

INVESTMENT SERVICES IN MALTA

Malta's high standards of regulatory oversight and processes have been a key advantage for reputable funds. Malta's stringency operates as an optimal incentive, particularly by fund managers in tandem with the regulator's efficiency, to move to Malta. In the fast-moving arena of fund management, with its acute level of responsibility of investors, guaranteeing investor protection through this stringent approach, it is a crucial factor.

The Maltese regulatory framework in the financial services sector is one of the most comprehensive and attractive for the setting-up, licensing and marketing of credit institutions, financial institutions, insurance companies, collective investment schemes and institutional funds as well as for investment services providers.

Several important factors make Malta an ideal jurisdiction to domicile and operate such financial services activities:

* Malta's status as a full member of the European Union;

* Malta's EU compliant legislation;

* Malta's status as an onshore jurisdiction and member of onshore and global consultative, regulatory and enforcement bodies, including the International Monetary Fund ('IMF'), the Council of Europe, International Organisation of Securities Commission ('IOSCO'), and the Committee of European Securities Regulators ('CESR');

* The Malta Financial Services Authority (the 'MFSA'), in its capacity as the Maltese financial services single regulator, is flexible, accessible and proactive but at the same time meticulous in considering and determining applications for the licensing of funds;

* Malta's comprehensive legislative framework for the taxation as well as Malta's extensive range of double taxation treaties include agreements with all EU member states.

* The presence on the Island of international financial services providers and a skilled work force with considerable experience and



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knowledge in the sector;

* Use of the English language in official communications, forms and documentation as well as in drafting financial services legislation, regulations and guidelines.

All this has contributed to Malta's success in establishing and consolidating itself as an onshore financial services centre which now enjoys the presence of an always increasing number of international banks, insurers and fund managers.

Legal and Regulatory Framework

The Investment Services Act, Chapter 370 of the Laws of Malta ('ISA'), establishes the regulatory framework for the provision of investment services. The primary purpose of the ISA is to provide comprehensive

investment services regulations to regulate the provision of investment services and adequate investor protection. The ISA provides for the appointment of a competent authority responsible to administer the provisions of the ISA, particularly as regards licensing, regulation and supervision of investment services.

The Malta Financial Services Authority ('MFSA') has been appointed as the competent authority to supervise and regulate the investment services sector with inter alia powers of granting investment services licences. The MFSA has also issued Investment Services Rules with the purpose of inter alia transposing and implementing the MiFID Framework Directive and MiFID Implementing Directive regulating the conduct of business by investment services

business by investment services licence holders.

Investment services licence

The ISA prohibits:

(a) Any person from providing, or holding himself out as providing, an investment service in or from within Malta unless he is in possession of a valid investment services licence.

(b) Any body corporate, unincorporated body or association formed in accordance with or existing under the Laws of Malta, from providing or holding 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.

Licence Categories

<p>Category 1a:</p>	<p>License 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.</p>
<p>Category 1b:</p>	<p>License 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.</p>

Category 2:	License 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:	License holders authorised to provide any investment service and to hold and control clients' money or customers' assets.
Category 4:	License holders authorised to act as trustees or custodians of collective investment schemes.

Licence Application Process

Phase One – Preparatory Phase

This phase involves inter alia the promoter meeting with representatives of the MFSA to describe his proposal, the submission by the promoter to the MFSA of a draft application form together with supporting documents, the review by the MFSA of such form and documentation, and the MFSA's decision as to which licence conditions should apply to the promoter.

Phase Two – Pre-Licensing Phase

This phase involves the issuance by the MFSA of its 'in principle' approval for the issue by the MFSA of an investment services licence, and the finalisation by the promoter of any outstanding matters, such as

incorporation of a company, submission of signed copies of the revised application form together with supporting documents in their final format, and any other issues raised during the application process.

Phase Three – Post-Licensing / Pre-Commencement of Business Phase

This phase involves the compliance by the promoter of any post-licensing matters prior to formal commencement of business.

The regulatory process outlined above is typically expeditious. Once we would have all the necessary information and documentation requested by us in order to proceed with the said process, the relevant licence application and other ancillary documentation would be

drafted, prepared and compiled (as the case may be) and submitted to the MFSA within two weeks. The MFSA typically provides its 'in principle' approval within six to eight weeks from receipt of the abovementioned licence application.

Licence Fees

An application fee is payable on submission of an application for an investment services licence and is not refundable.

Investment services licence holders are also required to pay a licence issue fee, and an annual supervisory fee.

The applicable fees are currently as follows:

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Investment Services Licence	Application Fee	Licence Issue Fee	Annual Supervisory Fee
Category 1A:	€750	€1,300	€1,300 (up to €50,000 in revenue) plus €250 per every other €50,000 in revenue (up to a maximum of €1,000,000 in revenue) or part thereof
Category 1B:	€750	€1,800	€1,800 (up to €50,000 in revenue) plus €250 per every other €50,000 in revenue (up to a maximum of €1,000,000 in revenue) or part thereof
Category 2:	€1,500	€3,000	€3,000 (up to €250,000 in revenue) plus €350 per every other €250,000 in revenue (up to a maximum of €5,000,000 in revenue) or part thereof
Category 3:	€2,000	€4,000	€4,000 (up to €250,000 in revenue) plus €350 per every other €250,000 in revenue (up to a maximum of €5,000,000 in revenue) or part thereof
Category 4:	€4,000	€10,000	€10,000

Corporate Structure

A limited liability company is typically registered and incorporated in Malta in terms of the Companies Act, Chapter 386 of the Laws of Malta ('CA'), for the purposes of the conduct of any licensable activity under the ISA.

A limited liability company may be registered and incorporated as aforesaid either as a private limited liability company or as a public limited liability company. The registration of a limited liability

company would typically be finalised during Phase Two of the investment services licence application process outlined in Section 3 hereof.

The share capital of a limited liability company may be denominated in any currency. The minimum issued share capital of a private limited liability company is €1,165, whilst the minimum issued share capital of a public limited liability company is €46,600. At least 20% of the issued share capital of a private limited

liability company must be paid up at the time of incorporation and deposited in a bank account in Malta. In the case of a public limited liability company, at least 25% of its issued share capital must be paid up and deposited as aforesaid.

Notwithstanding the aforesaid, the Investment Services Rules establish minimum initial capital requirements in respect of the different categories of investment services licence holders, as follows:

Licence Holder Category	Minimum Initial Capital
Category 1A	€50,000
Category 1B - with professional indemnity insurance	€20,000
Category 1B - without professional indemnity insurance	€50,000
Category 2	€125,000
Category 3	€730,000
Category 4	€125,000

A private limited liability company must have at least 1 director, whilst a public limited liability company must have at least 2 directors. Generally, a corporate entity may act as director of a company. It is not necessary to have Maltese directors, although having a director resident in Malta is a licensing requirement that is typically imposed by the MFSA on an investment services provider. A company must also have a company secretary.

The official company registration fee due to the Malta Registrar of Companies is calculated in accordance with the authorized share capital of the company, ranging from a minimum registration fee of €245 where the authorised share capital does not exceed €1,500, up to a maximum fee of €2,250 where the authorized share capital exceeds €2,500,000.

A registration fee due to the Malta Registrar of Companies is payable every year upon the submission of the statutory company return showing details about the company, its shareholders and its directors. The annual registration fee is also calculated in accordance with the authorized share capital of the company, ranging from a minimum fee of €100 (for companies with an authorised share capital of up to €1,500) up to a maximum fee of €1,400 (where the authorised share capital exceeds €2,500,000).

The fiscal benefits of setting up a limited liability company in Malta may be considerable. Although a Maltese limited liability company is subject to tax on its profits at the rate of thirty five per cent (35%), its non-resident shareholders may, upon a distribution of profits by such company to its shareholders, claim

a refund of part of the tax paid by the Company on such profits. The effective tax liability may be as low as five per cent (5%) on all trading profits.

Taxation

Malta's tax system has been one of the key contributors to it maturing into the financial and international business centre that it is today. The taxation system is a fully integrated imputation system which completely avoids the economic double taxation of corporate profits by imputing onto shareholders the underlying corporate tax attaching to dividends.

As part of this system the shareholder is entitled to claim a tax refund of the 35% corporate tax borne on distributed profits.

The default tax refund is 6/7ths of the tax charge borne on the distributed profits before deducting any credits in respect of any foreign taxes.

As a result the tax that would normally be borne in Malta after the tax refund is claimed is of 5%.

Fund management companies are also subject to Malta's full imputation tax system, wherein tax paid by a company in Malta is, on the

distribution of a final dividend, imputed to the shareholder as a tax credit against the shareholders' tax liability. A shareholder will, upon a distribution of the dividend, be entitled to a refund in part or in full of any advance tax levied on the distributing company. The default refund applicable to a fund management company in respect of active trading income, is a refund of 6/7ths. These tax benefits essentially consist of a net tax

essentially consist of a net tax leakage of just 5% on income and gains deriving from trading activities.

Passporting Rights

Maltese managers wishing to passport by way of freedom to provide services provisions or by the establishment of a branch in another EU jurisdiction need to observe a number of notification procedures:

The MFSA must be provided with:
* A written statement with the firm's intention to provide services or establish a branch in an EU or EEA territory, specifying which territory
* A program of operations setting out the services to be offered
* The address of the proposed branch from which documents may be obtained
* The proposed organizational structure and persons responsible for the management of the branch
* Other clarifications that may be required by the MFSA
The MFSA will then furnish the foreign regulator with a consent notice within three months of receiving all documentation from the firm
If the MFSA decides to refuse the issue of a consent notice, the firm shall be notified accordingly within a maximum of two months. This refusal may be appealed in tribunal
The manager's branch may not commence business abroad unless:
* The foreign regulator has approved the go-ahead, or
* Two months have elapsed from the date of transmission of information from the MFSA to the European regulatory authority
Where a Maltese management company wishes to provide services in the EU or any EEA State without establishing a branch, the MFSA will need to be provided with:
* A list of services it wishes to provide.
* A program of operations
* The Member State or EEA State in which it intends to operate
* The MFSA shall provide the foreign jurisdiction with a copy of the notice received. At this point, the management company may commence business

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Our Services

Our investment services team provides legal advice and assistance relating to the matters referred to herein including legal advice and assistance to investment services providers both at incorporation and licensing

stage as well as ongoing legal advice in relation to regulatory, fiscal and corporate compliance.

We work closely with our in-house fiduciary and trust services company DF Corporate Services Limited which offers inter alia back and middle office services to

and middle office services to investment services providers, including registered office services. DF Corporate Services Limited also provides the services of local directors, money laundering reporting officers and compliance officers.

