

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### ***THE INVESTMENT SERVICES ACT (ISA)***

The Investment Services Act, 1994 as amended in 2002, is one of the major pieces of legislation which are 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. The Act requires that investment services business may not be undertaken in Malta or from a base in Malta without a licence from the MFSA. The ISA lays down the broad criteria to be applied by the MFSA when considering applications.

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 licenceable 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.

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;
- (c) the promotion of competition and choice;

In addition, when considering an application for an investment services licence or a collective investment scheme licence, the MFSA takes into account the reputation and suitability of the applicant and of all other relevant parties closely connected with the scheme.

#### ***Investment Services Licence***

An investment services licence is required when the following activities are carried out in relation to an 'instrument', an investment services licence is required for:

- (1) dealing as principal or agent;
- (2) arranging deals;
- (3) management of investments;
- (4) providing trustee, custodian or nominee services;
- (5) providing investment advice;
- (6) providing stockbroking services.

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. 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: the integrity, competence and solvency.

### *Collective Investment Schemes*

The definition of a 'collective investment scheme' in the ISA is a very broad one which embraces corporate schemes such as open-ended and closed-ended investment companies, investment partnerships and other non-corporate investment vehicles. The MFSA will grant a licence for a collective investment scheme where it is satisfied that the scheme will comply with the relevant regulations and that its directors and officers, or in the case of a unit trust its trustees, are 'fit and proper persons' to carry out the functions required of them. The MFSA will in particular examine and consider the nature and features of the proposed scheme and the type of investors to whom it will be marketed. It will also review the experience and track record of all parties who are to be involved with the scheme.

### *Professional Investor Funds*

Professional Investor Funds (PIF's) are collective investment schemes designed for professional and high net worth investors aggregated under the term "authorised investors" - a term which requires a minimum investment level of \$100,000 or that investors have a minimum net worth of \$1m. Careful consideration is given to the needs of fund managers and investors and the MFSA offers a streamlined and rapid processing procedure for licence applications. A PIF is distinguished from a normal retail fund by special rules relating to its establishment, management and marketing in a manner which reflects its distinction from normal retail funds. The object is to reduce to an acceptable minimum the information and documentation needed to establish a PIF.

In most cases a corporate PIF would take the form of an incorporated open-ended or closed-ended investment company or partnership – in the form of a SICAV or a unit trust.