



QUBE SERVICES LIMITED

INVESTMENT SERVICES IN MALTA

Malta is fast becoming a very popular jurisdiction for investment services of various types. Below is a very brief introduction regarding the licensable activities that may be licensed under the Maltese Investment Services Act.

The Malta Financial Services Authority

The Malta Financial Services Authority (MFSA) is responsible for the licensing, regulation and supervision of all Investment Services providers. The MFSA also licenses, regulates and supervises banking, companies, insurance, collective investment schemes and recognised investment exchanges. It is a “one-stop-shop” financial services regulator with a simple vertical structure that makes it very user friendly.

The MFSA requires the highest standards of probity and honesty, and every license is issued subject to standard conditions. These standard conditions may, however, be adapted to suit circumstances as long as standards are not compromised. In other words, the MFSA is not a soft regulator, but rather a regulator that evolves with the market.

Legislative framework for financial services

The Investment Services Act establishes the regulatory framework for investment services and for collective investment schemes. It provides for two types of licenses, namely an Investment Services Licence and a Collective Investment Scheme Licence.

Other relevant laws includes the *Malta Financial Services Authority Act* which establishes the MFSA as the regulatory authority responsible for financial services, the *Companies Act* which provides a solid framework for the regulation of all types of commercial partnerships, the *Recognition of Trusts Act* which enables unit trusts governed by non-Maltese trust law to be recognised and managed in Malta and the *Trusts and Trustees Act* which provides for the creation of trusts and the authorisation and supervision of trustees.

Furthermore, the *Prevention of Money Laundering Act*, which conforms with all relevant EU directives, makes money laundering an offence in Malta, the *Prevention of Financial Markets Abuse Act* transposes and implements the EU Market Abuse Directive, the *Professional Secrecy Act* protects confidential information and the *Banking Act* harmonises Maltese law relating to banking with the best practices of EU banking regulations.

Finally, the *Financial Institutions Act* defines financial institutions and identifies the activities carried out by such institutions, the *Insurance Business Act* and the *Insurance Intermediaries Act* are the main insurance legislation, the *Financial Markets Act* regulates investment exchanges, the *Special Funds Act* provides for the regulation of retirement schemes and funds and the *Securitisation Act* introduces new rules on securitisation vehicles.



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Investment Services

An Investment Service is defined in the Investment Services Act as “*any service falling within the First Schedule to this Act when provided in relation to an instrument*”.

The services covered in the act include:

Dealing as Principal or Agent

Including buying, selling, subscribing for or underwriting instruments as principal or agent.

Arranging Deals

Including arranging for another person to buy, sell, subscribe for or underwrite investments

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 arrangement for their management are such that the person managing or agreeing to manage those assets has discretion to invest in any of those assets into one or more instruments.

Trustee, Custodian or Nominee Services

Including 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 in the course of providing an investment service.

It also includes 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 or on behalf of a client of such person, and such nominee holding is carried out in relation to such investment service.

Finally, it also includes acting as trustee or custodian in relation to a collective investment scheme.

Investment Advice

Giving, offering or agreeing to give, advice on the merits of their purchasing, selling, subscribing for or underwriting an instrument or exercising any right conferred by an instrument to acquire, dispose of, underwrite or convert an instrument; or advice in relation to a scheme or arrangement involving an instrument, to persons in their capacity as investors or potential investors.

Stockbroking

Carrying on the business of purchasing, selling or otherwise trading in instruments quoted on a recognized investment exchange for and on behalf of third parties.

Fund Administration is no longer a licensable activity, but firms providing such services must apply for recognition by the MFSA.



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Instruments

The term “instrument” is widely defined in the Investment Services Act and covers a number of types of investments, such as:

Securities

Securities, including shares and stock in the capital of a company, debentures, debenture stock, loan stock, certificates of deposit, bonds, notes and any other instruments creating or acknowledging indebtedness.

Certificates

Certificates or other instruments which create or acknowledge indebtedness and which upon issue confer the right to claim the debt created or acknowledged thereby at some time in the future, subject to the condition that the claim there under may be reduced to below the value of price of the certificate or instruments at the time of issue.

CIS

Units in a Collective Investment Scheme.

Currency instruments

Warrants, options, certificates or other instruments, including any record whether or not in the form of a document, entitling the holder to subscribe for, acquire, sell or otherwise dispose of, underwrite or convert any instrument or an interest in any instrument for any currency.

Property instruments

Certificates or other instruments which confer property rights in respect of any instrument.

Futures

Futures and foreign exchange contracts entered into for investment purposes or foreign exchange acquired or held for investment purposes.

Other rights

Rights under a contract for differences or under any other contract for 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 of property of any description or in any index or other factor designate for that purpose in the contract.

Licence conditions

Every licence is subject to standard licence conditions, which are described in full in the Investment Services Guidelines. The objective of the standard licence conditions is to protect investors by requiring that the licence holder acts honestly, fairly and with due skill, care, diligence and integrity in the best interest of his customer. The standard conditions may need to be supplemented in certain circumstances.



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Investment Services Guidelines

The Investment Services Guidelines describe the basic principles to which licence holders must adhere. The guidelines also include the necessary forms to be completed by applicants for an investment services licence and may be obtained from the MFSA.

Fit and proper

An applicant must be fit and proper and be prepared to act in accordance with the law and the standard licence conditions attached to any licence that is issued. The fit and proper test requires senior staff and potential and existing licencees, both at licensing stage and on an on-going basis thereafter, to demonstrate solvency, competence and integrity in all their dealings.

Licensing

A typical application process consist of three stages, namely the preparatory stage, the pre-licensing stage and the post-licensing/pre-commencement of business stage. The speed at which the preparatory stage is completed depends largely on the efficiency of the applicant. Stages two and three can be completed within six to twelve weeks.

for more information regarding the above, please contact
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