

**Regulation and Supervision  
of the  
Financial Services Sector**



Mdina – The Silent City, Malta

**MFSA**

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MALTA FINANCIAL SERVICES AUTHORITY

## Contents

1	Introduction .....	3
2	Regulation and Supervision of Financial Services Companies .....	4
2.1	<i>Jurisdiction – who is the regulator?</i> .....	4
2.2	<i>Reporting by the MFSA</i> .....	5
2.3	<i>Co-operation with other Regulatory Authorities</i> .....	6
2.4	<i>Employees of the MFSA</i> .....	7
2.5	<i>Funding of the MFSA</i> .....	8
2.6	<i>Setting of policies and creation of regulations</i> .....	8
2.7	<i>Supervision and Enforcement of Regulations</i> .....	9
3	The Investment Services Sector .....	10
3.1	<i>Investment Firms</i> .....	10
3.2	<i>Collective Investment Schemes</i> .....	12
4	The Supporting Infrastructure .....	13

## Introduction

Malta became a Member State of the European Union in 2004 and a member of the European Monetary Union [“EMU”] in 2008 when it adopted the Euro as its currency. The Maltese economy is based on tourism, manufacturing and services of which financial services is becoming one of the main pillars of the economy. Economic data published by AMECO [Annual Macro-Economic Database of the European Commission] show Malta as one of the best economic performing countries in the EU.

<b>Economic Performance</b>	<b>2013</b>	<b>2014</b>	<b>2015 *</b>	<b>Best Performing</b>	<b>Worst Performing</b>
<b>GDP Growth [Malta]</b>	<b>2.3</b>	<b>3.5</b>	<b>3.6</b>		
<b>GDP Growth [Eurozone]</b>	<b>-0.4</b>	<b>0.8</b>	<b>1.5</b>	<b>LU (5.6%)</b>	<b>CY (-2.3%)</b>
<b>GDP Growth [EU]</b>	<b>0.1</b>	<b>1.3</b>	<b>1.8</b>	<b>LU (5.6%)</b>	<b>CY (-2.3%)</b>
<b>Budget Deficit - % GDP [Malta]</b>	<b>-2.6</b>	<b>-2.1</b>	<b>-1.8</b>		
<b>Budget Deficit - % GDP [Eurozone]</b>	<b>-2.9</b>	<b>-2.4</b>	<b>-2</b>	<b>DE (0.7%)</b>	<b>CY (-8.8%)</b>
<b>Budget Deficit - % GDP [EU]</b>	<b>-3.2</b>	<b>-2.9</b>	<b>-2.5</b>	<b>DK (1.2%)</b>	<b>CY (-8.8%)</b>
<b>National Debt -%GDP [Malta]</b>	<b>69.2</b>	<b>68</b>	<b>67.2</b>		
<b>National Debt -%GDP [Eurozone]</b>	<b>93.2</b>	<b>94.2</b>	<b>94</b>	<b>EE (10.6%)</b>	<b>GR (177%)</b>
<b>National Debt -%GDP [EU]</b>	<b>87.3</b>	<b>88.6</b>	<b>88</b>	<b>EE (10.6%)</b>	<b>GR (177%)</b>
<b>Unemployment [Malta]</b>	<b>6.4</b>	<b>5.9</b>	<b>5.9</b>		
<b>Unemployment [Eurozone]</b>	<b>12</b>	<b>11.6</b>	<b>11</b>	<b>DE (5%)</b>	<b>GR (26.5%)</b>
<b>Unemployment [Europe]</b>	<b>10.9</b>	<b>10.2</b>	<b>9.6</b>	<b>DE (5%)</b>	<b>GR (26.5%)</b>
<b>GDP per Capita [Malta]</b>	<b>17,200</b>	<b>18,600</b>	<b>19,500</b>		
<b>GDP per Capital [Eurozone]</b>	<b>28,600</b>	<b>29,800</b>	<b>30,400</b>	<b>LU (88,500)</b>	<b>LV (12,100)</b>
<b>GDP per capita [EU]</b>	<b>25,700</b>	<b>26,600</b>	<b>27,300</b>	<b>LU (88,500)</b>	<b>BU (5,800)</b>
<b>*Projected</b>					
<b>Source: Annual Macro-Economic Database of the European Commission</b>					

Malta’s integration within the EU and the EMU has served to enhance further its establishment within the field of financial services. Malta has in fact been developing as a financial services jurisdiction since 1994. The regime regulating the financial services sector incorporates all EU financial services legislation and consequently operators benefit from the single market passporting rights under freedom of services and freedom of establishment.

The financial services sector has consistently expanded by around 25% in recent years and direct intermediation contributes 8.5% of GDP<sup>1</sup>. At least a similar amount is being contributed by indirect intermediation from the activities accountancy and law firms, corporate service providers and treasury companies. Over 90% of foreign direct investment is in the financial services sector.

The World Economic Forum Competitiveness Report 2015-2016 ranks Malta highly out of 148 countries. The following is a comparison with other European jurisdictions:

	Ireland	Luxembourg	United Kingdom	Malta
<b>Soundness of the Banking System</b>	126	12	63	<b>15</b>
<b>Strength of Auditing &amp; Reporting Standards</b>	59	8	15	<b>20</b>
<b>Regulation of Securities Exchanges</b>	53	5	21	<b>25</b>

*Source: World Economic Forum Competitiveness Report 2015-2016*

## 1 Regulation and Supervision of Financial Services Companies

### 1.1 Jurisdiction – who is the regulator?

The Malta Financial Services Authority (“MFSA”) is the single regulator of financial services. The MFSA regulates banking, financial institutions, insurance companies and insurance intermediaries, investment services companies and collective investment schemes, securities markets, recognized investment exchanges, trust management companies, company services providers and pension schemes. The MFSA is also responsible for the oversight of the financial market and is the competent authority for regulating stockbroking firms, investment exchanges, listed entities and market conduct. The MFSA is also the Listing Authority and approves admissibility to listing on Recognised Investment Exchanges and is also the Resolution Authority for credit institutions. The MFSA also houses the Registry of Companies.

<sup>1</sup> Source : NSO Press Releases

Since 2004, Malta has gained a reputation for having robust regulatory regime with a highly approachable regulatory authority. Nonetheless, the Maltese regulatory framework provides space for promoters to be innovative and develop new products to meet the changing needs of the industry.

The MFSA encourages staff to meet directly with operators to discuss their requirements, prospective applications and mutual concerns. This proactive and transparent approach coupled with regular contact is a hallmark of the Maltese financial services industry. Investors can have confidence in Malta’s approach based on:

- i. emphasis on disclosure;
- ii. reliance on the “fit and proper” status of directors, senior management, service providers and qualifying shareholders. Indeed the MFSA has a “no diligence, no license” approach whereby anybody failing the due diligence will not be licensed; and
- iii. continuous contact with the regulator.

The Maltese regulatory framework is a secure and stable framework for prudential and conduct supervision, consumer protection, market surveillance and prevention of money laundering.

Malta as an EU Member State transposes and implements all the Directives of the European Union. European regulations are directly applicable in all Member States including Malta, whereas Guidelines or Technical Standards issued by the European Supervisory Authorities are transposed within the national legislation.

English is the language of financial services business and hence all financial services legislation is in English. In the case where an interpretation issue arises between the Maltese and the English text, the English text prevails.

Malta is very pro-active in the EU financial services sector and has often topped the scoreboard of European Member States for the timely implementation of internal market rules for financial services.

## *1.2 Reporting by the MFSA*

The MFSA was established under the Malta Financial Services Authority Act<sup>2</sup> in 2002. Prior to that was the Malta Financial Services Centre established in 1994.

In terms of Article 28 of the MFSA Act, the MFSA is bound, as soon as may be, but not later than four months after the close of each financial year, to transmit to the House of Parliament, through the Minister of Finance, a copy of its annual accounts certified by the auditors together with a report on its activities during the previous year. Hence the MFSA is subject to parliamentary scrutiny.

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<sup>2</sup> Chapter 330 –Laws of Malta [hereinafter referred to as “MFSA Act”]

The Chairman of the MFSA is vested with the legal and judicial representation of the Authority. As such, the Chairman reports to the Parliamentary Public Accounts Committee to discuss the performance of the Authority as required.

The regulatory and supervisory activities of the Authority are also reviewed annually by the International Monetary Fund [“IMF”]. The MFSA is also a member of the three European Supervisory Authorities namely:

- i. the European Banking Authority [EBA];
- ii. the European Insurance and Occupational Pensions Authority [EIOPA] and
- iii. the European Securities and Markets Authority [ESMA].

The MFSA also participates actively in the European System of Financial Supervisors [‘ESFS’] and the European Systemic Risk Board [“ESRB”].

The MFSA has also been involved in on-going work in the establishment of the Banking Union, in particular the Single Supervisory Mechanism (SSM) conferring banking supervisory powers to the European Central Bank (ECB) as from November 2014, and the proposed Single Resolution Mechanism. It is represented on the Supervisory Board which has been established to plan and carry out the ECB’s supervisory tasks, undertake preparatory work, and propose complete draft decisions for adoption by the ECB’s Governing Council.

### *1.3 Co-operation with other Regulatory Authorities*

The Central Bank of Malta (“CBM”) and the MFSA co-operate through three Memoranda of Understanding (“MoUs”). Two MoUs signed in 2011 and 2013 deal with the Payment and Securities Settlement Systems and with the Exchange of Information in the fields of financial services respectively. In this regard, a Domestic Standing Committee was established to discuss regularly issues of relevance to both entities.

Furthermore, under the aegis of the ESRB, the MFSA and the CBM have concluded a third MoU for the purposes of setting up the Joint Financial Stability Board. The object of the Joint Financial Stability Board is to establish mechanisms of cooperation between the MFSA and the CBM for the purpose of formulating macro-prudential policy and contributing to the safeguard of the stability of the financial system as a whole in Malta. This includes strengthening the resilience of the financial system as a whole in Malta thereby ensuring a sustainable contribution of the financial sector to economic growth.

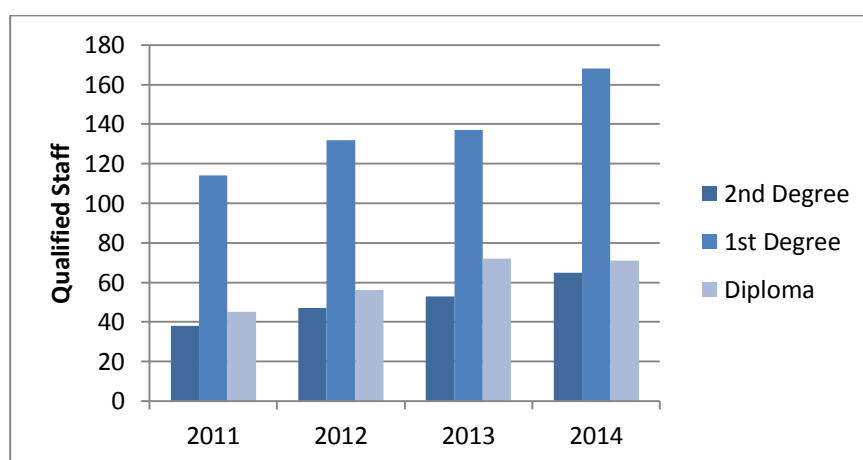
The MFSA also cooperates with the Financial Intelligence Analysis Unit through an MoU signed in 2014 regulating mutual assistance and exchange of information in the field of anti-money laundering/ countering terrorist financing and compliance supervision.

On the international scene, the MFSA has signed MoUs with 29 jurisdictions. The MFSA prefers to sign bilateral MoUs which besides exchange of information also include co-operation on training and the development of regulatory policies.

Furthermore the MFSA has signed the ESMA co-operation agreement with responsibility for the supervision of alternative investment funds with 39 non-EU securities regulators. The MFSA has also signed the multilateral MoUs with IOSCO and the International Association of Insurance Supervisors [IAIS]

#### 1.4 Employees of the MFSA

The number of employees of the MFSA is approaching 300. All staff employed by the Authority is required to have a professional qualification. Depending on the requirements of the regulatory units, members of staff may be qualified in banking and finance, law or accountancy. The MFSA has an Employee Development Policy whereby members of staff are encouraged to further their studies. Around 70% of employees have a University first degree while around 30% have a second degree. Support staff is also encouraged to obtain diploma qualifications. As at 31 December 2014, a total of 168 staff members held a first degree whereas 65 held a post graduate degree or equivalent. 71 persons held a diploma in one of the current vocational disciplines.



Source: MFSA Annual Report 2014

Members of staff are also sent abroad for regulatory training organised amongst others by the Financial Conduct Authority<sup>3</sup>, BaFIN<sup>4</sup>, Banque de France, Bank for International Settlements and the Securities Exchange Commission. Alternatively, members of staff are also sent abroad for short visits for regulatory familiarisation to compliance departments of financial institutions.

Members of staff also have the opportunity of attending in-house training – indeed officials from BaFIN, the Financial Conduct Authority and the Securities Exchange Commission

<sup>3</sup> UK Regulatory Authority

<sup>4</sup> Federal Financial Supervisory Authority of Germany

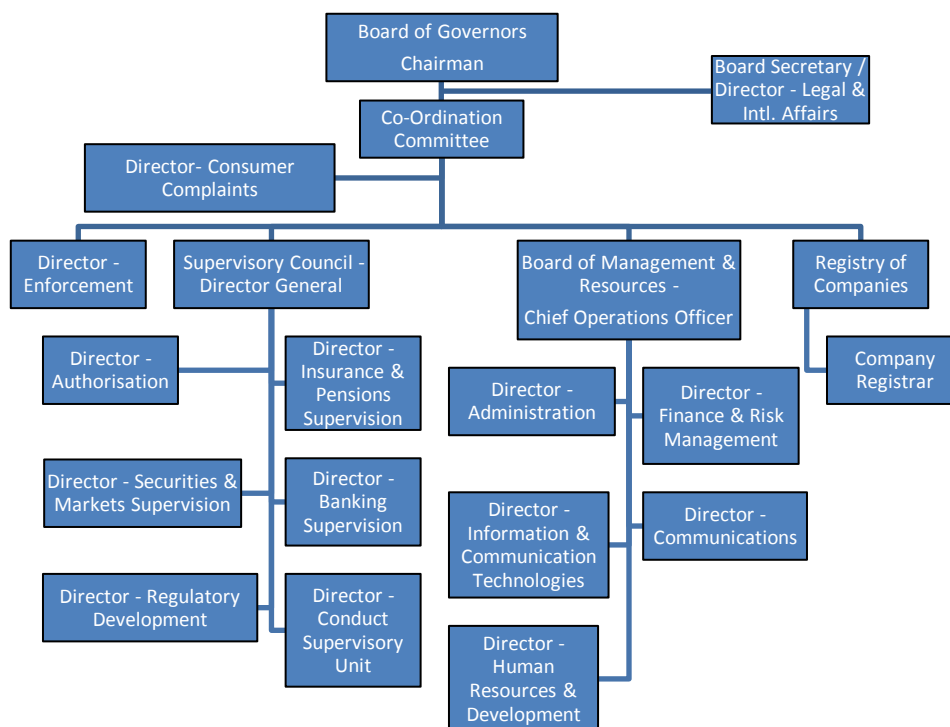
visit Malta on a regular basis to carry out in-house staff training on both on-site and off-site supervision.

### 1.5 Funding of the MFSA

The MFSA is primarily funded through the collection of fees payable by regulated entities and by partnerships registered with the Registry of Companies. Fees are approved by the Maltese Government following consultation with industry associations. Fees are normally fixed for a period of 5 years.

### 1.6 Setting of policies and creation of regulations

The Board of Governors is one of the main organs of the MFSA and under the MFSA Act<sup>5</sup>, it is entrusted with establishing the policies to be pursued thereby. In determining such policies, the Board of Governors follows any policy guidelines which may be set by the Maltese Government. The Chairman of the Authority chairs the Board of Governors. The Board approves regulatory policies which are subsequently implemented by the Supervisory Council. The Supervisory Council, which is chaired by the Director General, is responsible for the approval and issuance of licences and other authorisations for the processing of applications for such licences and authorisations. The Supervisory Council is also responsible for the monitoring and supervision of persons and other entities licenced or authorised by the Authority in the financial services sector<sup>6</sup>. Reproduced hereunder is the organisation chart of the MFSA.



<sup>5</sup> Article 6 of the MFSA Act

<sup>6</sup> Article 10 of the MFSA Act



The MFSA is also empowered to advise the Maltese Government on matters relating to financial services. It proposes primary and secondary legislation. Furthermore, the Authority is empowered to issue Rules regulating the procedures and duties of persons licenced or authorised by it, or falling under its regulatory or supervisory functions. The Rules are binding on licence holders and the entities specified therein.

The MFSA takes a proactive approach to regulation and the creation of innovative legislation which conforms to EU legislation. This approach is important because these frameworks must not create regulatory arbitrage. The main area where innovation through regulation has taken place has been investment services with the introduction of the Incorporated Cell Company [ICC] and the Recognised Incorporated Cell Company [RICC] structures. The cell company concept lends flexibility to the structuring of various types of financial activities and products and has already been very successfully utilised in the insurance sector with the introduction of the Protected Cell Company [PCC]. Malta is the only Member State to have this type of legislation.

The cell company concept has also recently been extended to the re-insurance special purpose vehicles and to securitisation cell companies. The latter legislation is considered a first worldwide.

### *1.7 Supervision and Enforcement of Regulations*

Under the MFSA Act and the different sectoral laws, the MFSA is empowered to carry out both onsite and offsite supervision. Reporting requirements depend on the applicable licence. The MFSA has extensive regulatory, investigative and enforcement powers. To this effect, the MFSA has the power to:

- i. require information from any person including any documentation and may use any information as evidence (except in relation to documents and information which are privileged under the Criminal Code);
- ii. appoint inspectors for conduct of more in - depth investigations as may be required;
- iii. issue directives both generally and in specific circumstances and
- iv. enter premises of persons on whom a notice of investigation has been served for the purposes of obtaining information.

The MFSA has the power to issue public warnings and to suspend or cancel a licence or to restrict a licensed entity's operations. Furthermore, under Article 16A of the MFSA Act, the Authority may impose an administrative penalty on any licence holder should the person's conduct, in the opinion of the MFSA, amount to a breach of the regulatory requirements applicable to the licence holder. All sanctions are published on the MFSA's website ([www.mfsa.com.mt](http://www.mfsa.com.mt)). They may be viewed under the section: Announcements / Sanctions & Penalties.

## 2 The Investment Services Sector

Investment firms are established and licenced in Malta under the Investment Services Act<sup>7</sup>. Once licensed, investment services firms may passport services to all EEA States under freedom of services or freedom of establishment under the Markets in Financial Instruments Directive (MiFID)<sup>8</sup> and other Directives.

The transposition of EU Directives, particularly the UCITS IV Directive<sup>9</sup> [UCITS] and subsequently the Alternative Investment Fund Managers Directive<sup>10</sup> [AIFMD], have further contributed to the robustness of the Maltese financial services framework applicable to fund managers. The AIFMD has also brought about radical changes in the custody sector. These changes will be further consolidated through the transposition and implementation of the UCITS V Directive. Amongst other beneficial results, the AIFMD and UCITS V increase the responsibility of custodians and enhance investor protection.

### 2.1 Investment Firms

The MFSA does not apply a “one-size fits all” approach to investment firms. Instead, provision is made for 4 different categories of investment services licences depending on the type of investment service provided.

Recognised Fund Administrators are not required to have an investment services licence issued under the Investment Services Act but a recognition certificate issued under Article 9A of the Investment Services Act.

The following are the categories of investment services licences issued under the Investment Services Act:

#### *Investment Services Licences*

- *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

<sup>7</sup> Cap. 370 – Laws of Malta

<sup>8</sup> 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

<sup>9</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast)

<sup>10</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

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; and

➤ *Category 4:* Licence holders authorised to act as trustees or custodians of collective investment schemes. The Category 4 Investment Services Licence can be either a Category 4a or Category 4b depending on the type of custody service being provided.

A Category 4a Investment Services Licence Holder is eligible to provide custody services to all collective investment schemes. The following entities are eligible to act as a Category 4a custodian:

#### *Category 4a*

a) A credit institution constituted and licensed under the Banking Act;

b) a branch, established in Malta, of a credit institution authorised in an EU Member State/EEA Member State;

c) a branch, established in Malta, of an overseas credit institution which is subject to prudential supervision requirements at least equivalent to the requirements applicable to Maltese credit institutions;

d) a company, incorporated in Malta, which is wholly owned by a credit institution, provided that the liabilities of the Licence Holder are guaranteed by a credit institution and the credit institution is either a Maltese credit institution or is an overseas credit institution which is subject to prudential supervision requirements at least equivalent to the requirements applicable to Maltese credit institutions;

e) a company incorporated in Malta which is wholly owned by a Maltese or foreign institution or company which is deemed by the MFSA to be an institution or company which provides unit-holders with protection equivalent to that provided by a Licence Holder fulfilling the requirements of (a), (b), (c) or (d) above and provided the liabilities of the company acting as Custodian are guaranteed by the institution or company and the institution or company has a minimum paid-up share capital of EUR 5 million or its equivalent in foreign currency and

f) an investment firm in Malta or a branch of an investment firm established in another Member State or EEA State subject to capital adequacy requirements in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 including capital requirements for operational risks and authorised in accordance with Directive 2004/39/EC and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with point (1) of Section B of Annex I to Directive 2004/39/EC; such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 28 (2) of Directive 2013/36/EU.

A Category 4b Investment Services Licence Holder (“Depositary Lite”) may be either a Category 2 Investment Services Licence Holder (excl. fund managers) or a Recognised Fund Administrator. A Category 4b Investment Services Licence Holder is eligible to provide custody services to one of the following:

- (a) Alternative Investment Funds (AIFs):
- which have no redemption rights exercisable during the period of 5 years from the date of the initial investments;
  - which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody according to Article 21(8)(a) AIFMD; or
  - which generally invest in issuers or non-listed companies in order to acquire control of such companies according Article 26 AIFMD.
- (b) Third country AIFs managed by an EU AIFM, which are marketed in the EU/EEA under Article 36 of the AIFMD.

## 2.2 *Collective Investment Schemes*

The following are the structures which can be established:

- i. Investment companies with fixed share capital (INVCO) or investment companies with variable share capital (SICAV) established under the Companies Act, the Companies Act (Investment Companies with Fixed Share Capital) Regulations<sup>11</sup> and the Companies Act (Investment Companies with Variable Share Capital) Regulations<sup>12</sup> respectively;
- ii. Incorporated Cell Companies established under the Companies Act (SICAV Incorporated Cell Companies) Regulations<sup>13</sup> or the Companies Act (Recognised Incorporated Cell Companies) Regulations<sup>14</sup>;
- iii. Unit trusts established under the Trusts and Trustees Act<sup>15</sup>;
- iv. Contractual funds established under the Civil Code<sup>16</sup> and the Investment Services Act (Contractual Funds) Regulations<sup>17</sup>. Provision is also made for the possibility of setting up Special Investment Vehicles regulated as part of the same scheme;
- v. Limited Partnerships established under the Tenth Schedule of the Companies Act<sup>18</sup>. The capital may or may not be divided into shares.

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<sup>11</sup> S.L. 386.04

<sup>12</sup> S.L. 386.02

<sup>13</sup> S.L. 386.14

<sup>14</sup> S.L. 386.15

<sup>15</sup> Cap. 331 - LOM

<sup>16</sup> Cap. 16 - LOM

<sup>17</sup> S.L. 370.16

<sup>18</sup> Cap. 386 - LOM

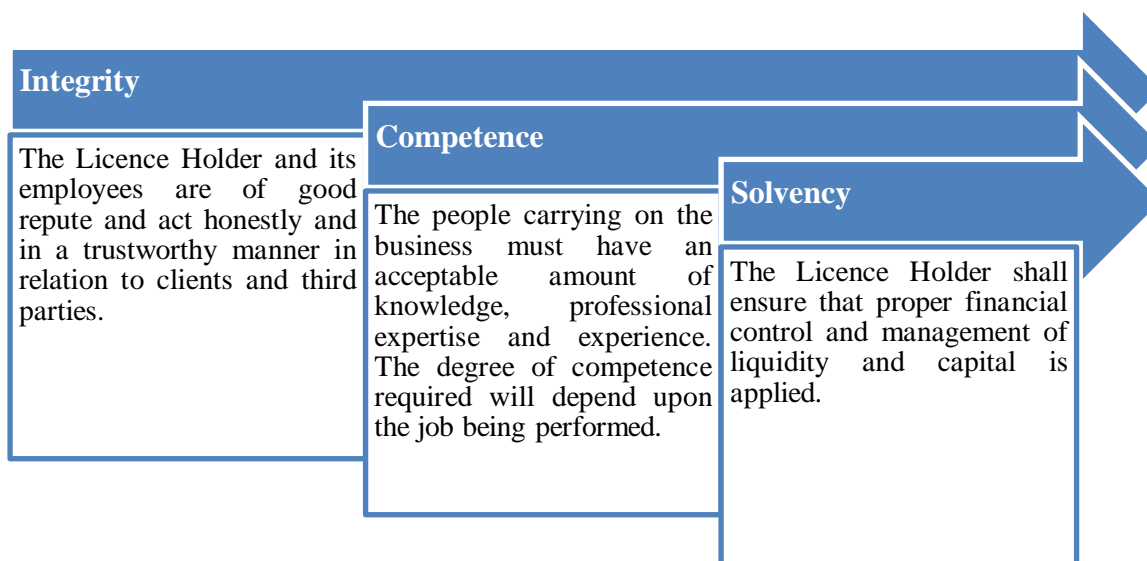
A collective investment scheme may be established as a third party managed fund or be self-managed.

### 2.3 Criteria adopted when assessing whether to grant of a licence

In assessing whether to grant a licence or otherwise, the Investment Services Act requires applicants to fulfil the ‘fit and proper’ requirements. In doing this, the Authority will further take into account [a] the promotion of competition and choice; [b] the degree of investor protection necessary; and [c] the protection of the reputation of Malta taking into account its international commitments.

Whilst the Investment Services Act covers different types of licenceable activities, the standards applied by the Authority of fitness and probity are unique and applied in all cases. Indeed the “fit and proper” test is one which the Applicant and eventually the Licence Holder is called to fulfil both at application stage as well as on an ongoing basis.

There are three criteria which an applicant must meet to satisfy the “fit and proper” test namely:



### 2.4 Management and Governance of Licensed Entities

Corporate governance is of utmost importance since it assures investors that the company’s objectives and operations are executed in a manner that benefits the best interests of the company. It involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. The MFSA expects all regulated entities to be headed by an effective board composed of persons who are fit and proper and headed by a chairman. The board should be composed of persons who as a group have the required diversity of knowledge, judgement and experience to complete their tasks and fulfil their role namely accountability, monitoring, strategy formulation and policy development. In

this regard, licenced entities are guided by the Corporate Governance Guidelines for Public Interest Companies and by the Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes.

### **3 The Supporting Infrastructure**

Malta has the necessary infrastructure in place for continued expansion:

- i. Malta has developed its infrastructure to meet the demands of a rapidly expanding sector.
- ii. The University of Malta and various other financial training centres are producing sufficient graduates to meet the demand for lawyers, accountants, investment managers, fund managers, fund administrators etc. The MFSA has set up an Education Consultation Council composed of all finance industry training associations to co-ordinate the training and ensure that the training satisfies the competencies required by the regulator. Thus, newly licensed companies have no difficulty in recruiting locally qualified staff. There are currently 10,000 employees in the financial services sector. However, in order to keep abreast of developments, Malta introduced the Highly Qualified Persons Program allowing companies to attract non-Maltese professionals with special skills such as actuaries, investment managers etc.
- iii. Maltese accountants are trained under IFRS, which Malta adopted in 1998;
- iv. The Maltese legal profession is a long established profession and most professionals have had further training at major institutions overseas particularly in the UK. Maltese law firms are listed on Chambers, Martindale, Lex Mundi, Lexis Nexis etc. Maltese law firms have considerable international experience acting as correspondents for overseas law firms particularly from the City of London and the US. Some overseas firms are now directly involved in the Maltese financial services sector.
- v. Malta follows an imputation system of taxation agreed with the EU in 2008. In 2008, the G20 placed Malta on the White List which means that Malta's taxation system is based on internationally agreed tax standards. Malta exchanges information under the EU Savings Directive and applies the OECD clauses on exchange of information in the Double Tax Treaties. In 2012, Malta signed the OECD Multilateral Tax Exchange Information Agreement. A FATCA IGA agreement was signed in November 2013. Malta continues to expand its double tax treaty network. There are currently over 65 double tax treaties in force.

# MFSA

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