
Chairman
Malta Financial Services Authority

L.N. _____ of 2013

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

Investment Services Act (Fees) Regulations, 2013

In exercise of the powers conferred by article 12 of the Investment Services Act, the Minister for Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:

Citation and
commencement.

1. (1) The title of these regulations is the Investment Services Act (Fees) Regulations, 2013.

S.L. 370.03

- (2) These regulations shall come into force on the 1st January 2014, and shall apply to fees falling due on or after the said date. Nothing in these regulations shall be deemed to affect the liability in respect of any fees due under the Investment Services Act (Licence and Other Fees) Regulations, 2008 prior to the coming into force of these regulations.

Cap. 370

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

“the Act” shall mean the Investment Services Act;

“Alternative Investment Fund” or “AIF” shall mean a collective investment scheme, 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” shall mean a legal person whose regular business is the management of one or more AIFs;

“carry on an activity” shall include but shall not be limited to marketing, advertising or otherwise promoting as may be further stipulated in Investment Services Rules issued by the competent authority in terms of article 6 of the Act;

“competent authority” shall mean the Malta Financial Services Authority as defined in terms of article 2 of the Act;

“eligible counterparties” shall have the same meaning as that assigned to it by the Investment Services Rules issued by the competent authority in terms of article 6 of the Act;

- S.L. 370.21 “European AIF” shall have the same meaning as that assigned to it by regulation 2 of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations;
- S.L. 370.22 “European AIFM” shall have the same meaning as that assigned to it by regulation 2 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations;
- S.L. 370.10 “European investment firm” shall have the same meaning as that assigned to it by regulation 2 of the European Passport Rights for Investment Firms Regulations;
- S.L. 370.20 “European management company” shall have the same meaning as that assigned to it by regulation 2 of the Investment Services Act (UCITS Management Company Passport) Regulations;
- S.L. 370.18 “European UCITS” shall have the same meaning as that assigned to it by regulation 2 of the Investment Services Act (Marketing of UCITS) Regulations;
- “hold or control” includes the holding by a licence holder of a mandate over a client’s bank account, or of a power of attorney to control a client’s assets: provided that a licence holder shall not be considered to be holding or controlling a client’s money or assets if a recommendation made by the licence holder can be placed into effect only by the customer or by a third party, such as a bank, acting on the customer’s behalf. The competent authority shall have the discretion to determine whether a licence holder is holding or controlling clients’ money or assets in any given case;
- “home Member State or EEA State”, in relation to:
- S.L. 370.10 (a) a European investment firm, shall have the same meaning as that assigned to it by regulation 2 of the European Passport Rights for Investment Firms Regulations;
- S.L. 370.20 (b) a European management company, shall have the same meaning as that assigned to it by regulation 2 of the Investment Services Act (UCITS Management Company Passport) Regulations;
- S.L. 370.18 (c) a European UCITS, shall have the same meaning as that assigned to a ‘UCITS home Member State or EEA State’ by regulation 2 of the Investment Services Act (Marketing of UCITS) Regulations;
- S.L. 370.22 (d) a European AIFM, shall have the same meaning as that assigned to a ‘home Member State of the AIF’ by regulation 2 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations;
- S.L. 370.21 (e) a European AIF, shall have the same meaning as that assigned to a ‘home Member State of the AIF’ by regulation 2 of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations.
- “professional investor” shall have the same meaning assigned to it in the Investment Services Rules or an investor who has opted to be treated as a professional investor in terms of the said Rules;
- “retail investor” shall mean an investor who is not a professional investor;
- “revenue” shall mean the net revenue which shall be calculated in the following manner – the gross revenue indicated in the annual audited

financial statements and that is derived from activities for which an investment services licence was issued in terms of article 3 of the Act, less any commissions that are directly related to the acquisition of the said gross revenue, paid or payable to third parties;

S.L. 370.14 “tied agent” shall have the same meaning assigned to it by regulation 2 of the Investment Services Act (Tied Agents) Regulations.

(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.

Payment of application fees. **3.** There shall be paid to the competent authority the following application fees, as applicable:

(a) any person or body or collective investment scheme shall, upon submission of an application for the granting of a licence, recognition, registration or authorisation, irrespective of whether the application is eventually accepted or not, pay the application fee established in the Second Column of the Schedule;

S.L. 370.10
S.L. 370.20
S.L. 370.22 (b) a European investment firm or a European management company or a European AIFM establishing a branch in Malta in terms of the applicable Regulations issued under the Act shall, upon notification to the competent authority that it wants to establish a branch in Malta, pay the relevant application fee established in the Second Column of the Schedule;

S.L. 370.18. (c) a European UCITS or a European AIF marketing its units in Malta in terms of the applicable Regulation issued under the Act shall, upon notification to the competent authority that it wants to market its units in Malta, pay the relevant application fee established in the Second Column of the Schedule;

S.L. 370.24 (d) an AIFM, whether established in an EU or EEA Member State or in a third country, wishing to market in Malta units or shares of an AIF whether established in an EU or EEA Member State or in a third country in terms of applicable regulations issued under the Act shall, upon notification to the competent authority that it wants to market by private placement in Malta pay, the relevant application fees established in the Second Column of the Schedule.

Payment of annual Supervisory fees. **4.** There shall be paid to the competent authority the following annual supervisory fees, as applicable:

(a) investment services licence holders shall, upon the submission of the annual audited financial statements, pay an annual supervisory fee as established in the third column of the Schedule;; Provided that, the first supervisory fee shall be due immediately once a licence is granted and shall be equal to a proportion of the minimum fee. The first supervisory annual fee payable shall be proportionate to the period remaining between the date of the granting of the licence and the established date for the submission of the annual audited financial statements.

(b) collective investment schemes, recognised persons or registered persons shall, upon the anniversary of the date of granting of a licence, recognition, or registration, pay the annual supervisory fee established in the Third Column of the Schedule. Provided that the first annual fee shall be payable immediately once a licence is granted.

- S.L. 370.10
S.L. 370.20
S.L. 370.22
- (c) European Investment Firms, European management companies and European AIFMs establishing a branch in Malta shall, annually, upon the anniversary of the date on which they commence business in Malta, pay the supervisory fee established in the Third Column of the Schedule. Provided that the first annual fee shall be payable immediately once a licence is granted.
- S.L. 370.18.
- (d) European UCITS and European AIFs marketing their units in Malta shall, annually, upon the anniversary of the date on which they commence to market their units in Malta, pay the supervisory fee established in the Third Column of the Schedule. Provided that the first annual fee shall be payable immediately once a licence is granted.
- S.L. 370.24
- (e) AIFMs, whether established in an EU or EEA Member State or in a third country wishing to market in Malta units or shares of an AIF whether established in an EU or EEA Member State or in a third country in terms of applicable regulations issued under the Act shall pay the supervisory fee established in the Third Column of the Schedule. Provided that the first annual fee shall be payable immediately once a licence is granted.

Licence
classification.

5. (1) A person or body applying for a licence for investment services in terms of article 3 of the Act shall be classified at the discretion of the competent authority into one of the six categories which determine the financial resources requirements of licence holders, as follows:

Category 1a: Licence holders authorised to receive and transmit orders in relation to one or more instrument and, or provide investment advice and, or place instruments without a firm commitment basis but not to hold or control clients' money or customers' assets.

Category 1b: Licence holders authorised to receive and transmit orders, and, or provide investment advice in relation to one or more instrument and, or place instruments without a firm commitment basis solely for professional clients and, or eligible counterparties but not to hold or control clients' money or customers' assets.

Category 2: Licence holders authorised to provide any investment service and to hold or control clients' money or customers' assets, but not to operate a multilateral trading facility or deal for their own account or underwrite or place instruments on a firm commitment basis.

Category 3: Licence holders authorised to provide any Investment Service and to hold and control clients' money or customers' assets.

Category 4a: Licence holders authorised to act as trustees or custodians of collective investment schemes.

Category 4b: Licence holders authorised to act as custodians of collective investment schemes which have no redemption rights exercisable during the five year period from the date of initial investment and which generally do not invest in assets that must be held in custody.

- (2) The competent authority shall set out in the licence the nature of the

activities which particular licence holders may carry out.

- 6.** None of the fees established as due in terms of these regulations shall be refundable or prorated other than the first annual supervision fee, as established in these regulations.

Revocation of
L. N. 359 of
2008.

- 7.** The Investment Services Act (Licence and Other Fees) Regulations, are hereby revoked.

**SCHEDULE
(Regulations 3 and 4)**

Licence Fees

First Column	Second Column		Third Column
	Application Fee		Supervisory Fee
	€		€
(a) Investment Services Licences: Category 1a	2,500	For Revenue up to €50,000	2,000
		Further tranches of €50,000 up to a maximum of €1,000,000	350 per tranche or part thereof
Category 1b	3,000	For Revenue up to €50,000	2,750
		Further tranches of €50,000 up to a maximum of €1,000,000	350 per tranche or part thereof
Category 2	5,000	For Revenue up to €250,000	4,500
		Further tranches of €250,000 up to a maximum of €5,000,000	400 per tranche or part thereof
Category 3	7,000	For Revenue up to €250,000	6,000
		Further tranches of €250,000 up to a maximum of €50,000,000	400 per tranche or part thereof
Category 4a	17,000		15,000
Category 4b	7,500		5,000
(b) Collective Investment Schemes which fall within the scope of article 4 of the Act; and which are authorized as UCITS Schemes and non-UCITS Retail Schemes: Scheme: Scheme sub-funds (per sub-fund)	2,500		3,000
	450		500
		Up to 15 Scheme sub-funds (per sub-fund). <i>No annual supervision fee will be payable</i>	

(c)	Collective Investment Schemes which qualify as Professional Investor Funds and Alternative Investment Funds in terms of Investment Services Rules issued for this purpose by the Competent Authority:		
	Scheme	2,000	2,000
	Scheme sub-funds (Per sub-fund)	1,000	600

Recognition Fees

(d)	Persons providing administrative services in terms of article 9A of the Act	3,000	1,500
(e)	Private Schemes recognised in terms of the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations	2,000	750
(f)	European investment firms establishing a branch in Malta in terms of regulation 3 of the European Passport Rights for Investment Firms Regulations		
	i. authorised by their Home member State or EEA State to receive and transmit orders in relation to one or more instruments and, or provide investment advice and, or place instrument without a firm commitment basis , in terms of the Directive but are not authorized to hold and control Clients Money or Customers' Assets.	750	1,200
	ii. authorised by their home Member State or EEA State to provide any investment services in terms of the Directive and to hold and control Clients' Money or Customers' Assets but		

	not to operate a multilateral trading facility or to deal for their own account or underwrite or place instruments on a firm commitment basis	1,000	3,000
	<i>iii.</i> authorized by their home Member State or EEA State to provide any investment services in terms of the Directive, and to hold and control Clients' Money or Customers' Assets	1,650	3,600
<i>(g)</i>	European management companies establishing a branch in Malta in terms of regulation 9 of the Investment Services Act (UCITS Management Company Passport) Regulations	1,250	4,000
<i>(h)</i>	European Alternative Investment Fund Managers establishing a branch in Malta in terms of regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations	1,250	4,000
<i>(i)</i>	European UCITS marketing their units in Malta in terms of regulation 8 of the Investment Services Act (Marketing of UCITS) Regulations:		
	(i) UCITS Scheme	2,500	3,000
	(ii) Per Scheme sub-funds (per sub-fund)	450	500
			Up to 15 Scheme sub-funds (per sub-fund). No annual supervision fee will be payable from the 16 th Scheme sub-fund upwards
<i>(j)</i>	European Alternative Investment Funds marketing their units in Malta in terms of regulation 5 of Investment services Act (Marketing of Alternative Investment Funds) Regulations:		
	(i) European AIF	2,500	3,000
	(ii) Per Scheme sub-funds		

(per sub-fund)

450

500

Up to 15 Scheme sub-funds (per sub-fund).
*No annual supervision fee will be payable
from the 16th Scheme sub-fund upwards*

(k) Marketing of units or shares of an AIF (whether established in an EU/EEA Member State or in a third country) by an Alternative Investment Fund Manager (whether established in an EU/EEA Member State or in a third country) pursuant to Regulations 7 and 22 of the Investment Services Act (Alternative Investment Fund Managers) (Third Country) Regulations

(i) AIF

2,500

3,000

(ii) Per AIF sub-funds (per sub-fund)

450

500

Registration Fees

(k) Tied agents registered by the competent authority in terms of regulation 5 of the Appointment of Tied Agents Regulations:

(i) where the tied agent is an individual

300

300

(ii) where the tied agent is not an individual

350

350 and 250 per individual employed by such tied agent and who is directly involved in the provision of tied agent activities.