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No. 5431, 30.12.2020
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R.A.D. 5/2018
R.A.D. 645/2020
R.A.D. 41/2021
R.A.D. 510/2021

UNOFFICIAL CONSOLIDATION OF THE DIRECTIVE DI87-04 OF 2018 OF THE CYPRUS SECURITIES AND EXCHANGE COMMISSION, DI87-04(A) OF 2020, DI87-04(B) OF 2021 AND DI87-04(C) OF 2021

DIRECTIVE DI87-04 OF THE CYPRUS SECURITIES AND EXCHANGE COMMISSION FOR THE PROVISION OF SERVICES BY THIRD COUNTRY FIRMS IN THE REPUBLIC OF CYPRUS TO ELIGIBLE COUNTERPARTIES AND PROFESSIONAL CLIENTS IN THOSE CASES THAT DO NOT FALL WITHIN THE SCOPE OF REGULATION (EU) NO. 600/2014 ON MARKETS IN FINANCIAL INSTRUMENTS (MIFIR)

The Cyprus Securities and Exchange Commission in accordance with the power vested in it by virtue of section 96 of the Provision of Investment Services, the Exercise of Investment Activities, the Operation of Regulated Markets and other related matters Law of 2017, issues the following Directive:

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| Short Title. | 1. | This Directive may be cited as the Directive for the provision of services by third country firms to eligible counterparties and professional clients of 2018 to 2021. |
| R.A.D. 5/2018
R.A.D. 645/2020
R.A.D. 41/2021
R.A.D. 510/2021 | | |
| Interpretation. | 2. | In this Directive, unless the context otherwise indicates: |
| L. 87 (I)/2017 | | “Law” means the Investment Services and Activities and Regulated Markets Law of 2017.

Terms used in this Directive that are not interpreted differently shall have the meaning given to them by the Law.

Where in this Directive reference is made to the Law, it shall include the regulatory administrative acts issued by delegation thereof. |
| Scope. | 3. | The present Directive regulates those cases where third country firms wish to provide their services in the Republic to eligible counterparties and professional clients within the meaning of Part I of Second Appendix of the Law in those cases where the condition of Article 46(2)(a) of Regulation (EU) No. 600/2014 is not met. |
| Second Appendix
L. 87(I)/2017 | | |

Establishment of a branch.	4.	(1) A third-country firm intending to provide in the Republic, investment services or perform investment activities with or without any ancillary services to eligible counterparties and professional clients within the meaning of Part I of Second Appendix of the Law and which does not meet the condition of Article 46(2)(a) of Regulation (EU) No. 600/2014, must, for this purpose:
Second Appendix L. 87(I)/2017		(i) Have been granted authorisation in the third country where its head offices are established, for the provisions of the investment services or the performance of the investment activities which will be provided or performed in the Union and is subject to effective supervision and control of adhering to its obligations, ensuring full compliance with the requirements that are in place in the said third country, and
		(ii) establish a branch in the Republic.
R.A.D. 41/2021		(2) The firm referred to in sub-paragraph (1) must comply with sections 40 and 41 of the Law.
R.A.D. 41/2021		(3) The branch referred to in this paragraph is granted authorisation in accordance with the provisions of section 42 of the Law.
Provision of services at the exclusive initiative of the client.	5.	When an eligible counterparty or professional client within the meaning of Part I of Second Appendix of the Law, established or situated in the European Union, initiates at its own exclusive initiative the provision of an investment service or the performance of investment activity by a third-country firm, which does not meet the condition of Article 46(2)(a) of Regulation (EU) No. 600/2014, the requirement for granting authorisation to operate a branch under paragraph 4(3) above, shall not apply to the provision of that service or activity by the third country firm to that client, including a relationship specifically relating to the provision of that service or activity. An initiative by such clients shall not entitle the third-country firm to market otherwise than through the branch, new categories of investment products or investment services to that client.
Adoption of equivalence decision of the European Commission.	6.	In case that, after the granting of authorisation of a branch, the European Commission adopts a decision in accordance with Article 47(1) of Regulation (EU) No. 600/2014, which results to the third country firm satisfying the conditions of Article 46(2) of the said Regulation, then, provided that the provisions of section 40(1) of the Law are not applied, the third country firm shall decide whether it will continue the operation of its branch or whether it will be registered in the register of third-country firms kept by ESMA in accordance with Article 46(1) of Regulation (EU) No. 600/2014, and notify its decision to the Cyprus Securities and Exchange Commission.

Transitional
Provisions.

R.A.D. 645/2020
R.A.D. 41/2021
R.A.D. 510/2021

6A. (1) By way of derogation from the provisions of paragraph 4(1)(ii) and paragraph 4(2) and without prejudice to the provisions of paragraph 5, the following shall apply after the end of the transition period provided for in Article 126 of the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C384 I/01):

- (i) An Investment Firm of the United Kingdom may provide in the Republic investment services or perform investment activities with or without any ancillary services only to eligible counterparties and professional clients within the meaning of Part I of Second Appendix of the Law for a period of up to twelve (12) months after the end of the said transition period, unless a decision is adopted by the European Commission regarding the existence of equivalence or not, in the meaning of Article 46(2)(a) of Regulation (EU) No. 600/2014; and
- (ii) An Investment Firm of the United Kingdom mentioned in point (i) has duly completed and submitted to the Commission the Form 87-01-04 until 28 February 2021; and
- (iii) An Investment Firm of the United Kingdom mentioned in point (i), complies in full with any other applicable requirements.

(2) By way of derogation from the provisions of paragraph 4(1)(ii) and paragraph 4(2) and without prejudice to the provisions of paragraph 5, following the period referred to in point (i) of sub-paragraph (1), the Investment Firms of sub-paragraph (1) may continue providing investment services to eligible counterparties or/and to professional clients within the meaning of Part I of the Second Appendix of the Law, provided that they have submitted to the Commission by 31 December 2021;

- (a) an application for acquiring a qualifying holding in a CIF, in accordance with the provisions of Article 12 of the Law; or
- (b) an application for the establishment of a branch in the Republic, as per paragraph 4(2),

up until the completion of the evaluation of the application by the Commission and for a period up to six (6) months after the approval of the application or the granting of an authorisation to the branch, as the case may be.

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(3) The provisions of sub-paragraph (2) apply in relation to the Investment Firms of sub-paragraph (1), also in the following cases:

- (i) where the Investment Firms of sub-paragraph (1) belong to a group and an application for granting a CIF authorisation has been submitted to the Commission up until 31 December 2021 by a member of the group in accordance with Chapter I of Title II of the Law;
- (ii) where the Investment Firms of sub-paragraph (1) belong to a group and an application for acquiring a qualifying holding in a CIF has been submitted to the Commission up until 31 December 2021 by a member of the group, in accordance with the provisions of Article 12 of Law;
- (iii) where the Investment Firms of sub-paragraph (1) belong to a group and an application for establishing a branch in the Republic has been submitted to the Commission up until 31 December 2021 by a member of the group as per paragraph 4(2).

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(4) Following the period refer to in sub-paragraph (2), Investment Firms of sub-paragraph (1) may continue providing investment services or performing investment activities with or without any ancillary services to professional clients and/or to eligible counterparties in the Republic, within the meaning of Part I of Second Appendix of the Law, only if they have established a branch in the Republic.

Entry into force.

7. This Directive shall enter into force from the date of its publication in the Official Gazette of the Republic.