

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Consultation Procedure

Proposals for Legal Notices / Ministerial Regulations and for new laws and amendments to existing laws

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.

In the case of primary legislation in particular, Bills may and do undergo revisions during the Parliamentary stages.

This consultation is also being exercised at the request and on behalf of the Ministry of Finance.

Note for Consultation

Amendments to the Investment Services Act (Tied Agents) Regulations, 2007 (Legal Notice 327 of 2007) and to the European Passport Rights for Credit Institutions Regulations (Legal Notice 88 of 2004)

The Investment Services Act (Tied Agents) Regulations, 2007, regulating the appointment of tied agents, refer only to the appointment of tied agents by local Investment Services Licence Holders (which include local credit institutions providing investment services) and by European investment firms. The current local legal framework does not cater for the appointment of tied agents by European Credit Institutions which are authorised by their Home Regulators to provide investment services in terms of the Market in Financial Instruments Directive ('MIFID') and which offer such services in Malta in terms of Articles 31 or 32 of the said Directive. . The European Passport Rights for Credit Institutions Regulations, 2004 are silent on the matter..

In the light of the above, the following amendments are being proposed :

- a. ***The Investment Services Act (Tied Agents) Regulations, 2007:*** A new regulation (regulation 12) is being proposed, providing that the requirements of these Regulations shall apply *mutatis mutandis* to a European credit institution as defined in regulation 2 of the European Passport Rights for Credit Institutions Regulations 2007 authorised to provide investment services falling under the scope of the MIFID and seeking to appoint a tied agent in terms of the said Directive.

Some other minor amendments, aimed to ensure the better clarity of these Regulations are also being proposed.

- b. ***The European Passport Rights for Credit Institutions Regulations, 2004:*** It is proposed to amend these Regulations so as to provide for the appointment of tied agents providing MIFID investment services in Malta by duly authorized European Credit Institutions passporting into Malta. Such tied agents will be appointed in terms of the Investments Services Act (Tied Agents) Regulations. 2007 as amended. By virtue of this amendment, when referring to the European Passport Rights for Credit Institutions Regulations, European Credit Institutions wishing to appoint tied agents in Malta shall be made aware of the fact that the appointment of such tied agents should be made in terms of the Investment Services Act (Tied Agents) Regulations.

Some other minor amendments are also being proposed to reflect amendments carried out to the Financial Institutions Act to transpose the Payment Services Directive.

Interested parties are to submit any comments which they may have with respect to this proposed legislation, in writing, by not later than the **16th September, 2009**.

August 2009

Chairman
Malta Financial Services Authority

**Minister for Finance, the Economy and
Investment**

L.N. of 2009

**INVESTMENT SERVICES ACT, 1994
(CAP. 370)**

Investment Services Act (Tied Agents) (Amendment) Regulations, 2009

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

Citation and
commencement.

L.N.327 of 2007.

Amends regulation 3
of the principal
regulations.

1. The title of these regulations is the Investment Services Act (Tied Agents) (Amendment) Regulations and shall be read and construed as one with the Investment Services Act (Tied Agents) Regulations, 2007 hereinafter referred to as “the principal regulations”.

2. Regulation 3 of the principal regulations shall be amended as follows:

(a) in subregulation (1) thereof:

(i) for the words “European investment firms may appoint tied agents”, there shall be substituted the words “European investment firms exercising a European right may appoint tied agents”; and

(ii) for the words “and services offered by the investment services licence holder” there shall be inserted the words “ and services offered by the investment services licence holder or the European investment firm.”;

(b) in subregulation (2) thereof, for the words “ subject to these regulations be established” there shall be substituted the words “ subject to these regulations and the European Passport Rights for Investment Firms Regulations, where applicable, be established”.

Amends regulation 4 of the principal regulations.

follows:

3. Regulation 4 of the principal regulations shall be amended as

(a) subregulation (1) thereof shall be deleted;

(b) subregulation (2) and (3) thereof shall be renumbered as subregulation (1) and (2) respectively;

(c) immediately after subregulation (2), as renumbered, there shall be added the following new subregulation (3):

“(3) Tied agents established in Malta and registered in terms of regulation 9 shall be exempt from the provisions of article 3 of the Act.”.

Amends regulation 5 of the principal regulations.

4. (1) Subregulation (1) of regulation 5 of the principal regulations shall be deleted.

(2) For subregulation (2) thereof there shall be substituted the following:

“An investment services licence holder may appoint a tied agent in a Member State or EEA State which provides for the appointment of tied agents in terms of Article 23 of the Directive only if such tied agent is registered in the public register which the Member or EEA State concerned has established for this purpose.”.

Adds new regulation 12 to the principal regulations.

5. Immediately after regulation 11 of the principal regulations, there shall be added the following new regulation 12:

“12. The provisions of these regulations shall apply *mutatis mutandis* to a European credit institution as defined in regulation 2 of the European Passport Rights for Credit Institutions Regulations 2007 authorised under the Directive to provide investment services and seeking to appoint a tied agent in terms of the Directive. Reference to the term “European investment firm” shall be deemed to be a reference to the term “European credit institution”.

L.N. 88 of 2004.

L.N. of 2009

BANKING ACT
(CAP. 371)

European Passport Rights for Credit Institutions
(Amendment) Regulations, 2009

IN exercise of the powers conferred by article 3 (2) (b) of the Banking Act, the Minister of Finance, Economy and Investment, after consultation with the Malta Financial Services Authority, has made the following regulations:

Citation.

1. (1) The title of these regulations is the European Passport Rights for Credit Institutions (Amendment) Regulations, 2009 and they shall be read and construed as one with the European Passport Rights for Credit Institutions Regulations, hereinafter to as the “the principal regulations”.

Legal Notice 88 of 2004.

(2) These regulations shall come into force on the date of publication.

Adds new regulation 4A to the principal regulations.

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

“Exercise of passport rights by European credit institutions – tied agents.

4A. A European credit institution which is seeking to appoint tied agents in Malta in exercise of a European right and in terms of Council Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, shall be subject to the requirements of the Investment Services Act (Tied Agents Regulations), 2007, as may be amended from time to time.”.

L.N. 327 of 2007

Amends regulation 13 of the principal regulations.

3. In sub-regulation (1) of regulation 13 of the principal regulations, for the words “A company, other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of Annex I to the Directive, incorporated in the Schedule to these regulations,”, there shall be substituted the words “A

company, other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2, 3 and 5 to 12 of Annex I to the Directive, incorporated in the Schedule to these regulations,”.

Amends the
Schedule to the
principal
regulations.

4. The Schedule to the principal regulations shall be substituted as follows:

SCHEDULE Annex I to the Directive	
LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION	
1.	Acceptance of deposits and other repayable funds;
2.	Lending including, inter alia: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting);
3.	Financial Leasing;
4.	Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC;
5.	Issuing and administering other means of payment (e.g. travellers cheques and bankers' drafts) in so far as this activity is not covered by activity 4 above;
6.	Guarantees and commitments;
7.	Trading for own account or for account of customers in: (a) money market instruments (cheques, bills, certificates of deposit, etc.); (b) foreign exchange; (c) financial futures and options; (d) exchange and interest-rate instruments; (e) transferable securities
8.	Participation in securities issues and the provision of services related to such issues;
9.	Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;
10.	Money broking;
11.	Portfolio management and advice;
12.	Safekeeping and administration of securities;
13.	Credit reference services;
14.	Safe custody services
The services and activities provided for in Section A and Section B of Schedule I to the European Passport Rights for Investment Firms Regulations (S.L. 371.10) when referring to the instruments provided for in the Section C of the said Schedule are subject to mutual recognition.	