

The Investment Services and Activities and Regulated Markets (Amending) Law of 2012 published in the Official Gazette of the Republic of Cyprus according to Article 52 of the Constitution.

No 141(I) of 2012

A LAW TO AMEND THE INVESTMENT SERVICES AND ACTIVITIES AND REGULATED MARKETS LAWS OF 2007 AND 2009

Preamble
OJ No L331,
15.12.2010
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For the purpose of harmonisation with Article 6, paragraphs 1, 3, 5, 9, 10, 11, 13, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 27 and 28 and Article 13 of the act of the European Union titled “Directive 2010/78/EU of the European Parliament and the Council of 24 November 2010 for the amendment of Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC on the powers of the European Supervisory Authority (European Banking Authority), of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and of the European Supervisory Authority (European Securities and Markets Authority)”,

The House of Representatives votes as follows:

Short title

1. This law shall be cited as the Investment Services and Activities and Regulated Markets (Amending) Law of 2012 and shall be read together with the Investment Services and Activities and Regulated Markets Law of 2007 and 2009 (hereinafter referred to as “basic law”) and the basic law and this Law shall be referred to together as the Investment Services and Activities and Regulated Markets Laws of 2007 to 2012.

144(I) of 2007

106(I) of 2009

Amendment of
article 2 of the basic
law

2. Article 2 of the basic law shall be amended as follows:

(a) by adding in the appropriate alphabetical order the following new terms and their definitions:

“European Securities and Markets Authority or “ESMA” shall mean the European Supervisory Authority (European Securities and Markets

Authority) established under Regulation No 1095/2010;

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“European Systemic Risk Board or “ESRB” shall mean the European Systemic Risk Board established under Regulation (EU) No 1092/2010 of the European Parliament and the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, as amended or replaced from time to time;

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“Regulation (EU) No 1095/2010” shall mean the act of the European Union titled “Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC” as lately amended by Directive 2011/61/EC of the European Parliament and the Council of 08 June 2011 as subsequently may be amended or replaced.”

Replacement of
article 7 of the basic
law

3. Article 7 of the basic law shall be replaced by the following new article:

Public
Register of
CIFs

7.-(1) The Commission shall establish and maintain a public register freely accessible to the public, in which all CIFs shall be registered

(2) Upon authorisation, the Commission shall enter in the public register kept in accordance with this article, the CIF’s name and the number of its authorisation, the date of issue of the licence, the investment and ancillary services which the CIF is allowed to carry out, the investment activities which the CIF is allowed to carry out, as well as any other information the Commission may deem necessary.

(3) The Commission shall see to keep the public register updated.

(4) The Commission shall publish the register either on its website or/and in any other way the Commission may decide.

(5) The Commission shall communicate to ESMA all CIF authorisations.

Amendment of
article 25 of the
basic law

4. Article 25 of the basic law shall be amended by adding, immediately after par. 6 thereof, of the following new paragraph:

“(7) The Commission shall communicate to ESMA the revocation of any CIF authorisation.”

Amendment of
article 47 of the
basic law

5. Article 47 of the basic law shall be amended by adding in its paragraph (5), immediately after the phrase “to all market participants” (seventh line), the phrase “and it is communicated to ESMA”.

Amendment of
article 79 of the
basic law

6. Par. (5) of article 79 of the basic law shall be amended as follows:

(a) by replacing the word “announces” (fourth line) with the word “communicates”; and

(b) by replacing the word “logic” (fifth line) with the word “reasonable”.

Amendment of
article 94 of the
basic law

7. Article 94 of the basic law shall be amended by adding immediately after par. (5) thereof, of the following new paragraph:

“(6) The Commission shall communicate to ESMA the revocation of any authorisation.”

Amendment of
article 105 of the
basic law

8. Article 105 of the basic law shall be amended as follows:

(a) by replacing in par. (2) thereof, the word “demands” (first line) with the word “requests”;

(b) by replacing in par. (2) thereof, the phrase “the other Supervising Authorities” (fifth line) with the phrase “ESMA”;

(c) by replacing in par. (3) thereof, the phrase “information equivalent to that” (first line) with the phrase “respective request”;

(d) by replacing in par. (3) thereof, the phrase “it could cause significant damage to the investors' interests or the orderly functioning of the market” (sixth and seventh line) with the phrase “it may cause significant damage to the investors' interests or the orderly functioning of the market”;

Amendment of
article 112 of the
basic law

9. Article 112 of the basic law shall be amended by replacing the phrase “European Commission” (third line) with the word “ESMA”:

Amendment of
article 126 of the
basic law

10. Article 126 of the basic law shall be amended by adding, immediately after paragraph (4) thereof, the following new paragraph:

“(5) In order to facilitate and accelerate the cooperation and in particular to exchange information, the Commission shall be designated the contact point for the purposes of Directive 2004/39/EC, according to Article 56(1)(3) of the said Directive.”.

Amendment of
article 130 of the
basic law

11. Paragraph (5) of article 130 of the basic law shall be amended as follows:

(a) by adding in the first paragraph thereof, immediately after the phrase “to the competent authority of the other Member State” (sixth and seventh line) the phrase “and to ESMA”; and

(b) by adding in the second paragraph thereof, immediately after the phrase “the notifying competent authority” (third and fourth line) the phrase “and ESMA”.

Amendment of the
basic law by adding
a new article

12. Paragraph (5) of article 130 of the basic law shall be amended as follows:

“Obligation of
cooperation
and exchange
of information
between the
Commission
and ESMA

130A.-(1) The Commission shall cooperate with ESMA for the purposes of this Law and of Directive 2010/78/EC, according to the provisions of Regulation 1095/2010.

(2) The Commission, when and where ESMA requests so, shall provide without any delay, all information necessary to the accomplishment of ESMA’s work according to Article 35 of Regulation 1095/2010.

(3) Each year, the Commission shall provide ESMA with consolidated information of all administrative penalties inflicted by virtue of this Law.

(4) The Commission shall communicate to ESMA any complaints and the relevant remedy procedures which are available by virtue of the Arbitration Law and the International Trade Arbitration Law of 1987.

Amendment of
article 131 of the
basic law

13. Article 131 of the basic law shall be amended by adding immediately after paragraph (3) thereof, the following new paragraph:

“(4) ESMA’s employees shall be able to participate in Commission’s supervisory activities, including on-site inspections carried out jointly by two or more competent authorities by virtue of Article 21 of Regulation 1095/2010.”.

Amendment of
article 132 of the
basic law

14. Article 132 of the basic law shall be amended as follows:

(a) by adding in paragraph (4) thereof, immediately after the phrase “for transmitting” (second line) the phrase “to ESMA, to the ESRB”;

(b) by adding, immediately after paragraph (4) thereof, the following new paragraph:

“(5) In case a request, under article 131, for cooperation in supervisory activities, including on-site inspections, or a request, under article 132, for exchange of information between the Commission and the competent authorities of the other Member States, is rejected or may not be processed within a reasonable period of time, the Commission may report this case to ESMA.

Amendment of
article 133 of the
basic law

15. Paragraph (2) of article 133 of the basic law shall be replaced by the following new paragraph:

(2) In case of refusal, the Commission shall inform the competent authority of the Member State that has submitted the request, as well as ESMA, providing them with the most detailed information possible.”.

Amendment of
article 134 of the
basic law

16. Article 134 of the basic law shall be amended as follows:

(a) by replacing the second paragraph of paragraph (1) thereof,

the word “insufficient” (second line) with the word “inadequate”;

(b) by replacing the second paragraph of paragraph (1) thereof, the word “adequate” (seventh line) with the word “appropriate”;

(c) by adding in the second paragraph of paragraph (1) thereof, immediately after the phrase “the European Commission” (last line) the phrase “and ESMA”;

(d) by adding, immediately after the second paragraph of paragraph (1) thereof, the following new third paragraph:

“The Commission may communicate the whole issue to ESMA.”;

(e) by replacing in the third paragraph of paragraph (2) thereof, the phrase “take appropriate measures to prevent or to penalise further irregularities and, in so far as necessary, to prevent that IF from initiating any further transactions in the Republic.” (sixth to ninth line) with the phrase “all adequate measures required for the protection of investors and the orderly functioning of the markets.”;

(f) by adding in the third paragraph of paragraph (2) thereof, immediately after the phrase “the European Commission” (last line) the phrase “and ESMA”;

(g) by adding, immediately after the third paragraph of paragraph (2) thereof, the following new paragraph:

“The Commission may communicate the whole issue to ESMA.”;

(h) by replacing in the second paragraph of paragraph (3) thereof, the word “insufficient” (second line) with the word “inappropriate”;

(i) by replacing in the second paragraph of paragraph (3) thereof, the word “adequate” (seventh line) with the word “appropriate”;

(j) by adding in the second paragraph of paragraph (3) thereof, immediately after the phrase “the European Commission” (last line) the phrase “and ESMA”;

(k) by adding, immediately after the second paragraph of paragraph (3) thereof, the following new paragraph:

“The Commission may communicate the whole issue to ESMA.”;

Amendment of
article 135 of the
basic law

17. Paragraph (1) of article 135 of the basic law shall be amended by adding, immediately after the phrase “the European Commission” (first line) the phrase “and the ESMA”;

Amendment of
article 141 of the
basic law

18. Article 141 of (1) of the basic law shall be amended as follows:

(a) by the numbering of the existing text thereof, into paragraph (1); and

(b) by adding, immediately after paragraph (1) thereof, the following new paragraph:

“(2) In case the Commission announces publically any measures or penalties inflicted by virtue of this Law, it shall also communicate these to ESMA”.