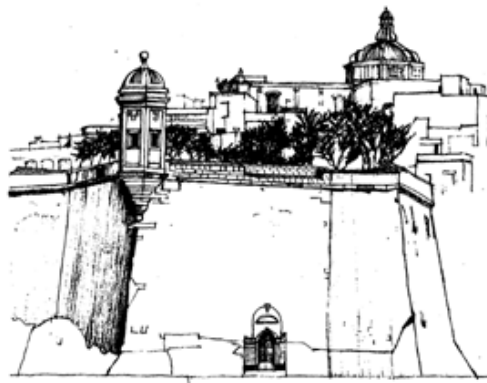


A Guide to Investment Services in Malta



Senglea—Malta

The Guide on Investment Services is designed to assist promoters of Investment Services business and their professional advisors to obtain an overview of the regulatory regime that applies in Malta. Additional information is provided in the Appendices attached to this guide.

This guide does not purport to provide more than an overview. Readers interested in obtaining more information about the establishment of an Investment Services business in Malta or about any related topic are invited to make contact with the Malta Financial Services Authority (MFSA).

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1. INTRODUCTION

Investment Services are regulated by the Investment Services Act (Cap. 370 of the Laws of Malta) (the “ISA”/the “Act”). This law establishes the regulatory framework for two types of licences namely Investment Services Licences and Collective Investment Schemes Licences.

The Investment Services Act, the Regulations and Investment Services Rules issued thereunder also incorporate the transposition of EU legislation in this area, including the Markets in Financial Instruments Directive (Directive 2004/39/EC), the UCITS Directive (Directive 2009/65/EC), the Alternative Investments Fund Managers Directive (Directive 2011/61 EU) and any related updates and legislative developments.

The Malta Financial Services Authority (the “MFSA”/the “Authority”) is responsible for the licensing, regulation and supervision of Investment Services Providers, Collective Investment Schemes and Regulated Markets.

The MFSA regulates and licenses a broad range of service providers and seeks to provide a stable regulatory environment which encourages the development of investment services business in a sound and professional manner. The protection of investors’ interests is paramount and powers are available to take action against those who undertake licensable activity without an appropriate licence as well as against those who fail to meet the required standards. However, the MFSA is mindful of the importance of providing licence holders with the freedom to innovate and to develop new products to meet the changing needs of the market.

2. LICENSING AND AUTHORISATION

2.1. INVESTMENT SERVICES ACT

The Investment Services Act is one of the major pieces of legislation administered by the Authority. The Act provides the statutory basis for the licensing and regulation of persons and companies wishing to set up investment services undertakings and collective investment schemes.

2.1.1. THE MEANING OF “INVESTMENT SERVICES”

A licensable activity takes place when an investment service is offered in respect of an instrument. It is an offence under the Act to conduct licensable activity without a licence. An “investment service” is defined as “any service falling within the First Schedule [to the Act] when provided in relation to an instrument.” The term “instrument” is defined in the ISA and covers a wide range of investments and financial products, including shares, bonds and other securities and foreign exchange dealings as listed in the Second Schedule to the Act.

The First Schedule to the Act lists the following services:

- Reception and transmission of orders in relation to one or more instruments;
- Execution of orders on behalf of other persons;
- Dealing on own account;
- Management of investments;
- Trustee, custodian or nominee services;

- Investment advice;
- Underwriting of instruments and, or placing of instruments on a firm commitment basis;
- Placing of instruments without a firm commitment basis;
- Operation of a multilateral trading facility.

These services and instruments are dealt with in additional detail in Appendices I and II to this Guide.

2.1.2. CRITERIA WHICH THE MFSA WILL APPLY IN CONSIDERING AN APPLICATION FOR A LICENCE

The ISA lays down the broad criteria to be applied by the MFSA when considering applications. When considering whether to grant or refuse a licence, the MFSA is legally required to have regard to three criteria set out in the law:

- a. the protection of investors and the general public;
- b. the protection of the reputation of Malta taking into account Malta's international commitments;
and
- c. the promotion of competition and choice.

An Investment Services Licence is issued by the Authority only if it is satisfied that the applicant is a **“fit and proper”** person to provide the investment service concerned and that the applicant will comply with and observe any Investment Services Rules and Regulations issued pursuant to the provisions of the ISA and applicable to the licence holder.

The concept of “fit and proper” is a fundamental regulatory concept. It is a rigorous test which requires senior staff and potential and existing licensees - both at licensing stage and on an on-going basis thereafter - to demonstrate solvency, competence and integrity in all their dealings. The MFSA will only grant a licence if it is satisfied that the applicant (or, in the case of a company, each of its directors and officers) and other related parties are “fit and proper” to provide the investment services concerned and that they will comply with the applicable rules and regulations. In general there are three criteria which have to be met by those who must satisfy the “fit and proper” test. These are *integrity, competence and solvency*.

2.1.3. REQUIREMENTS FOR AN INVESTMENT SERVICES LICENCE

Article 3 of the ISA states that:

“3(1) No person shall provide, or hold himself out as providing, an investment service in or from within Malta unless he is in possession of a valid investment services licence.

(2) No body corporate, unincorporated body or association formed in accordance with or existing under the laws of Malta, shall provide or hold itself out as providing an investment service in or from within a country, territory or other place outside Malta unless it is in possession of a valid investment services licence.”

An investment services licence is required whether the investment service is being provided in Malta or overseas. If the investment service is provided in Malta to overseas residents, a Licence is required whatever kind of “legal person” (including an individual) is involved. If the investment service is being provided overseas, from outside Malta, Article 3(2) of the Act provides that an Investment

Services Licence is required if the service is being provided by a body corporate, unincorporated body or association formed, established or constituted under the Laws of Malta.

Article 12(1)(i) of the Act makes provision for exemptions from the requirement to have an investment services licence. For further details, reference should be made to the Investment Services Act (Exemption) Regulations, the European Passport Rights for Investment Firms Regulations, the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations, the European Passport Rights for Persons Operating Multilateral Trading Facilities Regulations, the Investment Services Act (UCITS Management Company Passport) Regulations and the Investment Services Act (Alternative Investment Fund Manager)(Passport) Regulations.

2.2. INVESTMENT SERVICES RULES

The Investment Services Rules lay down additional requirements and conditions in relation to the activities of licence holders, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the MFSA, reporting requirements, financial resources, capital adequacy and any related requirements. The Rules also include the necessary forms to be completed by applicants for an investment services licence. Copies of these Rules may be obtained from the MFSA website, although in the first instance, potential applicants are encouraged to discuss their proposals with the Authorisation Unit.

Every licence is subject to Standard Licence Conditions (“SLCs”) - which are described in full in the Investment Services Rules for Investment Services Providers. However, the SLCs are not exhaustive and may need to be supplemented in certain circumstances. The objective of the SLCs is to protect investors. They require the licence holder to act honestly, fairly and with due skill, care, diligence and integrity in the best interests of the investor. Furthermore, except in certain specified instances, there must be a written agreement with each client and there must be adequate internal control and compliance procedures. Licence holders must retain records that are sufficient to demonstrate compliance with the regulations and the individual licence conditions. Prudential regulations require licence holders to submit annual and interim returns¹.

The MFSA regards the Investment Services Rules as a framework within which the SLCs can be tailored to meet the particular application being considered. If the promoters can justify why one or more derogation from the SLCs should be considered, the Authority will certainly consider the proposals submitted. However, the Authority will not approve any change that detracts from its high standards of regulation. In summary, there is certain flexibility within firm regulatory principles.

3. CATEGORIES OF LICENCES

There are four categories of Investment Services Licences as follows:

- *Category 1a:*
Licence Holders authorised to receive and transmit orders in relation to one or more instruments 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. (This Category does not include managers of Collective Investment Schemes.)

¹ Further information on the manner in which the MFSA supervises the activity of the Licence Holders may be obtained from the document entitled “The Framework for the Regulation of Investment Services Licence Holders, Regulated Markets and Central Securities Depositories.” This document can be downloaded from the MFSA website: www.mfsa.com.mt

- *Category 1b:*
Licence Holders authorised to receive and transmit orders and/or provide investment advice in relation to one or more instruments 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. (This Category does not include managers of Collective Investment Schemes.)
- *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 to the following:
 - (a) Alternative Investment Funds marketed in Malta in terms of regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations; or
 - (b) Alternative Investment Funds 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 in terms of the Investment Services Rules.

4. THE APPLICATION PROCESS

The application process may be summarised in three phases namely:

- 1) the Preparatory Stage;
- 2) the Pre-Licensing Stage; and
- 3) the Post-Licensing/Pre-Commencement of Business Stage.

The speed at which the Preparatory Stage is completed depends very much on the completeness of the documentation submitted and on the applicant's efficiency. Stages two and three can be completed in within six to twelve weeks.

4.1. PREPARATORY STAGE

It is recommended that the promoters hold a preliminary meeting with the MFSA to outline their proposal. This meeting should be held well in advance of submitting an application for a licence. Following this preliminary meeting, promoters usually submit a draft licence application form, together with supporting documentation as specified in the application form itself.² The application form and all material submitted should be in English, or if in another language, should be accompanied by an English translation.

² A sample copy of the Application Form is set out in Schedule A1 of the Investment Services Rules for Investment Services Providers.

SUPPORTING DOCUMENTATION

1. A covering letter as shown in the Application Form.
2. The appropriate fee (this is not refundable).
3. The auditor's confirmation.
4. Supporting Board Resolution.
5. Financial Resources Statement³.
6. Project profit and loss account and balance sheet for 3 years after the licence is issued.
7. Where appropriate, copies of the applicant's audited accounts for the previous three years and those of other relevant related companies.
8. The Memorandum and Articles of Association or Partnership Agreement as appropriate.
9. Specimen copies of the insurance policies and draft schedule/cover note (where applicable) and insurance checklist.
10. Personal Questionnaire Form⁴ for each director, shareholder and senior officer of the applicant.
11. Competency Form⁵ in the case of a request for authorisation to engage in Portfolio Management or Investment Advice or to act as Compliance Officer, Money Laundering Reporting Officer or Risk Manager
12. Memorandum and Articles of Association of the applicant's corporate shareholders.
13. A chart illustrating the internal operational structure of the applicant's business (this should show names, reporting lines and roles).
14. Where the applicant is a company/partnership that forms part of a group, a diagram showing the relationships between the Applicant and other members of the group should be provided. The "family tree" submitted should give details up to the ultimate beneficial owner(s), showing percentage sizes of holdings in each entity unless the entity has: (a) one ultimate beneficial owner with a holding of over 50% of the voting rights or (b) no less than fifty ultimate beneficial owners who between them account for over 50% of the voting rights. If (a) or (b) apply, it will only be necessary to give details of the ultimate beneficial owners with holdings of 10% or more.

The draft application and supporting documentation are reviewed and preliminary comments are provided to the applicant who in turn is invited to revert with comments. The MFSA may request more information and may make such further enquiries as it considers necessary. The "fit and proper" checks follow. These consist in following up the information which has been provided in the application documents submitted. The "fit and proper" test must be satisfied at the outset and on a continuing basis and the three main criteria which are to be met to satisfy this test are integrity, competence and solvency.

In particular, with regards to integrity, the MFSA will carry out due diligence enquiries on the information contained in the Personal Questionnaires and the Competency Forms. From the due diligence enquires undertaken the MFSA would need to obtain sufficient comfort that no adverse information is known about the applicant, and where the applicant is a company sufficient comfort is obtained on its directors and senior personnel.

The MFSA will consider the nature of the proposed activity and the kind of investors to whom and the market to which the investment services are to be provided. On the basis of this analysis, a decision will be made regarding which SLCs should apply. The MFSA may allow some derogation from the SLCs where the circumstances justify such treatment, as long as there is adequate protection of investors. The applicant will have the opportunity to consider the conditions before they are confirmed.

³ Schedule C of the Investment Services Rules for Investment Services Providers.

⁴ Schedule F of the Investment Services Rules for Investment Services Providers.

⁵ Schedule I of the Investment Services Rules for Investment Services Providers

4.2. PRE-LICENSING STAGE

Once the draft application and supporting documents have been reviewed and the draft licence conditions have been agreed to, the MFSA will issue its “in principle” approval for the issue of a licence. The applicant will then be required to finalise any outstanding matters, such as company incorporation (or registration of partnership), submission of signed copies of the revised application form together with supporting documentation in their final format, and any other issues raised during the Application process. The licence is issued once all pre-licensing issues are resolved.

4.3. POST-LICENSING STAGE

The Applicant may also be required to satisfy a number of post-licensing matters prior to formal commencement of business.

5. THE FEE STRUCTURE

An application fee is payable to the Authority upon submission of an application for the granting of a licence. Thereafter an annual supervisory fee is payable to the Authority upon submission of the annual audited financial statements. The first annual supervisory fee shall be payable immediately upon granting of a licence and shall be equal to a proportion of the minimum fee. The amount of each fee is set out in Appendix IV of this Guide.

6. IMPLEMENTATION OF EU DIRECTIVES

6.1. MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

The Market in Financial Instruments Directive (“MiFID”) replaced the Investment Services Directive, which was repealed on the 1st November 2007. The aim of MiFID was to introduce a comprehensive regulatory regime intended to cover investment services, trading platforms (including regulated markets, multilateral trading facilities and systematic internalisers), as well as financial markets in Europe. Furthermore, the Directive was also aimed at opening up Europe’s capital markets by improving the price transparency of traded financial instruments while facilitating trade across borders.

MiFID-compliant investment firms authorised in Malta under the Investment Services Act benefit from the “freedom of services” in the EU in relation to services and financial instruments listed in the Directive.

MiFID harmonised the regulation of investment services firms in the EU by introducing:

- a) rules regulating the operation/administration and conduct of business of investment firms;
- b) pre/post transparency requirements applicable to trading platforms;
- c) enhanced transaction requirements and enforcement and exchange of information provisions.

As a result of the transposition exercise of the MiFID into Maltese law, certain changes to the local legal and regulatory framework had to take place. These included:

- a) amendments to the Financial Markets Act, 1990 and the Investment services Act, 1994;
- b) the issue of a number of new Legal Notices as well as the amendment of certain Legal Notices issued under the above-mentioned Acts; and
- c) revisions to the MFSA Investment Services Rules issued in terms of the Investment Services Act and to the general notification rules issued in terms of the Financial Markets Act.

6.2. THE DIRECTIVE ON UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES

Directive 2009/65/EC was approved by the European Parliament in January 2009 and adopted by the Council in June 2009. This Directive, which replaces the previous UCITS Directive 85/611/EEC, provides for provisions regulating the establishment and operation of UCITS funds. Investment funds authorised in accordance with the provisions of this Directive may be distributed to investors across the EU after following a defined procedure for notifying the relevant competent authorities.

Directive 2009/65/EC is accompanied by Level 2 Implementing Measures and together they form the package which lays the foundations for improved investor protection and further strengthen the competitiveness of the UCITS brand.

The UCITS framework has more recently been improved by “UCITS IV”, which is aimed at making the UCITS market more efficient, especially vis-à-vis the cross-border activities of fund management companies. UCITS IV aims at:

- [i] offering the investing public a wider choice of financial products at lower prices through further integration of the Internal Market;
- [ii] enhancing investor protection through better information and more effective supervision; and
- [iii] preserving the competitiveness of the European funds industry by updating the regulatory framework of UCITS funds in order to reflect developments in the global financial market.

As a consequence, UCITS IV has:

- [a] created an authentic EU passport for UCITS management companies;
- [b] improved investor information through the creation of the Key Investor Information Document;
- [c] facilitated the cross-border marketing of UCITS;
- [d] made possible the cross-border mergers of UCITS;
- [e] introduced a framework for master-feeder structures; and
- [f] strengthened the supervision of UCITS Funds and management companies.

The main provisions of the Directive have been transposed through the Investment Services Rules, particularly in Part BII of the Investment Services Rules for Investment Services Providers regulating the UCITS Fund Manager and Part BII of the Investment Services Rules for Retail Collective Investment Schemes regulating the UCITS scheme. Other requirements set out by UCITS IV have been transposed by means of Regulations and are those relating to: (a) the cross-border marketing of

UCITS Schemes; (b) the passporting rights of UCITS Management Companies; and (c) the merger of UCITS Schemes.

In particular, the provisions relating to the regulation of the UCITS management company passport were transposed in the Investment Services Act (UCITS Management Company Passport) Regulations. The Management Company Passport provides strategic opportunities for management companies in that it allows funds authorised in a Member State to be managed by a management company which is established in another Member State.

The Investment Services Act (UCITS Management Company Passport) Regulations are intended to set out the procedure applicable for the attainment of the regulatory approval required for a Maltese management company to establish a branch or to provide services on a cross-border basis in another EU/EEA Member State and for a European management company to establish a branch or to provide management services on a cross-border basis in Malta. These Regulations also define which regulatory authority has jurisdiction to take action in case of breaches of the relevant requirements by a management company 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.

The Investment Services Act (UCITS Management Company Passport) Regulations are further supplemented by Schedules DII and EII to Part A of the Investment Services Rules for Investment Services Providers. These Schedules⁶ are applicable as follows:

- Schedule DII provides the applicable notification letter for UCITS Management Companies wishing to provide cross-border services under the freedom to provide services in another EU or EEA Member State; and
- Schedule EII provides the applicable notification letter for UCITS Management Companies wishing to provide cross-border services via the establishment of a branch in another EU or EEA Member State.

6.3. THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative investment Fund Managers (also referred to as “AIFMD”) was published in the Official Journal of the European Union on 1st July 2011. The transposition deadline for this Directive together with its Level 2 Implementing Measures was 22nd July 2013.

The main aim of the AIFMD is that of creating a comprehensive and effective regulatory and supervisory framework for Alternative Fund Managers (“AIFMs”) in the EU. The AIFMD introduces a harmonised regulatory and supervisory framework for AIFMs in the EU. For the purposes of the AIFMD, Alternative Investment Funds (“AIFs”) are defined as all funds that do not require authorisation under the UCITS Directive. The objectives of the Directive are to:

- [i] ensure that all AIFMs are subject to appropriate authorisation and registration requirements;
- [ii] provide a framework for the enhanced monitoring of macro-prudential risks, e.g. through sharing of relevant data among supervisors;
- [iii] improve risk management and organisational safeguards to mitigate micro-prudential risks;
- [iv] enhance investor protection;

⁶ The Investment Services Rules for Investment Services Providers can be downloaded from the MFSA Website at the following link: <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=262>

- [v] improve public accountability for AIFs holding controlling stakes in companies; and
- [vi] develop the single market for AIFMs.

The main provisions of the AIFMD have been transposed through the Investment Services Rules, including the Investment Services Rules for Alternative Investment Funds. Other requirements set out in the AIFMD have been transposed by means of Regulations, namely those relating to: (a) the cross-border marketing of AIFs and (b) the passporting rights of AIFMs.

The Investment Services Act (Marketing of Alternative Investment Funds) 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.

On the other hand, the provisions relating to the regulation of the AIFM passport were transposed in the Investment Services Act (Alternative Investment Fund Managers)(Passport) Regulations. These 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.

The Investment Services Act (Alternative Investment Fund Managers)(Passport) Regulations are further supplemented by Schedules DIII and EIII to Part A of the Investment Services Rules for Investment Services Providers. These Schedules are applicable as follows:

- Schedule DIII provides the applicable notification letter for AIFMs wishing to provide cross-border services under the freedom to provide services in another EU or EEA Member State; and
- Schedule EIII provides the applicable notification letter for AIFMs wishing to provide cross-border services via the establishment of a branch in another EU or EEA Member State.

APPENDIX I - FIRST SCHEDULE (ISA) - SERVICES

RECEPTION AND TRANSMISSION OF ORDERS IN RELATION TO ONE OR MORE INSTRUMENTS

The reception from a person of an order to buy, sell or subscribe for instruments and the transmission of that order to a third party for execution.

EXECUTION OF ORDERS ON BEHALF OF OTHER PERSONS

Acting to conclude agreements to buy, sell or subscribe for one or more instruments on behalf of other persons.

DEALING ON OWN ACCOUNT

Trading against proprietary capital resulting in conclusion of transactions in one or more instruments

MANAGEMENT OF INVESTMENTS

Managing or agreeing to manage assets belonging to another person if those assets consist of or include one or more instruments or the arrangements for their management are such that the person managing or agreeing to manage those assets has a discretion to invest any of those assets in one or more instruments.

Management of Investments may also constitute the selection or agreement to select, on a discretionary basis, instruments by reference to which benefits are wholly or partly payable under a contract of insurance falling within class III – linked long term of the Second Schedule to the Insurance Business Act.

Collective portfolio management of assets, belonging to collective investment schemes, where the arrangements for their management are such that the person managing or agreeing to manage those assets has discretion to invest in any movable or immovable property.

TRUSTEE, CUSTODIAN OR NOMINEE SERVICES

- a. Acting as trustee, custodian or nominee holder of an instrument, or of the assets represented by or otherwise connected with an instrument, where the person acting as trustee, custodian or nominee holder is so doing as part of his providing any investment service in paragraphs 1, 2, 3, 4 or 6 of this Schedule;

Provided that for the purposes of this sub-paragraph any person who is authorised or otherwise exempt from authorisation in terms of article 43 or 43A of the Trusts and Trustees Act shall not by virtue of holding such assets be required to have a licence in terms of this subparagraph if such person does not provide an investment service and delegates all activities which are investment services in terms of the Investment Services Act to a person who is licensed to provide such services; or

- b. Holding an instrument or the assets represented by or otherwise connected with an instrument as nominee, where the person acting as nominee is so doing on behalf of another person who is providing any investment service in this Schedule or on behalf of a client of such person, and such nominee holding is carried out in relation to such investment service; or

Provided that for the purposes of this paragraph any person who is authorised or otherwise exempt from authorisation in terms of article 43 or 43A of the Trusts and Trustees Act shall not

by virtue of holding such assets be required to have a licence in terms of the Investment Services Act.

- c. Acting as trustee or custodian in relation to a collective investment scheme.

INVESTMENT ADVICE

Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors or as agent for an investor or potential investor, a personal recommendation in respect of one or more transactions relating to one or more instruments.

For the purposes of this paragraph, a "personal recommendation" shall mean a recommendation presented as suitable for the person to whom it is addressed, or which is based on a consideration of the circumstances of that person, and must constitute a recommendation to take one of the following steps:

- (a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular instrument;
- (b) to exercise or not to exercise any right conferred by a particular instrument to buy, sell, subscribe for, exchange, or redeem an instrument;
- (c) to select one or more instruments by reference to which benefits are wholly or partly payable under a contract of insurance falling within the meaning of class III – "linked long term" of the Second Schedule to the Insurance Business Act.

A recommendation is not a persona recommendation if it is issued exclusively through distribution channels or to the public.

UNDERWRITING OF INSTRUMENTS AND, OR PLACING OF INSTRUMENTS ON A FIRM COMMITMENT BASIS

The underwriting or placing of instruments such that the person providing the service assumes the risk of bringing a new securities issue to the market by buying the issue from the issuer thereby guaranteeing the sale of certain number of shares to investors.

PLACING OF INSTRUMENTS WITHOUT A FIRM COMMITMENT BASIS

The marketing of newly-issued securities or of securities which are already in issue but not listed, to specified persons and which does not involve an offer to the public or to existing holders of the issuer's securities' – without assuming the risk of guaranteeing the sale of a certain number of shares by buying the relative securities from the issuer.

OPERATION OF A MULTILATERAL TRADING FACILITY

The operation of a multilateral system which brings together multiple third party buying and selling interests in instruments – in the system and in accordance with non-discretionary requirements – in a way that results in a contract.

APPENDIX II - SECOND SCHEDULE (ISA) - INSTRUMENTS

1. Transferable Securities

Those classes of securities which are negotiable on the capital market and include:

- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
- (b) bonds or other forms of securitised
- (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

2. Money Market Instruments

Those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

3. Units in collective investments schemes.

4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.

5. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (other than by reason of a default or other termination event).

6. Options, futures, swaps, and any other derivative contracts relating to commodities, that can be physically settled provided that they are traded on a regulated market, within the meaning of the Financial Markets Act and, or a Multilateral Trading Facility within the meaning of Schedule 1.

7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled, are not for commercial purposes, are not included in article 6 of this Schedule, and, which have the characteristics of other derivative instruments, having regard to whether, *inter alia*, they are cleared and settled throughout recognised clearing houses or are subject to regular margin calls.

8. Derivative instruments for the transfer of credit risk.

9. Rights under a contract for differences or under any other contract the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price for property of any description or in an index or other factor designated for that purpose in the contract.

10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Schedule, which have the characteristics of other derivative instruments, having regard to whether

inter alia, they are traded on a regulated market within the meaning of the Financial Markets Act or a Multilateral Trading Facility within the meaning of the First Schedule, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

- 11.** Certificates or other instruments which confer property rights in respect of any instrument falling within the Schedule.
- 12.** Foreign exchange acquired or held for investment purposes.

APPENDIX III - OWN FUNDS REQUIREMENT

FINANCIAL RESOURCES REQUIREMENT

In terms of the Investment Services Rules for Investment Services Providers, Licence Holders are required at all times to maintain own funds which are equal to or in excess of their capital resources requirement. These shall constitute the Licence Holder's Financial Resources Requirement.

This Appendix calculates the Licence Holder's capital resources requirement on an individual basis. Where the Licence Holder is a member of a group of companies as defined in the Companies Act, 1995, the Licence Holder shall ensure compliance, where applicable, with the financial resources requirement outlined in Appendix 3 of the Investment Services Rules for Investment Services Providers ("Consolidated Financial Resources Requirement and Guidance on the compilation of the Financial Return for Consolidations").

CAPITAL RESOURCES REQUIREMENT

The components of the capital resources requirement vary depending on the Category of Licence Holders. The following tables summarise the components of the capital resources requirement:

A. Category 1a, 1b, Category 2 and Category 4

The Capital Resources Requirement shall be the higher of (i) and (ii) below:

- i. Initial Capital
- ii. The higher of the following:
- iii.
 - a. The sum of the non-trading book business risk components, the trading book business risk components, the commodities instruments – risk component, the foreign exchange risk component and the settlement risk component;
 - b. The fixed overheads requirement.

B. Category 3 – including Operators of MTFs

The Capital Resources Requirement shall be the higher of (i) and (ii) below:

- i. Initial Capital
- ii. The sum of the non-trading book business risk components, the trading book risk components, the commodities instruments – risk component, the large exposures risk component, the foreign exchange risk component and the operational risk component.

C. Fund Managers (UCITS Fund Managers, Non-UCITS Retail Fund Managers and AIFMs)

The Capital Resources Requirement applicable to Fund Managers shall be the higher of (i) and (ii) below:

- i. The sum of the following:
 - a. Initial Capital of EUR 125,000
 - b. An additional amount of Own Funds equivalent of 0.02% of the amount by which the value of the portfolios under management exceed EUR 250,000,000.

The summation of (a) and (b) above shall not exceed EUR 10,000,000.

Provided that the Fund Manager may be exempted from providing up to 50% of the additional amount of Own Funds referred to in (b) above, if it benefits from a guarantee of the same amount given by a credit institution or insurance undertaking. The credit institution or insurance undertaking must have its registered office in a Member State or third country that is subject to prudential rules considered by the MFSA as equivalent to those provided under Community Law.

Fund Managers wishing to avail themselves of this exemption should make an application to the MFSA.

- ii. The fixed overheads requirement.

For the purpose of the above calculation, the following portfolios shall be deemed to be the portfolios of the Fund Manager:

- a. Unit trusts/ common funds managed by the Fund Manager including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;
- b. Investment companies for which the Fund Manager is the designated management company;
- c. Other collective investment schemes managed by the Fund Manager including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation.

The Fund Manager shall be considered as managing portfolios under delegation in those cases where it does not have a direct relationship with the UCITS or AIF concerned due to its role as Sub-Manager of the designated UCITS Fund Manager or AIFM.

CATEGORIES OF LICENCE HOLDERS AND OF THE INITIAL CAPITAL⁷ REQUIREMENTS		
Licence Holder Category		EUR
1(A)	Licence Holders authorised to receive and transmit orders in relation to one or more financial instrument and/or provide investment advice and, or place instruments without a firm commitment basis but not hold or control Clients' Money or Customers' Assets <i>Provided that where Category 1(A) Licence Holders are also registered under the Insurance Mediation Directive, the initial capital requirement shall be reduced to EUR 25,000.</i>	50,000
1(B)	Licence Holders authorised to receive and transmit orders, and/or provide investment advice and/or place financial instruments without a firm commitment basis solely for Non-Private Customers but not to hold or control Clients' Money or Customers' Assets. <i>Provided that where Category 1(B) Licence Holders are also registered under the Insurance Mediation Directive, the initial capital requirement shall be reduced to EUR 25,000.</i>	20,000 With PII
		50,000 Without PII
2	Licence Holders authorised to provide any Investment Service, and hold or control Clients' Money or Customers' Assets, but not to operate a multilateral trading facility or deal for their own account or underwrite and/or place financial instruments on a firm commitment basis.	125,000
3	Licence Holders authorised to provide any Investment Service including operating a multilateral trading facility, to hold and control Clients' Money or Customers' Assets and to deal for their own account or underwrite and/or place financial instruments on a firm commitment basis.	730,000
4	Licence Holders authorised to act as trustees or custodians of Collective Investment Schemes	125,000

⁷ The term 'initial capital' shall be comprised of:

- [a] **Equity capital** meaning: share capital subscribed by shareholders or other proprietors, in so far as it has been paid up, plus share premium accounts but excluding cumulative preferential shares; and
- [b] **Reserves** meaning: revenue reserves, interim or year-end net profits/ retained profits for the year, unrealised fair value movements in held for trading financial instruments and other reserves.

APPENDIX IV - SCHEDULE OF FEES

INVESTMENT SERVICES LICENSES

	Application/Notification Fee	Supervisory Fee
	<i>EUR</i>	<i>EUR</i>
Category 1a	2,500	2,000 (for revenue up to EUR 50,000) 350 per tranche or part thereof (for further tranches of EUR 50,000 up to a maximum of EUR 1,000,000)
Category 1b	3,000	2,750 (for revenue up to EUR 50,000) 350 per tranche or part thereof (for further tranches of EUR 50,000 up to a maximum of EUR 1,000,000)
Category 2	5,000	4,500 (for revenue up to EUR 250,000) 400 per tranche or part thereof (for further tranches of EUR 250,000 up to a maximum of EUR 5,000,000)
Category 3	7,000	6,000 (for revenue up to EUR 250,000) 400 per tranche or part thereof (for further tranches of EUR 250,000 up to a maximum of EUR 50,000,000)
Category 4a	17,000	15,000
Category 4b	7,500	5,000

COLLECTIVE INVESTMENT SCHEMES

	Application Fee	Supervisory Fee
	EUR	EUR

Appendix IV
SCHEDULE OF FEES

Collective Investments Schemes which fall within the scope of Article 4 of the Investment Services Act; and which are authorised as UCITS Retail Schemes	2,500	3,000
Sub-funds (per sub-fund)	450	500 (per sub-fund) up to fifteen sub-funds <i>No annual supervisory fee will be payable from the 16th Scheme sub-fund upwards</i>
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 Authority	2,000	2,000
Sub-funds (per sub-fund)	1,000	600

RECOGNISED ENTITIES

	Recognition Fee	Supervisory Fee
	EUR	EUR
Persons providing administrative services in terms of Article 9A of the Act	3,000	1,500
Private Schemes recognised in terms of the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulation	2,000	750

EUROPEAN MANAGEMENT COMPANIES PROVIDING SERVICES THROUGH THE ESTABLISHMENT OF A BRANCH

	Application Fee	Annual Fee
	EUR	EUR
European Management Companies Providing Services	1,250	4,000

in Terms of Regulation 9 of the Investment Services Act (UCITS) Management Company (Passport) Regulations		
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EUROPEAN UCITS

	Notification Fee	Annual Fee
	EUR	EUR
European UCITS marketing their units in Malta in terms of Regulation 8 of the Investment Services Act (Marketing of UCITS) Regulations		
UCITS Scheme	2,500	3,000
Per Scheme sub-funds (per sub-fund)	450	<i>500 up to 15 Scheme sub-funds (per sub-fund) No annual supervisory fee will be payable from the 16th scheme sub-fund upwards</i>

EUROPEAN INVESTMENT FIRMS ESTABLISHING A BRANCH IN MALTA

	Notification Fee	Supervisory Fee
	EUR	EUR
European Investment Firms establishing a branch in Malta in terms of Regulation 3 of the European Passport Rights for Investment Firms Regulations and 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 authorised to hold and control clients' money or customers' assets.	750	1,200
European Investment Firms establishing a branch in Malta		

in terms of Regulation 3 of the European Passport Rights for Investment Firms Regulations and 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
European Investment Firms establishing a branch in Malta in terms of Regulation 3 of the European Passport Rights for Investment Firms Regulations and 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	1,650	3,600

EUROPEAN ALTERNATIVE INVESTMENT FUNDS AND EUROPEAN ALTERNATIVE INVESTMENT FUND MANAGERS

	Notification Fee	Supervisory Fee
	EUR	EUR
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
European Alternative Investment Funds having their units marketed in Malta in terms of Regulation 5 of the Investment Services Act (Marketing of Alternative		

Investment Regulations Funds)		
European AIF	2,500	3,000
Per Scheme sub-funds (per sub-fund)	450	500 up to fifteen scheme sub-funds (per sub-fund)
		<i>No annual supervisory fee will be payable from the 16th scheme sub-fund upwards</i>
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		
AIF	2,500	3,000
Per AIF sub-funds (per sub-fund)	450	500

TIED AGENTS

	Registration Fee	Annual Fee
	EUR	EUR
Individual	300	300
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

APPENDIX V - PROVISION OF ONLINE FOREX TRADING SERVICES

This section provides information on the establishment of entities intending to provide online forex trading. This activity would generally be provided in the Member State where the entity is established and is also made available to clients resident within the EU further to the passporting of this service under the EU Markets in Financial Instruments Directive (“MiFID”). The MiFID was adopted by the European Parliament and the Council in 2004 with *inter alia* the aim of ensuring a harmonised regime for the authorisation and operation of investment firms within the EU.

A service with respect to foreign exchange is licensable under the Investment Services Act, (“ISA”) and is passportable under MiFID, if the service relates to contracts for difference, derivatives in relation to foreign exchange, and rolling spot forex. Providing a service with respect to foreign exchange, which is acquired or held for investment purposes is also licensable under the ISA, however this is not considered a MiFID service and cannot therefore be passported under this EU Directive.

Online forex trading is generally provided in one of two forms, either by dealing on own account or by acting as a riskless principal (often as a ‘white label partner’). With respect to the latter, the entity would be involved in executing two matching trades (one with the client and one offsetting trade with another principal) entered at the same time and price, with the entity acting as counterparty to both transactions. This is considered as execution of orders on behalf of clients. As indicated in Appendix II to this guide, in order for an entity to execute orders on behalf of clients, a category 2 investment services licence is required. On the other hand, an entity which would like to deal on its own account is required to have a Category 3 investment services licence.

The main difference in the requirements which are applicable to a category 2 and a category 3 investment services licence holder relates to the capital requirements which must be satisfied. A Category 2 investment services licence holder is required to have an initial capital of Euro 125,000 and has to have own funds which are higher than either: **[i]** initial capital; or **[ii]** the sum of all the risk components calculated in terms of the rules but excluding the operational risk component; or **[iii]** the fixed overheads requirement. A category 3 investment services licence holder is required to have an initial capital of Euro 730,000 and should have own funds which are higher than either: **[i]** initial capital; or **[ii]** the sum of all the risk components calculated in terms of the rules including the operational risk component.

An applicant intending to provide online forex trading, should complete the application process outlined in Section 3 of this guide. In addition, it is advisable for the applicant to review the capital requirements applicable to Category 2 and Category 3 investment services licence holders, which are included in section 7 and Appendix 1 to 3 of the Investment Services Rules for Investment Services Providers. These are available on the MFSA’s web-site under the section: Securities/Investment Services/ Investment Services Rules for Investment Services Providers. An explanation on the calculation of the risk components relating to CFDs and derivative financial instruments may be provided upon a request addressed to the Director of the Authorisation Unit on au@mfsa.com.mt.

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The logo for the Malta Financial Services Authority (MFSA) consists of the letters "MFSA" in a serif font, colored in a dark red or maroon hue. The text is centered within a solid black rectangular background.