the European regulatory authority of the European AIFM's home Member State or EEA State the complete notification file.

(4) The notification file transmitted to the competent authority shall also include a statement to the effect that the European AIFM concerned is authorised to manage AIFs with a particular investment strategy:

Provided that the statement referred to above shall be provided in a language customary in the sphere of international finance.

(5) The competent authority shall receive the complete notification file from the European regulatory authority only if the European AIFM's management of the European AIF complies with and will continue to comply with the provisions of the AIFM Directive and if the European AIFM otherwise complies with the provisions of the AIFM Directive.

(6) Upon transmission of the notification file to the competent authority, the European AIFM may start marketing the AIF in Malta as from the date of such notification of transmission thereof.

(7) The competent authority shall be responsible for the supervision of the compliance of the European AIFM with the information provided relating to the arrangements made for the marketing of AIFs and, where relevant, information on the arrangements established to prevent units or shares of the AIFs from

being marketed to retail investors, including in the case where the European AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

(8) In the event of the implementation of an acceptable material change to any of the particulars communicated in accordance with subregulation (2) of this regulation, the competent authority shall receive notification thereof from the European regulatory authority of the home Member State or EEA State of the European AIFM, in so far as the changes concern the termination of the marketing of certain third country AIFs or additional third country AIFs marketed.

LICENSING OF THIRD COUNTRY AIFMS AND CHOICE OF MALTA AS MEMBER STATE OF REFERENCE

Licensing of third country AIFMs intending to manage European AIFs in Malta and, or market AIFs managed by them a Member State or EEA State in accordance with regulations 11 to 14.

9. (1) A third country AIFM intending to manage European AIFs in Malta and, or market such AIFs in a Member State or EEA State, in accordance with regulations 11 to 14, shall be required to acquire a licence from the competent authority in terms of the Act in the case where Malta is deemed to be its Member State of reference in accordance with this regulation.

(2) A third country AIFM intending to obtain a licence in terms of the Act as referred to in subregulation (1), shall comply with the provisions of the AIFM Directive with the exception of Chapter VI thereof as transposed in the Investment Services Act (Alternative Investment Fund Manager Passport) Regulations, 2012 and the Investment Services Act (Marketing of Alternative Investment Funds) Regulations, 2012.

(3) If and to the extent that compliance with a provision of the AIFM Directive is incompatible with compliance with the law to which the third country AIFM and, or the third country AIF marketed in the Union is subject, there shall be no obligation on the third country AIFM to comply with that provision of the AIFM Directive if it can demonstrate that:

- (a) it is impossible to combine such compliance with compliance with a mandatory provision in the law to which the third country AIFM and, or the third country AIF marketed in any Member State or EEA State is subject;
- (b) the law to which the third country AIFM and, or the third country AIF is subject provides for an equivalent rule having the same regulatory purpose and offering the same level of protection to the investors of the relevant AIF; and
- (c) the third country AIFM and, or the third country AIF

complies with the equivalent rule referred to in paragraph (b).

(4) The third country AIFM intending to obtain a licence in terms of the Act, as referred to in subregulation (1), shall have a legal representative established in Malta.

(5) The legal representative referred to in subregulation (4) shall be the contact point of the third country AIFM in Malta. Any official correspondence between the competent authority, the third country AIFM and the investors in any Member State or EEA State of the relevant AIF and of the third country AIFM as provided for in the AIFM Directive, shall take place through the said legal representative. The legal representative shall perform the compliance function relating to the management and marketing activities performed by the third country AIFM under the AIFM Directive together with the third country AIFM.

(6) The choice of Malta as a Member State of reference shall be determined as follows:

- (a) if the third country AIFM intends to manage only one AIF or several AIFs established in Malta, and does not intend to market any AIF in accordance with regulations 11 to 14 in any Member State or EEA State, Malta, being the home Member State of that or those AIFs shall be deemed to be the Member State of reference and the competent authority shall be competent for the licensing procedure and for the supervision of the third country AIFM;
- (b) if the third country AIFM intends to manage several European AIFs established in different Member States and does not intend to market any European AIF in accordance with regulations 11 to 14 in any Member State or EEA State, Malta shall be deemed to be the Member State of reference where:
 - (i) it is the Member State where most of the AIFs are established; or
 - (ii) it is the Member State where the largest amount of assets is being managed;
- (c) if the third country AIFM intends to market only one European AIF in only one Member State, Malta shall be deemed to be the Member State of reference where:
 - (i) Malta is the country where the AIF is licensed or registered, that is the home Member State of the

AIF, or the Member State where the third country AIFM intends to market the AIF;

- (ii) if the AIF is not licensed or registered in Malta, the third country AIFM intends marketing the AIF in Malta;
- (d) if the third country AIFM intends to market only one third country AIF only in Malta, Malta shall be deemed to be the Member State of reference;
- (e) if the third country AIFM intends to market only one European AIF, but in different Member States or EEA States, Malta shall be deemed to be the Member State of reference in the following cases:
- (i) if the AIF is licensed or registered in Malta and Malta is the home Member State of such AIF or otherwise Malta is one of the Member States where the third country AIFM intends to develop effective marketing; or
 - (ii) if although the AIF is not licensed or registered in Malta, one of the Member States where the third country AIFM intends to develop effective marketing is Malta;
- (f) if the third country AIFM intends to market only one third country AIF, in different Member States or EEA States, Malta shall be deemed to be the Member State of reference if it is one of the Member States where the third country AIFM intends to market the third country AIF;
- (g) if the third country AIFM intends to market several European AIFs in Member States or EEA States, Malta shall be deemed to be the Member State of reference in the following cases:
- (i) in so far as those AIFs are all registered or licensed in Malta, Malta is the home Member State of the AIFs or the Member State where the third country AIFM intends to develop effective marketing for most of those AIFs;
 - (ii) in so far as those AIFs are not all registered or licensed in Malta, Malta is still the Member State where the third country AIFM intends to develop effective marketing for most AIFs;

- (h) if the third country AIFM intends to market several European and third country AIFs, or several third country AIFs in the any Member State or EEA State, Malta shall be deemed to be the Member State of reference if the third country AIFM intends to develop effective marketing for most of those AIFs in Malta.

(7) In accordance with the criteria prescribed in paragraphs (b), (c)(i), (e), (f) and (g)(i) of subregulation (6) of this regulation, more than one Member State of reference is possible. In such cases, the European regulatory authorities including the competent authority, shall require that the third country AIFM intending to manage European AIFs without marketing them and, or marketing AIFs managed by it in any Member State or EEA State according to regulations 11 to 14, submits a request to all the European regulatory authorities including the competent authority of all the Member States or EEA States that are possible Member States of reference in accordance with the criteria prescribed in the aforementioned paragraphs, to determine the Member State of reference from among them.

(8) The European regulatory authorities including the competent authority shall jointly decide which Member State shall be the Member State of reference for the third country AIFM within one month from the receipt of such request.

(9) In the case where Malta is deemed to be the Member State of reference, the competent authority shall, without undue delay, inform the third country AIFM of that appointment.

(10) Where the competent authority fails to notify the third country AIFM of the decision made by same within seven days of the decision, or if the relevant European regulatory authorities including the competent authority have not made a decision within a period of one month, the third country AIFM may itself choose its Member State of reference based on the criteria outlined in subregulation (6).

(11) The third country AIFM shall be able to prove its intention to develop effective marketing in Malta by disclosing its marketing strategy to the competent authority.

(12) Where Malta is the Member State of reference, a third country AIFM intending to manage European AIFs without marketing them and, or to market AIFs managed by it in a Member State or EEA State in accordance with Regulations 11 to 14, shall submit a request for a licence with the competent authority.

(13) After receiving the licensing application, the competent authority shall assess whether the determination of Malta by the third country AIFM as its Member State of reference complies with the

criteria prescribed in subregulations (6) to (11) of this regulation.

(14) If the competent authority considers that the criteria prescribed in subregulations (6) to (11) have not been complied with, it shall refuse the licensing application of the third country AIFM explaining the reasons for its refusal.

(15) If the competent authority considers that the criteria prescribed in subregulations (6) to (11) of this regulation have been complied with, it shall proceed to notify ESMA, requesting advice on its assessment. In its notification to ESMA, the competent authority shall provide ESMA with the justification by the AIFM of its assessment regarding the choice of Malta as the Member State of Reference and with information on the marketing strategy of the third country AIFM.

(16) Within one month of having notified ESMA pursuant to subregulation (15), the competent authority shall receive notification from ESMA about its assessment on the choice of Malta as the Member State of Reference in accordance with the criteria prescribed in subregulations (6) to (11):

Provided that the competent authority shall be notified by ESMA with a negative advice only if ESMA considers that the criteria prescribed in subregulations (6) to (11) have not been complied with:

Provided further that the term of three months granted to the competent authority in terms of Article 8(5) of the AIFM Directive to inform the applicant whether or not authorisation has been granted shall be suspended during ESMA's deliberation.

(17) Where the competent authority proposes to grant a licence contrary to ESMA's advice referred to in the first proviso to subregulation (16) of this regulation, it shall proceed to inform ESMA, stating its reasons. ESMA shall publish the fact that the competent authority does not comply or does not intend to comply with its advice:

Provided that ESMA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying with that advice and it shall proceed to notify the competent authority in advance of such publication.

(18) Where the competent authority proposes to grant a licence contrary to ESMA's advice as referred to in subregulation (16) and the third country AIFM intends to market units or shares of the AIFs managed by it in a Member State or EEA State other than Malta, the competent authority shall inform the European regulatory authorities of those Member States or EEA States thereof, stating its reasons. In so far as applicable, the competent authority shall also

inform the European regulatory authority of the home Member States or EEA States of the AIFs managed by the AIFM thereof, stating its reasons.

(19) Where the European regulatory authority of a Member State or EEA State disagrees with the determination by the third country AIFM of Malta as the Member State of reference, the European regulatory authority concerned may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulations (EU) No. 1095/2010.

(20) Without prejudice to subregulations (23) and (24) hereunder, the competent authority shall not grant a licence unless the following additional conditions are met:

- (a) Malta is indicated as a Member State of reference by the third country AIFM in accordance with the criteria prescribed in subregulations (6) to (11) and supported by the disclosure of the marketing strategy, and the procedure prescribed in subregulations (12) to (18) has been followed by the competent authority and the relevant European regulatory authorities concerned;
- (b) the third country AIFM has appointed a legal representative established in Malta;
- (c) the legal representative shall, together with the third country AIFM, be the contact person of the third country AIFM for the investors of the relevant AIFs, for ESMA and for the competent authority as regards the activities for which the third country AIFM is licensed in Malta and shall at least be sufficiently equipped to perform the compliance function pursuant to the provisions of the AIFM Directive;
- (d) appropriate cooperation arrangements are in place between the competent authority, the European regulatory authority of the home Member State or EEA State of the European AIFs concerned and the supervisory authorities of the third country where the third country AIFM is established in order to ensure at least an efficient exchange of information that allows the competent authority to carry out its duties in accordance with the provisions of the AIFM Directive;
- (e) the third country where the third country AIFM is established is not listed as a Non-Cooperative Country and Territory by FATF;
- (f) the country where the third country AIFM is established

has signed an agreement with Malta, which fully complies with the standards prescribed in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;

- (g) the effective exercise by the competent authority of its supervisory functions under the AIFM Directive is neither prevented by the laws, regulations or administrative provisions of a third country governing the third country AIFM, nor by limitations in the supervisory and investigatory powers of that third country's supervisory authorities.

(21) Where a European regulatory authority of another Member State or EEA State disagrees with the assessment made by the competent authority on the application of paragraphs (a) to (e) and (g) of subregulation (20), the European regulatory authority concerned may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

(22) Where a European regulatory authority of a European AIF does not enter into the required cooperation arrangements prescribed in paragraph (d) of subregulation (20) within a reasonable period of time, the competent authority may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

(23) The authorisation granted by the competent authority shall be in accordance with Chapter II of the AIFM Directive as transposed in the Investment Services Act and the Investment Services Rules issued thereunder which shall apply *mutatis mutandis* subject to the following criteria:

- (a) the information referred to in Article 7(2) of the AIFM Directive shall be supplemented by:
 - (i) a justification by the third country AIFM of its assessment regarding the choice of Malta as a Member State of reference in accordance with the criteria prescribed in subregulations (6) to (11) of this regulation with information on the marketing strategy;
 - (ii) a list of the provisions of the AIFM Directive for which compliance by the third country AIFM is impossible since compliance by the said AIFM with those provision, is, in accordance with sub-

- regulations (2) to (3) of this regulation, incompatible with compliance with a mandatory provision in the law to which the third country AIFM or the third country AIF marketed in any Member State or EEA State is subject;
- (iii) written evidence is based on the regulatory technical standards developed by ESMA that the relevant third country law provides for a rule equivalent to the provision for which compliance is impossible, which has the same regulatory purpose and offers the same level of protection to the investors of the relevant AIFs and that the third country AIFM complies with that equivalent rule; and such written evidence is supported by a legal opinion on the existence of the relevant incompatible mandatory provision in the law of the third country and including a description of the regulatory purpose and the nature of the investor protection pursued by it; and
 - (iv) the name of the legal representative of the third country AIFM and the place where it is established;
- (b) the information referred to in Article 7(3) of the AIFM Directive may be limited to the European AIFs the third country AIFM intends to manage, and to those AIFs managed by the third country AIFM that it intends to market in another Member State or EEA State;
 - (c) the competent authority's satisfaction that the AIFM will be able to meet the conditions of the AIFM Directive shall be without prejudice to subregulations (2) and (3) of this regulation;
 - (d) the requirement stipulated in Article 8(1)(a) of the AIFM Directive that the head office and the registered office of the AIFM are located in Malta shall not apply;
 - (e) the requirement to submit a complete application in terms of the Investment Services Rules shall, for the purposes of this regulation, be deemed to include a reference to the information referred to in paragraph (a) of this subregulation.

(24) Where a European regulatory authority of another Member State or EEA State disagrees with the licence granted by the competent authority, the European regulatory authority concerned may refer the matter to the ESMA which may act in accordance with

the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

(25) In the case where the competent authority considers that the third country AIFM may rely on subregulations (2) and (3) of this regulation to be exempted from compliance with certain provisions of the AIFM Directive, it shall without undue delay, notify ESMA thereof. It shall support this assessment by the information provided by the AIFM in accordance with paragraphs (a)(ii) and (iii) of subregulation (23) of this regulation.

(26) Within one month of receipt of the notification referred to in subregulation (25) of this regulation, ESMA shall issue advice to the competent authority about the application of the exemption for compliance with the provisions of the AIFM Directive, caused by the incompatibility in accordance with subregulations (2) and (3). In particular, the advice may address whether the conditions for such exemption appear to be met based on the information provided by the third country AIFM in accordance with paragraphs (a)(ii) and (iii) of subregulation (23) of this regulation and on the regulatory technical standards on equivalence:

Provided that the term of three months granted to the competent authority in terms of Article 8(5) of the AIFM Directive shall be suspended during the ESMA review.

(27) If the competent authority proposes to grant a licence contrary to ESMA's advice as referred to in subregulation (26) of this regulation, it shall inform ESMA stating its reasons. ESMA shall publish the fact that the competent authority does not comply or does not intend to comply with that advice:

Provided that ESMA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying with that advice and it shall proceed to notify the competent authority in advance of such publication.

(28) If the competent authority proposes to grant a licence contrary to ESMA's advice as referred to in subregulation (26) of this regulation, and the third country AIFM intends to market units or shares of AIFs managed by it in Member States or EEA States other than Malta, the competent authority shall inform the European regulatory authorities of those Member States or EEA States, stating its reasons.

(29) Where a European regulatory authority of another Member State or EEA State disagrees with the assessment made on the application of subregulations (25) to (28) by the competent authority, the European regulatory authority concerned may refer the matter to the ESMA which may act in accordance with the powers

conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

(30) The competent authority shall, without undue delay, inform ESMA of the outcome of the initial licensing process, about any changes in the licensing of the third country AIFM and any withdrawal of a licence.

(31) The competent authority shall inform ESMA about the licensing applications it has rejected, providing data about the third country AIFM having asked for a licence and the reasons for the rejection. ESMA shall keep a central register of those data, which shall be at the disposal of all European regulatory authorities including the competent authority, on request. This information shall be treated as confidential.

(32) Where Malta is the Member State of reference and the competent authority considers that a licensed third country AIFM is in breach of its obligations under the AIFM Directive, the competent authority shall notify ESMA, setting out detailed reasons as soon as possible.

Changes in marketing strategy of third country AIFM within two years of its initial authorisation by the competent authority.

10. (1) The determination of Malta as a Member State of reference shall not be affected by the further business development of the third country AIFM in any Member State or EEA State.

(2) Where, however, the third country AIFM changes its marketing strategy within two years of its initial authorisation, and that change would have affected the choice of Malta as a Member State of reference if the modified marketing strategy had been the initial marketing strategy, the said AIFM shall notify the competent authority of the change before implementing it and it shall indicate its Member State of reference in accordance with the criteria prescribed in subregulations (6) to (11) of regulation 9 and based on the new strategy. The said AIFM shall justify its assessment by disclosing its new marketing strategy to the competent authority. At the same time, the said AIFM shall provide information on its legal representative, including its name and the place where it is established:

Provided that the legal representative shall be established in the new Member State of reference.

(3) The competent authority shall assess whether the determination of the third country AIFM in accordance with subregulations (1) and (2) of this regulation is correct and shall notify ESMA thereof. In its notification to ESMA, the competent authority shall provide the third country AIFM's justification of its assessment regarding the Member State of reference and information on the said AIFM's new marketing strategy:

Provided that ESMA shall issue advice on the assessment

made by the competent authority.

(4) Within one month of receipt of the notification referred to in subregulation (3), the competent authority shall receive ESMA's advice on the assessment carried out:

Provided that ESMA shall issue a negative advice only where it considers that the criteria prescribed in subregulations (6) to (11) of regulation 9 have not been complied with.

(5) After receipt of ESMA's advice in accordance with subregulation (4), the competent authority shall inform the third country AIFM, its original legal representative and ESMA of its decision.

(6) Where the competent authority agrees with the assessment made by the third country AIFM, it shall also inform the European regulatory authority of the new Member State of reference of the change. The competent authority shall also, without undue delay, transfer a copy of the licensing and the supervision file relating to the said AIFM to the European regulatory authority of the new Member State of reference. From the date of transmission of the licensing and supervision file, the European regulatory authority of the new Member State of reference shall be responsible for the licensing and supervision of the said AIFM.

(7) Where the final assessment of the competent authority is contrary to ESMA's advice as referred to in subregulation (4):

- (a) the competent authority shall inform ESMA thereof, stating reasons. ESMA shall publish the fact that the competent authority does not comply, or does not intend to comply with its advice:

Provided that ESMA may also decide, on a case-by-case basis, to publish the reasons for non-compliance provided by the competent authority and it shall proceed to notify the competent authority in advance of such publication.

- (b) where the third country AIFM markets units or shares of the AIFs managed by it in Member States or EEA States other than Malta, the competent authority shall inform the European regulatory authorities of those other Member States or EEA States thereof, stating reasons. Where applicable, the competent authority shall also inform the European regulatory authority of the home Member State or EEA State of the AIFs managed by the said AIFM thereof, stating reasons.

(8) Where it appears from the actual course of the business

development of the third country AIFM in the Member State or EEA State within two years after its licensing, that the marketing strategy as presented by the AIFM at the time of its licensing was not followed, that the AIFM made false statements in relation thereto or that the AIFM has failed to comply with the conditions prescribed in subregulations (1) to (7) of this regulation when changing its marketing strategy, the competent authority shall request that the third country AIFM indicates the Member State of reference based on its actual marketing strategy. The procedure prescribed in subregulations (1) to (7) of this regulation shall apply *mutatis mutandis*.

(9) If the third country AIFM fails to comply with the request made by the competent authority, it shall withdraw the AIFM's licence.

(10) Where the AIFM changes its marketing strategy after the period of two years as referred to in subregulations (1) to (7) of this regulation, and intends to change its Member State of reference on the basis of its new marketing strategy, it may submit a request to change its Member State of reference to the competent authority. The procedure prescribed in subregulations (1) to (7) of this regulation shall apply *mutatis mutandis*.

(11) Where a European regulatory authority of a Member State or EEA State disagrees with the assessment made on the determination of the Member State of reference under subregulations (1) to (7) of this regulation or under subregulations (8) to (10), the European regulatory authority concerned may refer the matter to ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(12) Any disputes arising between the competent authority as the third country AIFM's Member State of reference, and the said AIFM, shall be settled in accordance with the law of Malta and shall be subject to the jurisdiction of the Courts of Malta.

(13) Any disputes between the AIFM or the AIF and investors in any Member State or EEA State of the relevant AIF shall be settled in accordance with the law of and subject to the jurisdiction of the Member State or EEA State involved.

(14) Where a European regulatory authority rejects a request to exchange information in accordance with the regulatory technical standards developed by ESMA, the competent authority may refer the matter to ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

**THIRD COUNTRY AIFMS HAVING MALTA AS MEMBER
STATE OF REFERENCE AND MARKETING EUROPEAN
AIFS IN MALTA OR IN ANY MEMBER STATE OTHER
THAN MALTA**

Third country
AIFM licensed in
Malta marketing
European AIF in
Malta.

11. (1) A third country AIFM duly licensed in Malta may market to professional investors, in Malta units or shares of a European AIF which it manages as soon as the conditions prescribed in this regulation are met:

Provided that without prejudice to regulation 26, AIFs managed and marketed by a third country AIFM shall be marketed in Malta only to professional investors;

Provided further, where a duly licensed third country AIFM intends to market units or shares of a European AIF, registered in a Member State or EEA State other than Malta, to professional investors, such European AIF shall be exempt from the provisions of Article 4 of the Act.

(2) Where the third country AIFM duly authorised in Malta intends to market units or shares of the European AIF in Malta, after having deemed Malta as its Member State of reference, the third country AIFM shall submit a notification to the competent authority in respect of each European AIF that it intends to market. The notification shall comprise the documentation and information prescribed hereunder:

- a. a notification letter, including a programme of operations identifying the European AIFs which the AIFM intends to market and the information on where the European AIFs are established;
- b. the European AIF's prospectus or equivalent rules or instruments of incorporation;
- c. identification of the custodian of the European AIF;
- d. a description of, or any information on, the European AIF available to investors;
- e. information on where the master AIF is established if the European AIF is a feeder AIF;
- f. any additional information concerning the disclosure obligations prescribed in Investment Services Rules for each European AIF which the AIFM intends to market;
- g. where relevant, information on the arrangements established to prevent units or shares of the European

AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the European AIF.

(3) The competent authority shall within twenty working days from receipt of a complete notification pursuant to subregulation (2) of this regulation, inform the third country AIFM whether it may start marketing the European AIF identified in the notification referred to in subregulation (2) in Malta.

(4) The competent authority may prevent the marketing of the European AIF in Malta only if the third country AIFM's management of the European AIF does not or will not comply with the provisions of the AIFM Directive or if the third country AIFM otherwise does not or will not comply with the provisions of the AIFM Directive.

(5) In the case of a positive decision by the competent authority, the third country AIFM may start marketing the European AIF in Malta as from the date of the notification by the competent authority to that effect.

(6) The competent authority shall also inform ESMA and the European regulatory authorities of the European AIFs that the third country AIFM may start marketing the units or shares of the European AIF in Malta.

(7) In the event of a material change to any of the particulars communicated in accordance with subregulation (2) of this regulation, the third country AIFM shall give written notice thereof to the competent authority at least one month prior to the implementation of such planned change, or immediately after an unplanned change has occurred.

(8) Where, pursuant to a planned change, the third country AIFM's management of the European AIF would no longer comply with the provisions of the AIFM Directive, or the third country AIFM would otherwise no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the third country AIFM without undue delay, that it shall not implement the change.

(9) Where the third country AIFM proceeds with the implementation of the planned change, notwithstanding the notification received pursuant to subregulations (7) and (8) of this regulation, or if an unplanned change has taken place pursuant to which the third country AIFM's management of the European AIF no longer complies with the provisions of the AIFM Directive or the third country AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any

regulations issued thereunder, including, if necessary, the express prohibition of marketing of the European AIF.

(10) If the changes are acceptable because they do not affect the compliance of the third country AIFM's management of the European AIF with the provisions of the AIFM Directive, or the compliance by the third country AIFM with the provisions of the AIFM Directive, the competent authority shall, without delay inform ESMA in so far as the changes concern the termination of the marketing of certain European AIFs or additional European AIFs being marketed and, if applicable, the European regulatory authorities of the host Member State or EEA State of the third country AIFM of such changes.

Third country AIFM licensed in Malta marketing European AIFs in a Member State or EEA State other than Malta

12. (1) A third country AIFM duly licensed in Malta may market to professional investors in a Member State or EEA State other than Malta, units or shares of a European AIF which it manages as soon as the conditions prescribed in this regulation are met:

Provided that, without prejudice to Article 43 of the AIFM Directive, AIFs managed and marketed by a third country AIFM shall be marketed only to professional investors.

(2) Where the third country AIFM duly licensed in Malta intends to market units or shares of the European AIF in any Member State or EEA State other than Malta, the third country AIFM shall submit a notification to the competent authority in respect of each European AIF that it intends to market. The notification shall comprise the documentation and information prescribed hereunder:

- a. a notification letter, including a programme of operations identifying the European AIFs which the third country AIFM intends to market and the information on where the European AIFs are established;
- b. the European AIF's prospectus or equivalent rules or instruments of incorporation;
- c. identification of the custodian of the European AIF;
- d. a description of, or any information on the European AIF available to investors;
- e. information on where the master AIF is established if the European AIF is a feeder AIF;
- f. any additional information concerning the disclosure obligations prescribed in Investment Services Rules for each European AIF which the third country AIFM

intends to market;

- g. the indication of the Member State or EEA State in which it intends to market the units or shares of the European AIF to professional investors;
- h. information on the arrangements made for the marketing of the European AIFs and, where relevant, information on the arrangements established to prevent units or shares of the European AIF from being marketed to retail investors, including in the case where the third country AIFM relies on activities of independent entities to provide investment services in respect of the European AIF:

Provided that the notification letter by the third country AIFM referred to above shall be provided in a language customary in the sphere of international finance.

(3) The competent authority shall, within twenty working days from receipt of a complete notification pursuant to subregulation (2) of this regulation, transmit the complete notification file to the European regulatory authorities of the Member States or EEA States where the units or shares of the European AIF are intended to be marketed. The competent authority shall also enclose a statement to the effect that the third country AIFM concerned is licensed to manage AIFs with a particular investment strategy:

Provided that the statement referred to above shall be provided in a language customary in the sphere of international finance.

(4) The competent authority shall proceed with the transmission of the complete notification file pursuant to subregulation (3) of this regulation, only if the third country AIFM's management of the European AIF complies and will continue to comply with the provisions of the AIFM Directive and if the third country AIFM otherwise complies with the provisions of the said Directive.

(5) Upon transmission of the notification file, the competent authority shall, without delay, notify the third country AIFM about the transmission. The third country AIFM may start marketing the European AIF in the relevant host Member State or EEA State as of the date of that notification.

(6) The competent authority shall also inform ESMA and the European regulatory authorities of the European AIFs that the third country AIFM may start marketing the units or shares of the European AIF in the host Member States or EEA State of the third country AIFM.

(7) The arrangements referred to in paragraph (h) of subregulation (2) of this regulation shall be subject to the laws and supervision of the European regulatory authority of the AIFM's host Member State or EEA State.

(8) In the event of a material change to any of the particulars communicated in accordance with subregulation (2) of this regulation, the third country AIFM shall give written notice thereof to the competent authority at least one month prior to the implementation of such planned change, or immediately after an unplanned change has occurred.

(9) Where, pursuant to a planned change, the third country AIFM's management of the European AIF would no longer comply with the provisions of the AIFM Directive, or the third country AIFM would otherwise no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the third country AIFM without undue delay that it shall not implement the change.

(10) Where the third country AIFM proceeds with the implementation of the planned change, notwithstanding the notification received pursuant to subregulations (8) and (9) of this regulation, or if an unplanned change has taken place pursuant to which the third country AIFM's management of the European AIF no longer complies with the provisions of the AIFM Directive or the third country AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any regulations issued thereunder, including, if necessary, the express prohibition of marketing of the European AIF.

(11) If the changes are acceptable because they do not affect the compliance of the third country AIFM's management of the European AIF with the provisions of the AIFM Directive, or the compliance by the third country AIFM with the provisions of the AIFM Directive, the competent authority shall, without delay inform ESMA in so far as the changes concern the termination of the marketing of certain European AIFs or additional European AIFs marketed and, if applicable, the European regulatory authorities of the host Member State or EEA State of the third country AIFM of such changes.

**THIRD COUNTRY AIFMS HAVING MALTA AS MEMBER
STATE OF REFERENCE AND MARKETING EU OR THIRD
COUNTRY AIFS IN MALTA OR IN ANY MEMBER STATE
OTHER THAN MALTA**

Third country
AIFM licensed in
Malta to market

13. (1) A third country AIFM duly licensed in Malta may market in Malta units or shares of a third country AIF it manages, to

third country AIFs
in Malta.

professional investors in Malta as soon as the conditions prescribed in this regulation are met:

Provided that, without prejudice to regulation 26, third country AIFs managed and marketed by a third country AIFM shall be marketed only to professional investors;

Provided further, where a duly licensed third country AIFM intends to market units or shares of a third country AIF it manages in Malta to professional investors, such third country AIF shall be exempt from the provisions of Article 4 of the Act.

(2) In addition to the requirements prescribed in the AIFM Directive in relation to European AIFMs, the following conditions shall also be met for third country AIFMs:

- a. appropriate cooperation arrangements are in place between the competent authority as the Member State of reference and the supervisory authority of the country where the third country AIF is established in order to ensure at least an efficient exchange of information, which allows the competent authority to carry out its duties in accordance with the provisions of the AIFM Directive;
- b. the third country where the third country AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;
- c. the country where the third country AIF is established has signed an agreement with the competent authority and with each other Member State or EEA State in which the units or shares of the third country AIF are intended to be marketed, which fully complies with the standards prescribed in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

(3) Where a European regulatory authority of another Member State or EEA State disagrees with the assessment made on the application of paragraphs (a) and (b) of subregulation (2) of this regulation by the competent authority, the European regulatory authority concerned may refer the matter to ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

(4) Where the third country AIFM duly licensed in Malta, intends to market units or shares of a third country AIF in Malta, as its Member State of reference, the third country AIFM shall submit a

notification to the competent authority in respect of each third country AIF that it intends to market in Malta. The notification shall comprise the documentation and information prescribed hereunder:

- a. a notification letter, including a programme of operations identifying the third country AIFs which the third country AIFM intends to market and the information on where the third country AIFs are established;
- b. the third country AIF's prospectus or equivalent rules or instruments of incorporation;
- c. identification of the custodian of the third country AIF;
- d. a description of, or any information on the third country AIF available to investors;
- e. information on where the master AIF is established if the third country AIF is a feeder AIF;
- f. any additional information concerning the disclosure obligations prescribed in Investment Services Rules for each third country AIF which the third country AIFM intends to market;
- g. where relevant, information on the arrangements established to prevent units or shares of the third country AIF from being marketed to retail investors, including in the case where the third country AIFM relies on activities of independent entities to provide investment services in respect of the third country AIF.

(5) The competent authority shall, within twenty working days from receipt of a complete notification pursuant to subregulation (4) above, inform the third country AIFM whether it may start marketing the third country AIF identified in the notification referred to in subregulation (4) in Malta.

(6) The competent authority may prevent the marketing of the third country AIF in Malta only if the third country AIFM's management of the third country AIF does not or will not comply with the provisions of the AIFM Directive or if the third country AIFM otherwise does not or will not comply with the provisions of the AIFM Directive.

(7) In the case of a positive decision by the competent authority, the AIFM may start marketing the third country AIF in Malta as from the date of the notification by the competent authority to that effect.

(8) The competent authority shall also inform ESMA that the third country AIFM may start marketing the units or shares of the third country AIF in Malta.

(9) In the event of a material change to any of the particulars communicated in accordance with subregulation (4) above, the third country AIFM shall give written notice thereof to the competent authority at least one month prior to the implementation of the planned change, or immediately after an unplanned change has occurred.

(10) Where, pursuant to a planned change, the third country AIFM's management of the third country AIF would no longer comply with the provisions of the AIFM Directive, or the third country AIFM would otherwise no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the third country AIFM without undue delay that it shall not implement the change.

(11) Where the third country AIFM proceeds with the implementation of the planned change, notwithstanding the notification received pursuant to subregulations (9) and (10) above, or if an unplanned change has taken place pursuant to the which the third country AIFM's management of the third country AIF no longer complies with the provisions of the AIFM Directive or the third country AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any regulations issued thereunder, including, if necessary, the express prohibition of marketing the third country AIF.

(12) If the changes are acceptable because they do not affect the compliance of the third country AIFM's management of the third country AIF with the provisions of the AIFM Directive, or the compliance by the third country AIFM with the provisions of the AIFM Directive, the competent authority shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of certain third country AIFs or additional third country AIFs being marketed and, if applicable, the European regulatory authorities of the host Member State of the third country AIFM of such changes.

Third country
AIFM licensed in
Malta marketing
third country AIFs
in any Member
State or EEA State
other than Malta.

14. (1) A third country AIFM duly licensed in Malta may market units or shares of a third country AIF it manages to professional investors in a Member State or EEA State other than Malta, as soon as the conditions prescribed in this regulation are met:

Provided that, without prejudice to Article 43 of the AIFM Directive, AIFs managed and marketed by a third country AIFM shall

be marketed only to professional investors.

(2) In addition to the requirements prescribed in the AIFM Directive in relation to European AIFMs, the following conditions shall also be met for third country AIFMs:

- a. appropriate cooperation arrangements are in place between the competent authority and the supervisory authorities of the third country where the third country AIF is established in order to ensure at least an efficient exchange of information, which allows the competent authority to carry out its duties in accordance with the provisions of the AIFM Directive;
- b. the third country where the third country AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;
- c. the third country where the third country AIF is established has signed an agreement with the competent authority and with each other Member State or EEA State in which the units or shares of the third country AIF are intended to be marketed, which fully complies with the standards prescribed in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

(3) Where a European regulatory authority of another Member State or EEA State disagrees with the assessment made on the application of points (a) and (b) of subregulation (2) of this regulation by the competent authority, the European regulatory authority concerned may refer the matter to ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

(4) Where the third country AIFM duly licensed in Malta intends to market units or shares of a third country AIF in any Member State or EEA State other than Malta, the third country AIFM shall submit a notification to the competent authority in respect of the third country AIF that it intends to market. The notification shall comprise the documentation and information prescribed hereunder:

- a. a notification letter, including a programme of operations identifying the third country AIFs which the third country AIFM intends to market and the information on where the third country AIFs are established;
- b. the third country AIF's prospectus or equivalent rules or

- instruments of incorporation;
- c. identification of the custodian of the third country AIF;
 - d. a description of, or any information on the third country AIF available to investors;
 - e. information on where the master AIF is established if the third country AIF is a feeder AIF;
 - f. any additional information concerning the disclosure obligations prescribed in Investment Services Rules for each third country AIF which the third country AIFM intends to market;
 - g. the indication of the Member State or EEA State in which it intends to market the units or shares of the third country AIF to professional investors;
 - h. information on the arrangements made for the marketing of the third country AIFs and, where relevant, information on the arrangements established to prevent units or shares of the third country AIF from being marketed to retail investors, including in the case where the third country AIFM relies on activities of independent entities to provide investment services in respect of the third country AIF:

Provided that the notification letter by the third country AIFM referred to above shall be provided in a language customary in the sphere of international finance.

(5) The competent authority shall within twenty working days from receipt of a complete notification pursuant to subregulation (4) above, transmit the complete notification file to the European regulatory authorities of the Member States or EEA States where the units or shares of the third country AIF are intended to be marketed. The competent authority shall also enclose a statement to the effect that the third country AIFM concerned is licensed to manage third country AIFs with a particular investment strategy:

Provided that the statement referred to above shall be provided in a language customary in the sphere of international finance.

(6) The competent authority shall proceed with the transmission of the complete notification file pursuant to subregulation (4) of this regulation, only if the third country AIFM's management of the third country AIF complies and will continue to comply with the provisions of the AIFM Directive and if the third country AIFM otherwise complies with the provisions of the AIFM

Directive.

(7) Upon transmission of the notification file, the competent authority shall, without delay, notify the third country AIFM about the transmission. The third country AIFM may start marketing the third country AIF in the relevant host Member State or EEA State as of the date of that notification.

(8) The competent authority shall also inform ESMA that the third country AIFM may start marketing the units or shares of the third country AIF in the host Member States or EEA State of the third country AIFM.

(9) The arrangements referred to in paragraph (h) of subregulation (4) of this regulation shall be subject to the laws and supervision of the European regulatory authority of the third country AIFM's host Member State or EEA State.

(10) In the event of a material change to any of the particulars communicated in accordance with subregulation (4) of this regulation, the third country AIFM shall give written notice thereof to the competent authority at least one month prior to the implementation of the planned change, or immediately after an unplanned change has occurred.

(11) Where, pursuant to a planned change, the third country AIFM's management of the third country AIF would no longer comply with the provisions of the AIFM Directive, or the third country AIFM would otherwise no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the third country AIFM without undue delay that it shall not implement the change.

(12) Where the third country AIFM proceeds with the implementation of the planned change, notwithstanding the notification received pursuant to subregulations (10) and (11) of this regulation, or if an unplanned change has taken place pursuant to which the third country AIFM's management of the third country AIF no longer complies with the provisions of the AIFM Directive or the third country AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any regulations issued thereunder including, if necessary, the express prohibition of marketing of the third country AIF.

(13) If the changes are acceptable because they do not affect the compliance of the third country AIFM's management of the third country AIF with the provisions of the AIFM Directive, or the compliance by the third country AIFM with the provisions of the AIFM Directive, the competent authority shall, without delay inform

ESMA in so far as the changes concern the termination of the marketing of certain third country AIFs or additional third country AIFs marketed and, if applicable, the European regulatory authorities of the host Member State of the third country AIFM of such changes.

LICENSING OF THIRD COUNTRY AIFMS AND CHOICE OF MALTA AS ALTERNATIVE MEMBER STATE OF REFERENCE

Choice of Malta as new Member State of reference.

15. (1) Where a third country AIFM which has been granted an authorisation by a European regulatory authority of a Member State or EEA State after having deemed such Member State or EEA State as its Member State of reference, changes its marketing strategy within two years of its initial authorisation, and that change would have affected the choice of its Member State of reference to be Malta had the modified marketing strategy been the initial marketing strategy, the third country AIFM shall proceed as follows:

- (a) it shall inform the European regulatory authority of the original Member State of reference of the change prior to implementation; and
- (b) it shall indicate Malta as being the Member State of reference in accordance with the criteria prescribed in Article 37(4) of the AIFM Directive based on the new strategy.

(2) The third country AIFM shall justify its assessment by disclosing its new marketing strategy to its original Member State of reference.

(3) The third country AIFM shall also provide information on its legal representative including its name and the place where it is established:

Provided that the new legal representative shall be established in Malta.

(4) The European regulatory authority of the original Member State of reference shall assess whether the determination of the third country AIFM in accordance with subregulations (1) to (3) of this regulation is correct and shall notify ESMA thereof. The European regulatory authority shall also provide ESMA with the third country AIFM's justification of its assessment regarding the choice of the new Member State of reference and information on the third country AIFM's new marketing strategy:

(5) Where the European regulatory authority agrees with the assessment made by the third country AIFM, the competent authority shall be notified of the change by the said European regulatory

authority, and shall duly receive a copy of the authorisation and the supervision file relating to the third country AIFM:

Provided that from the date of transmission to the competent authority of the authorisation and supervision file, the competent authority shall be competent for the licensing and supervision of the third country AIFM.

(6) Where a third country AIFM changes its marketing strategy after a period of two years and intends to designate Malta as its new Member State of Reference on the basis of its new marketing strategy, it may submit a request to change its Member State of Reference to the European Regulatory Authorities of the original Member State of Reference. The procedure indicated in subregulations (2) to (5) above shall apply *mutatis mutandis*.

THIRD COUNTRY AIFMS HAVING AN EU OR EEA MEMBER STATE OF REFERENCE OTHER THAN MALTA MARKETING EU OR THIRD COUNTRY AIFs IN MALTA

Third country AIFM authorised in a Member State or EEA State other than Malta marketing European AIFs in Malta.

16.(1) A third country AIFM authorised in a Member State or EEA State other than Malta may market to professional investors in Malta units or shares of a European AIF which it manages as soon as the conditions prescribed in this regulation are met:

Provided that without prejudice to regulation 26, European AIFs managed and marketed by a third country AIFM, shall be marketed in Malta only to professional investors;

Provided further, where a third country AIFM intends to market units or shares of a European AIF registered in a Member State or EEA State other than Malta to professional investors, such European AIF shall be exempt from the provisions of Article 4 of the Act.

(2) Where a third country AIFM authorised in a Member State or EEA State other than Malta, intends to market units or shares of the European AIF in Malta, the third country AIFM shall submit to the European regulatory authority of the Member State or EEA State a notification in respect of the European AIFs that it intends to market. The notification shall comprise the documentation and information prescribed hereunder:

- a. a notification letter, including a programme of operations identifying the European AIFs which the third country AIFM intends to market and the information on where the European AIFs are established;
- b. the European AIF's prospectus or equivalent rules or

instruments of incorporation;

- c. identification of the custodian of the European AIF;
- d. a description of, or any information on the European AIF available to investors;
- e. information on where the master AIF is established if the European AIF is a feeder AIF;
- f. any additional information concerning the disclosure obligations prescribed in Article 23(1) of the AIFM Directive for each European AIF which the third country AIFM intends to market;
- g. the indication of Malta as being the Member State in which it intends to market the units or shares of the European AIFs to investors;
- h. information on the arrangements made for the marketing of the European AIFs and, where relevant, information on the arrangements established to prevent units or shares of the European AIFs from being marketed to retail investors, including in the case where the third country AIFM relies on activities of independent entities to provide investment services in respect of the European AIF:

Provided that the notification letter by the third country AIFM referred to above shall be provided in a language customary in the sphere of international finance.

(3) The competent authority shall, no later than twenty working days after the date of receipt of a complete notification file pursuant to subregulation (2), receive from the European regulatory authority of the third country AIFM's home Member State or EEA State the complete notification file.

(4) The notification file transmitted to the competent authority shall also include a statement to the effect that the third country AIFM concerned is authorised to manage European AIFs with a particular investment strategy:

Provided that the statement referred to above shall be provided in a language customary in the sphere of international finance.

(5) The competent authority shall receive the complete notification file only if the third country AIFM's management of the European AIF complies with and will continue to comply with the provisions of the AIFM Directive and if the third country AIFM

otherwise complies with the provisions of the AIFM Directive.

(6) The third country AIFM may start marketing the European AIFs in Malta as from the date that the European regulatory authority has notified the third country AIFM of the transmission to the competent authority of the notification file.

(7) The competent authority shall be responsible for the supervision of the compliance of the third country AIFM with the information provided relating to the arrangements made for the marketing of European AIFs and, where relevant, information on the arrangements established to prevent units or shares of the European AIFs from being marketed to retail investors, including in the case where the third country AIFM relies on activities of independent entities to provide investment services in respect of the European AIF.

(8) In the event that the European regulatory authority accepts a change to any of the particulars communicated in accordance with subregulation (2) of this regulation by the third country AIFM, the competent authority shall receive notification thereof from the said European regulatory authority in so far as the changes concern the termination of the marketing of certain European AIFs or additional European AIFs marketed.

Third country AIFM authorised in a Member State or EEA Member State other than Malta marketing third country AIFs in Malta.

17. (1) A third country AIFM duly authorised in a Member State or EEA State other than Malta may market units or shares of a third country AIF to professional investors in Malta as soon as the conditions prescribed in this regulation are met:

Provided that without prejudice to regulation 26, AIFs managed and marketed by a third country AIFM shall be marketed only to professional investors;

Provided further, where a third country AIFM intends to market units or shares of a third country AIF in Malta to professional investors, such third country AIF shall be exempt from the provisions of Article 4 of the Act.

(2) Where the third country AIFM authorised in a Member State or EEA State other than Malta intends to market units or shares of a third country AIF in Malta, the third country AIFM shall submit a notification to the European regulatory authority of its home Member State or EEA State in respect of the third country AIF that it intends to market. The notification shall comprise the documentation and information prescribed hereunder:

- a. a notification letter, including a programme of operations identifying the third country AIFs which the third country AIFM intends to market and the information on where the third country AIFs are

established;

- b. the third country AIF's prospectus or equivalent rules or instruments of incorporation;
- c. identification of the custodian of the third country AIF;
- d. a description of, or any information on the third country AIF available to investors;
- e. information on where the master AIF is established if the third country AIF is a feeder AIF;
- f. any additional information concerning the disclosure obligations prescribed in Investment Services Rules for each third country AIF which the third country AIFM intends to market;
- g. the indication of Malta as being the Member State in which it intends to market the units or shares of the third country AIF to professional investors;
- h. information on the arrangements made for the marketing of the third country AIFs and, where relevant, information on the arrangements established to prevent units or shares of the third country AIF from being marketed to retail investors, including in the case where the third country AIFM relies on activities of independent entities to provide investment services in respect of the third country AIF:

Provided that the notification letter by the third country AIFM referred to above shall be provided in a language customary in the sphere of international finance.

(3) The competent authority shall, no later than twenty working days after the date of receipt by the European regulatory authority of the third country AIFM's home Member State or EEA State of a complete notification file pursuant to subregulation (2), receive the complete notification file from the said European regulatory authority .

(4) The notification file transmitted to the competent authority shall also include a statement to the effect that the third country AIFM concerned is authorised to manage third country AIFs with a particular investment strategy:

Provided that the statement referred to above shall be provided in a language customary in the sphere of international finance.

(5) The competent authority shall receive the complete notification file in terms of subregulation (3) only if the third country AIFM's management of the third country AIF complies with and will continue to comply with the provisions of the AIFM Directive and if the third country AIFM otherwise complies with the provisions of the AIFM Directive.

(6) Upon transmission of the notification file to the competent authority by the European regulatory authority, the third country AIFM may start marketing the third country AIF in Malta as from the date of such notification of transmission thereof.

(7) The competent authority shall be responsible for the supervision of the compliance of the third country AIFM with the information provided relating to the arrangements made for the marketing of third country AIFs and, where relevant, information on the arrangements established to prevent units or shares of the third country AIFs from being marketed to retail investors, including in the case where the third country AIFM relies on activities of independent entities to provide investment services in respect of the third country AIF.

(8) In the event that the European regulatory authority accepts a change to any of the particulars communicated in accordance with subregulation (2) of this regulation by the third country AIFM, the competent authority shall receive notification thereof from the said European regulatory authority in so far as the changes concern the termination of the marketing of certain third country AIFs or additional third country AIFs marketed.

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT BY THIRD COUNTRY AIFMS HAVING MALTA AS THEIR MEMBER STATE OF REFERENCE

Freedom of third country AIFMs to provide services—direct management of a European AIF in a Member State or EEA State other than Malta.

18. (1) A third country AIFM which has been licensed in Malta and which has appointed Malta as its Member State of reference may directly manage a European AIF established in any Member State or EEA State other than Malta, provided the third country AIFM is authorised to manage that type of European AIF.

(2) A third country AIFM which has been licensed in Malta and intending to manage a European AIF established in any Member State or EEA State other than Malta for the first time shall communicate the following information to the competent authority:

- a. the Member State or EEA State in which it intends to manage European AIFs directly;
- b. a programme of operations stating the particular services which the third country AIFM intends to perform and

identifying the European AIFs it intends to manage.

(3) The competent authority shall, within one month of receiving the complete documentation submitted in accordance with subregulation (2) of this regulation, transmit the complete documentation to the European regulatory authority of the AIFM host Member State or EEA State. The competent authority shall also enclose a statement to the effect that the third country AIFM is in possession of a licence granted by the competent authority:

Provided that such transmission shall occur only if the third country AIFM's management of the European AIF complies and will continue to comply with the provisions of the AIFM Directive and if the third country AIFM otherwise complies with the provisions of the AIFM Directive.

(4) The competent authority shall immediately notify the third country AIFM about the transmission of the notification pursuant to subregulation (3) of this regulation. The competent authority shall also inform ESMA that the third country AIFM may start managing the European AIF in the host Member State or EEA State of the third country AIFM.

(5) Upon receipt of the transmitted notification by the European regulatory authority, the third country AIFM may start directly managing the European AIF in the host Member State or EEA State of the third country AIFM.

(6) In the event of a change to any of the information communicated in accordance with subregulation (2), the third country AIFM shall give written notice of such change to the competent authority at least one month before implementing the planned change, or immediately after an unplanned change has occurred.

(7) Where, pursuant to a planned change, the third country AIFM's management of the European AIF would no longer comply with the provisions of the AIFM Directive or the third country AIFM would otherwise no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the third country AIFM without undue delay that it shall not implement the change.

(8) Where the third country AIFM proceeds with the implementation of the planned change, notwithstanding the notification made pursuant to subregulations (6) and (7) of this regulation, or if an unplanned change has taken place pursuant to which the third country AIFM's management of the AIF referred to in subregulation (1), no longer complies with the provisions of the AIFM Directive or the third country AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the

provisions of the Act and any regulations issued thereunder, including, if deemed necessary, the express prohibition of marketing of such European AIFs.

(9) If the changes are acceptable because they do not affect the compliance by the third country AIFM's management of the European AIF with the provisions of the AIFM Directive, or the compliance by the third country AIFM with the provisions of the AIFM Directive, the competent authority shall, without undue delay, inform the European regulatory authority of the third country AIFM host Member State or EEA State of those changes.

Freedom of establishment of third country AIFMs – establishment of a branch.

19. (1) A third country AIFM which has been licensed in Malta and which has appointed Malta as its Member State of reference may manage a European AIF established in any Member State or EEA State other than Malta through the establishment of a branch, provided the third country AIFM is authorised to manage that type of European AIF.

(2) A third country AIFM which has been licensed in Malta and which intends managing European AIFs in another Member State or EEA State for the first time and establish a branch shall communicate the following information to the competent authority:

- a. the Member State or EEA State in which it intends to establish a branch;
- b. a programme of operations stating the particular services which the third country AIFM intends to perform and identifying the European AIFs it intends to manage;
- c. the organisational structure of the branch;
- d. the address in the home Member State or EEA State of the European AIF from where documents may be obtained;
- e. the names and contact details of the persons responsible for the management of the branch.

(3) The competent authority shall within two months of receiving the complete documentation submitted in accordance with subregulation (2) of this regulation, transmit the said complete documentation to the European regulatory authority of the host Member State or EEA State where the third country AIFM intends establishing a branch. The competent authority shall also enclose a statement to the effect that the third country AIFM is licensed in terms of the Act:

Provided that such transmission shall occur only if the third

country AIFM's management of the European AIF complies and will continue to comply with the provisions of the AIFM Directive and the third country AIFM itself otherwise complies with the provisions of the AIFM Directive.

(4) The competent authority shall immediately notify the third country AIFM about the transmission pursuant to subregulation (3) of this regulation. The competent authority shall also inform ESMA that the third country AIFM may start managing the European AIF in the host Member State or EEA State of the third country AIFM.

(5) Upon receipt of the transmission notification referred to in subregulation (4), the third country AIFM may start managing the European AIF in the host Member State or EEA State of the third country AIFM.

(6) In the event of a change to any of the information communicated in accordance with subregulation (2), the third country AIFM shall give written notice of such change to the competent authority at least one month before implementing the planned change, or immediately after an unplanned change has occurred.

(7) Where, pursuant to a planned change, the third country AIFM's management of the European AIF would no longer comply with the provisions of the AIFM Directive or the third country AIFM itself would otherwise no longer comply with the provisions of the AIFM Directive, the competent authority shall inform the third country AIFM without undue delay that shall not implement the change.

(8) Where the third country AIFM proceeds with the implementation of the planned change, notwithstanding the notification received pursuant to subregulations (6) and (7) of this regulation, or if an unplanned change has taken place pursuant to which the third country AIFM's management of the AIF referred to in subregulation (1) no longer complies with the provisions of the AIFM Directive or the third country AIFM otherwise no longer complies with the provisions of the AIFM Directive, the competent authority shall take all due measures in accordance with the provisions of the Act and any regulations issued thereunder, including, if necessary, the express prohibition of marketing of such European AIFs.

(9) If the changes are acceptable because they do not affect the compliance of the third country AIFM's management of the European AIF with the provisions of the AIFM Directive, or the compliance by the third country AIFM with the provisions of the AIFM Directive, the competent authority shall, without undue delay inform the European regulatory authority of the third country AIFM host Member State or EEA State of those changes.

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT BY THIRD COUNTRY AIFMS HAVING AS THEIR MEMBER STATE OF REFERENCE A MEMBER STATE OR EEA STATE OTHER THAN MALTA

Freedom to provide services by third country AIFMS – Direct management of a European AIF in Malta.

20. (1) A third country AIFM which has been authorised in a Member State or EEA State other than Malta and which has appointed such Member State or EEA State as its Member State of reference may directly manage a European AIF in Malta provided the said AIFM is authorised to manage that type of European AIF.

(2) A third country AIFM authorised in a Member State or EEA State other than Malta and intending to directly manage European AIFs in Malta for the first time shall communicate the following information to the European regulatory authority in its home Member State or EEA State and shall thereafter be exempt from the provisions of Article 3 of the Act:

- a. the intention to manage European AIFs directly in Malta;
- b. a programme of operations stating the particular services which the third country AIFM intends to perform and identifying the European AIFs it intends to manage.

(3) The competent authority shall, within one month from submission by the third country AIFM to the European regulatory authority of the complete documentation in accordance with subregulation (2) of this regulation, receive the complete documentation from the European regulatory authority of the third country AIFM's home Member State or EEA State. The competent authority shall receive a statement to the effect that the third country AIFM is authorised in terms of the AIFM Directive:

Provided that such transmission shall occur only if the third country AIFM's management of the European AIF complies and will continue to comply with the provisions of the AIFM Directive and the third country AIFM otherwise complies with the provisions of the AIFM Directive.

(4) Upon notification by the European regulatory authority of the home Member State or EEA Member State of the third country AIFM of the transmission notification referred to in subregulation (3), the third country AIFM may start to provide its services in Malta.

(5) The competent authority shall not impose any additional requirements on the third country AIFM concerned in respect of matters which are covered by the AIFM Directive.

(6) In the event of a change, accepted by the European

regulatory authority, to any of the information communicated in accordance with subregulation (2), which changes do not affect the compliance by the third country AIFM's management of the European AIF with the provisions of the AIFM Directive or the compliance by the third country AIFM of the provisions of the AIFM Directive, the competent authority shall receive notification of such changes from the European regulatory authority of the home Member State or EEA State of the third country AIFM.

21. (1) A third country AIFM which has been authorised in a Member State or EEA State other than Malta and which has appointed such Member State or EEA State as its Member State of reference may manage a European AIF in Malta through the establishment of a branch, provided the AIFM is authorised to manage that type of AIF.

(2) A third country AIFM intending to manage European AIFs in Malta for the first time through the establishment of a branch shall communicate the following information to the European regulatory authority in its home Member State or EEA State and shall thereafter be exempt from the provisions of Article 3 of the Act:

- a. the intention to establish a branch in Malta;
- b. a programme of operations stating the particular services which the AIFM intends to perform and identifying the AIFs it intends to manage;
- c. the organisational structure of the branch;
- d. the address in the home Member State of the AIF from where documents may be obtained;
- e. the names and contact details of the persons responsible for the management of the branch.

(3) The competent authority shall, within two months from submission by the third country AIFM of the complete documentation to the European regulatory authority of the third country AIFM's home Member State or EEA State in accordance with subregulation (2) of this regulation, receive the complete documentation from such European regulatory authority. The competent authority shall receive a statement from the said European regulatory authority to the effect that the third country AIFM is authorised in terms of the AIFM Directive:

Provided that such transmission shall occur only if the third country AIFM's management of the European AIF complies and will continue to comply with the provisions of the AIFM Directive and the third country AIFM otherwise complies with the provisions of the AIFM Directive.

(4) Upon notification to the third country AIFM by the European regulatory authority of the home Member State or EEA State of the third country AIFM of the transmission notification, the third country AIFM may start managing the European AIF in Malta.

(5) The competent authority shall not impose any additional requirements on the third country AIFM concerned in respect of matters which are covered by the AIFM Directive.

(6) In the event of a change, accepted by the European regulatory authority, to any of the information communicated in accordance with subregulation (2), which changes do not affect the compliance by the third country AIFM's management of the European AIF with the provisions of the AIFM Directive or the compliance by the third country AIFM of the provisions of the AIFM Directive, the competent authority shall receive notification of such changes from the European regulatory authority of the home Member State or EEA State of the third country AIFM.

THIRD COUNTRY AIFMS MARKETING UNITS OR SHARES OF AIFS IN MALTA

Marketing of units or shares of AIFs by a third country AIFM in Malta.

22. (1) Without prejudice to regulation 26 of these regulations, a third country AIFM may market, only within the territory of Malta, to professional investors, units or shares of an AIF which it manages, subject at least to the following conditions:

- (a) the third country AIFM complies with Articles 22, 23 and 24 of the AIFM Directive in respect of each European AIF marketed by it pursuant to this regulation and with Articles 26 to 30 of the AIFM Directive where an AIF marketed by it pursuant to this regulation is one of the following:
 - (i) one or more AIFs managed by third country AIFMs, where such AIFs either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company in accordance with Article 26(5) of the AIFM Directive;
 - (ii) AIFs managed by third country AIFMs jointly, where such third country AIFMs cooperate with one or more other third country AIFMs on the basis of an agreement and the AIFs acquire control of a non-listed company in accordance with Article 26(5) of the AIFM Directive;

Provided that the term ‘competent authorities’ and ‘AIF investors’ referred to in articles 22, 23, 24, 26 to 30 shall be deemed to refer to the competent authority and to the investors in Malta.

- (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the competent authority, in so far as applicable, the European regulatory authorities of the European AIFs concerned and the supervisory authorities of the third country where the third country AIFM or the third country AIF is established in order to ensure an efficient exchange of information that allows the competent authority to carry out its duties in accordance with the provisions of the AIFM Directive;
- (c) the third country where the third country AIFM or the third country AIF is established is not listed as a Non-Cooperative Country and Territory by the FATF.

Provided that where a third country AIFM intends to market units or shares of a third country AIF, or a European AIF which is registered in another Member State or EEA State other than Malta, to professional investors in Malta, such AIF shall be exempt from the provisions of Article 4 of the Act

(2) Where a European regulatory authority of a European AIF does not enter into the required cooperation arrangements as prescribed in paragraph (b) of subregulation (1) within a reasonable period of time, the competent authority may refer the matter to ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(3) The competent authority may, for the purposes of this regulation, impose stricter rules on the third country AIFM in respect of the marketing of units or shares of AIFs to investors in Malta.

POWERS AND DUTIES OF THE COMPETENT AUTHORITY

23. (1) The competent authority shall be responsible for the prudential supervision of a third country AIFM licensed in Malta, whether the AIFM manages and, or markets AIFs in another Member State or EEA State or not, without prejudice to the provisions of the AIFM Directive which confer the responsibility for supervision on the European regulatory authority of the host Member State or EEA State of the third country AIFM.

Breaches by third country AIFMs licensed in Malta.

(2) The supervision of the third country AIFM's compliance with Articles 12 and 14 of the AIFM Directive shall be the responsibility of the European regulatory authority of the host Member State or EEA State where the AIFM manages and, or markets AIFs through a branch in that Member State or EEA State.

(3) Where an AIFM is managing and, or marketing AIFs in a Member State or EEA State other than Malta whether or not through a branch, and is in breach of one of the regulatory requirements for which the European regulatory authority is responsible for ensuring compliance, the competent authority shall receive notification from the European regulatory authority of the host Member State or EEA State of the request made to the AIFM to put an end to that breach.

(4) If the AIFM refuses to provide the European regulatory authority with information necessary for the supervision of the AIFM's compliance with the applicable regulatory requirements of such European regulatory authority, or fails to take the necessary steps to put an end to breach referred to in subregulation (3), the competent authority shall be duly informed of such matter by the European regulatory authority.

(5) Where the competent authority receives a notification from a European regulatory authority pursuant to subregulation (4) of this regulation, the competent authority shall, at the earliest opportunity:

(a) take all appropriate measures to ensure that the AIFM concerned provides the information requested by the European regulatory authority of the host Member State or EEA State, pursuant to subregulation (4) or puts an end to the breach referred to in subregulation (3);

(b) request the necessary information from the relevant supervisory authorities in third countries:

Provided that the competent authority shall communicate to the European regulatory authority of the host Member State or EEA State the nature of the measures taken pursuant to paragraph (a).

(6) Where, the third country AIFM continues to refuse to provide the information requested by the European regulatory authority in the host Member State or EEA State pursuant to subregulation (4) or persists in breaching the legal or regulatory provisions referred to in subregulation (3) in force in the host Member State or EEA State, despite the measures taken by the competent authority, or due to the inadequacy or unavailability of such measures in Malta, the competent authority shall be notified of the measures that may have been taken by the European regulatory authority of the host Member State or EEA State against the AIFM to prevent or

penalise further irregularities by the AIFM.

(7) Where the AIFM is in breach of obligations resulting from provisions in relation to which the European regulatory authority in the host Member State or EEA State has no responsibility for supervising compliance, the competent authority shall receive notification of such breach from the European regulatory authority in the host Member State or EEA State.

(8) The competent authority shall take appropriate measures including, if necessary, request additional information from the relevant supervisory authorities in the third countries.

(9) Where an AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant AIF, the financial stability or the integrity of the market in the Member State or EEA State, despite the measures taken by the competent authority, or due to the inadequacy of such measures in Malta or because the competent authority fails act within a reasonable time, the competent authority shall receive notification from the European regulatory authority of the host Member State or EEA State of any measures that may have been taken in order to protect the investors of the relevant AIF, the financial stability and integrity of the market in the host Member State or EEA State including the possibility of preventing the AIFM concerned to further market the units or shares of the relevant AIF in the host Member State or EEA State.

(10) The procedure prescribed in subregulations (7) to (9) of this regulation shall also apply in the event that the European regulatory authority of the AIFM host Member State or EEA State has clear and demonstrable grounds for disagreement with the licensing of a third country AIFM by the competent authority.

Breaches by third country AIFMS authorised in Member State or EEA State other than Malta.

24. (1) The competent authority may require a third country AIFM licensed in a Member State or EEA State other than Malta managing or marketing AIFs in Malta, whether or not through a branch, to provide the information necessary for the supervision of the AIFM's compliance with the applicable provisions of the AIFM Directive for which the competent authority is responsible:

Provided that the requirements imposed shall not be more stringent than those which the competent authority imposes on Maltese AIFMs for monitoring compliance with the same provisions.

(2) Where the competent authority ascertains that an AIFM managing and, or marketing European AIFs in Malta, whether or not through a branch, is in breach of one of the provisions in relation to which the competent authority is responsible for supervising compliance, the competent authority shall require the AIFM to put an end to that breach and shall proceed to notify the European regulatory

authority of the home Member State or EEA State thereof.

(3) If the AIFM concerned refuses to provide the competent authority with information for which it is responsible, or fails to take the necessary steps to put an end to the breach identified in subregulation (2), the competent authority shall inform the European regulatory authority of its home Member State or EEA State thereof:

Provided that the European regulatory authority shall notify the competent authority of any measures taken.

(4) Where an AIFM continues in its refusal to provide information requested by the competent authority in terms of subregulation (1), or persists in breaching the legal or regulatory provisions referred to in subregulation (2) in force in Malta, despite the measures taken by the European regulatory authority of the home Member State or EEA State or due to the inadequacy or unavailability of such measures in the said home Member State or EEA State, the competent authority may, after informing the European regulatory authority of the home Member State or EEA State of the European AIFM, take appropriate measures under the provisions of the Act and any regulations issued thereunder, to prevent or penalise further irregularities and, in so far as necessary, to prevent the AIFM from initiating any further transactions in Malta. Where the function carried out in Malta by the AIFM is the management of AIFs, the competent authority may require that the AIFM ceases managing those AIFs.

(5) Where the competent authority has clear and demonstrable grounds for believing that an AIFM is in breach of the obligations arising from provisions in relation to which the competent authority has no responsibility for supervising compliance, the competent authority shall refer those findings to the European regulatory authority of the home Member State or EEA State of the AIFM, which shall take appropriate measures, including, if necessary, requesting additional information from the relevant supervisory authorities in third countries.

(6) Where an AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant AIF, the financial stability or the integrity of the Maltese market, despite the measures taken by the European regulatory authority in the home Member State or EEA State of the AIFM, or due to the inadequacy of such measures in the Member State or EEA State or because the European regulatory authority fails to act within a reasonable time, the competent authority may, after informing the European regulatory authority in the home Member State or EEA State, take all appropriate measures needed in order to protect the investors of the relevant AIF, the financial stability and integrity of the Maltese market, including the possibility of preventing the AIFM concerned to further market the units or shares of the relevant AIF in Malta.

(7) The procedure prescribed in subregulations (5) and (6) of this regulation shall also apply in the event that the competent authority has clear and demonstrable grounds for disagreement with the authorisation of a third country AIFM by the Member State of reference.

(8) Where the competent authority disagrees on any of the measures taken by a European regulatory authority pursuant to subregulations (2) to (7) of this regulation, it may bring the matter to the attention of ESMA, which may act in accordance with the powers conferred to it under Article 19 of Regulation (EU) No 1095/2010.

(9) In so far as applicable, ESMA shall facilitate the negotiation and conclusion of the cooperation arrangements required by the AIFM Directive between the competent authority, the European regulatory authorities and the supervisory authorities of third countries.

Responsibility of competent authority.

25. The supervision of a third country AIFM's compliance with Articles 12 and 14 of the AIFM Directive shall be the responsibility of the competent authority where the AIFM manages and or markets AIFs through a branch in Malta.

THIRD COUNTRY AIFMS MARKETING EUROPEAN OR THIRD COUNTRY AIFS TO RETAIL INVESTORS IN MALTA

Marketing of AIFs by AIFMs to retail investors in Malta.

26 (1) An AIF shall not be marketed to retail investors in Malta unless it is in possession of an authorisation for this purpose from the Competent Authority.

(2) Regulations 4, 5, 6, 8, 11, 12, 13, 14, 16, and 17 shall, in so far as applicable, apply *mutatis mutandis*, and reference to the term "professional investors" shall be deemed to be a reference to "retail investors" subject to such variations or modifications as may be prescribed.

(3) Where an AIF is to be marketed to retail investors in Malta, the AIF and its AIFM shall be subject to Investment Services Rules, which shall prescribe the following:

- a) the types of AIF with respect to which an application for marketing to retail investors may be made to the Competent Authority;
- b) the manner and form of an application for an authorisation to market an AIF to retail investors in Malta, including the imposition of an application fee (if any);
- c) the conditions for authorisation for marketing to retail investors;
- d) the on-going obligations applicable to the marketing of

- an AIF to retail investors in Malta, including the imposition of a supervision fee (if any); and
- e) any other relevant matter determined by the competent authority.

(4) In the Investment Services Rules, the competent authority may impose stricter requirements on the AIFM or the AIF than the requirements applicable to the AIFs marketed to professional investors in Malta in accordance with the provisions of the AIFM Directive. The competent authority shall not, however, impose stricter or additional requirements on European AIFs established in Member State or EEA State other than Malta and marketed on a cross-border basis than on AIFs marketed in Malta.

(5) The competent authority shall, by 22 July 2014, inform the European Commission and ESMA of:

- (a) the types of AIF which AIFMs may market to retail investors in Malta; and
- (b) any additional requirements that Malta imposes for the marketing of AIFs to retail investors.

Provided that the competent authority shall also inform the European Commission and ESMA of any subsequent changes with regard to subregulation (3).

Transitory Provisions

Transitory provision.

27. (1) Regulation 7 and regulation 22 of these regulations shall cease to apply as from such date as the Minister may by notice in the Gazette establish.

(2) Overseas based collective investment schemes, which on the date of the coming into force of these regulations were licensed in terms of the article 4 of the Act, shall be deemed to be a third country AIF for the purpose of these regulations:

Provided that such collective investment schemes shall conform with all investment services rules, conditions, directives and guidelines issued by the competent authority for such purpose.

(3) Overseas based collective investment schemes shall without delay either surrender their licence to the competent authority or submit such licence thereto for the appropriate amendments, as the case may be, in accordance with requirements established by the competent authority for this purpose.