

MALTESE INVESTMENT FUNDS

WHY MALTA?

Malta is an emerging fund jurisdiction that offers a favourable European location for structuring and servicing retail and non-retail funds.

The Malta Financial Services Authority (MFSA) is the single regulator of the financial services industry and has a reputation as a strong, efficient and approachable regulator. The MFSA is responsible for licensing, regulating and supervising all collective investment schemes.

Malta has an established cluster of skilled and highly qualified professionals involved with the formation and servicing of funds. There is a good pool of well educated, multi-lingual and numerate individuals that are keen to learn and be involved with financial services.

Malta became a member of the European Union in May 2004 and adopted the Euro on 1st January 2008. It has aligned its laws and regulations with the *acquis communautaire* governing financial services.

Malta has a favourable tax regime and a comprehensive Double Tax Treaty network. English is the official business language and all laws and regulations are published in English.

The Maltese islands are situated in the heart of the Mediterranean and are easily accessible.

Malta is on Central European Time.

MALTA FUNDS - UCITS

EU membership in 2004 brought the European stamp of approval to Malta's financial legislation and it enabled passporting rights for Undertakings for Collective Investments in Transferable Securities (UCITS) certified funds. Appropriately certified funds can be freely distributed and marketed in Malta and other EU jurisdictions.

There are key requirements that must be met to obtain UCITS certification. The need for diversity, liquidity and the need to trade in eligible assets means that more complex funds that use derivatives, short positions, leveraged positions and other forms of hedging instruments are not generally permitted under the UCITS regime.

UCITS are mainly used for retail funds that hold transferable securities (e.g. equity and bonds) where the potential loss with respect to holding the investment is limited to the amount paid for them.

UCITS offers a global brand as a regulated investment product.

ALTERNATIVE FUND MANAGEMENT DIRECTIVE (AIFMD)

The AIFMD regulates the marketing and management of funds (other than UCITS) within the EU.

The AIFMD creates a passport regime to market shares or units inside the EU to professional investors.

The directive also provides a lighter or *de minimis* regime for small Alternative Investment Fund Managers (AIFMs) who manage, directly or indirectly, portfolios of funds whose assets under management do not exceed €100M or €500M if unleveraged/ closed ended for five years.

De minimis AIFMs (that cannot market under the AIFMD passporting regime) can utilise National Private Placement Regimes that reduce the AIFMD reporting and compliance obligations.

FUND MANAGEMENT

Alternative Investment Funds (AIFs), Professional Investment Funds (PIFs) & UCITS Funds can be set up as managed or self-managed schemes.

With a managed scheme the Board of Directors will appoint an external fund manager, who needs to be

suitably regulated in an equivalent jurisdiction and responsible for the day-to-day management of the investments.

With a self-managed scheme the Board of Directors would establish an investment committee consisting of either members of the Board or external professionals deemed competent to provide investment management for the fund. Alternatively, the investment committee can delegate the day to day investment management to a suitable regulated investment manager.

MALTA FUNDS - AIFS & PIFS

AIFs and PIFs are targeted at financially literate investors who invest into alternative assets via hedge, private equity and property strategies.

In Malta, alternative investment funds are either licensed as AIFs or PIFs,

There are different entry levels and restrictions for each category. Generally, investors are expected to have an understanding of investment markets so they comprehend the risks involved as well as having sufficient capital to be able to bear a loss. When subscribing into a fund, investors have to sign an investor's declaration confirming that they meet the criteria set down in the offering documents.

The eligible investor categories are:

- Experienced Investors
- Qualified Investors
- Extraordinary Investors
- Professional Investors

EXPERIENCED INVESTORS

Experienced Investors are defined as persons having the expertise, experience and knowledge in the acquisition/disposal of funds of a similar risk profile to which the proposed PIF relates. The minimum investment is €10,000 (or currency equivalent).

QUALIFYING INVESTORS

Various criteria need to be met for an investor to be classified as a Qualified Investor. The main criteria are that the investor must have more than €750,000 of net assets and the minimum initial investment is at least €75,000 (or currency equivalent).

EXTRAORDINARY INVESTORS

Different criteria need to be met to be classified as an Extraordinary Investor. The main criteria are that the investor must have more than €7,500,000 of net assets and that the minimum initial investment is €750,000 (or currency equivalent).

PROFESSIONAL INVESTORS

Professional Investors are considered to be either professional clients by nature, or treated as professional clients on request, within the meaning of Annex II of Directive 2004/39/EC on markets in financial instruments (MiFID).

LEGAL STRUCTURES

Most Maltese Funds are set up as a collective investment company with variable share capital (SICAV). SICAVs can be set up as a single or multi-class scheme.

Maltese law provides that funds can also be set up as a collective investment company with fixed share capital (INVCO), a unit trust or a limited partnership.

For private equity funds drawdown & distribution procedures are permitted.

TAXATION - PRESCRIBED & NON-PRESCRIBED STATUS

A fund that has its assets situated outside Malta is a non-prescribed fund and is exempt from Maltese tax on all its income and gains (except from immovable property situated in Malta, if any). Distributions to non-resident investors are exempt from Maltese income and capital gains tax.

There are different rules for prescribed funds which are defined as a resident fund with the value of assets held in Malta amount to at least 85% of the total assets of the fund.

AIFs are permitted to use special purpose vehicles (SPV) as long as the SPV is beneficially owned and controlled by a fund and the investments effected through the SPV are in accordance with the offering memorandum.

SERVICE PROVIDERS

Service providers (excluding custody/depository which have specific requirements) for funds such as Managers, Administrators, and Prime Brokers need not be in regulated in Malta as long as the MFSA is satisfied that the service provider fulfils the requisite fit and proper criteria and is sufficiently regulated in an approved jurisdiction.

PIFs targeting Experienced Investors must have a custodian. PIFs targeting Qualified and Extraordinary Investors can opt to use a prime-broker rather than a custodian.

UCITS funds must have a licensed custodian acceptable to the MFSA with a place of business in Malta.

AIFs must appoint a single independent custodian/depository. Until July 2017 the custodian need not be a Maltese entity but may be a credit institution established in the EU.

All Funds need to be audited and undertaken annual tax compliance obligations. All major audit firms have well established operations in Malta.

RE-DOMICILIATION

A fund can migrate to Malta without having to be wound up, subject to certain conditions that are relatively straight forward. These include that the fund is incorporated in an approved jurisdiction, that the fund is similar to the structures available in Malta, re-domiciliation is possible under the laws of the exporting jurisdiction as well as allowable under the fund's constitutive documents and that the re-domiciliation is approved by way of a resolution of the fund i.e. an extraordinary resolution.

Re-domiciliation is very useful where promoters want to move to a well regulated European jurisdiction without going through the painful process of winding up procedures in the country of origin and the re-incorporation process in Malta.

MALTA STOCK EXCHANGE (MSE)

Many investors are only able to consider investment into a fund if it is listed on an exchange. Furthermore the exchange may need to be recognised by a specific regulatory or fiscal authority.

On 29th December 2005 the HM Revenue and Customs designated the MSE as a recognised stock exchange under section 841(10b) – Income and Corporation Taxes Act of 1998 and a recognised exchange for inheritance tax purposes.

The MSE is also a Member of the International Organisation of Securities Commission, Federation of European Securities Exchanges, European Central Securities Depository Association, World Federation of Exchanges, European Corporate Governance Institute and European Capital Markets Institute.

CONTACT US

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