

Information on setting up an investment fund in Malta

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Malta is an independent republic, gaining independence from the United Kingdom in 1964. It is a full member of the European Union (from 1 May 2004) and is one of the 15 members of the Eurozone.

The legal system is based on the continental civil law system and the Napoleonic Code, but over the last 200 years public and commercial law have been strongly influenced by the Anglo Saxon model. The official language is Maltese, although English is the most commonly used language in business while Italian is fluently spoken by a good part of the population.

Along with its recent growth in financial services, Malta has also gained a strong reputation as an efficient funds domicile that provides competitive access to the European market and beyond. The country is now home to over 400 funds including 250 alternative investment funds and a significant number of UCITS and retail funds. Hedge funds licensed in Malta range from single manager funds to funds of hedge funds and include large, mid-sized and small cap funds, as well as single and multi-strategy funds.

The fund servicing infrastructure continues to consolidate and expand with the arrival of more international services providers. Fund administrators who have established operations in recent months include Custom House Global Fund Services, SGGG Fexco Fund Services and Praxis Fund Services, who have all commented favourably on the availability, quality and competitiveness of employees and the strength of professional services. Other administrators established in Malta include TMF, Apex, HSBC and Valletta Fund Services.

The asset management industry has also registered important gains with the recent arrival of a number of European managers, particularly from the Netherlands, Switzerland and the UK.

Regulatory Framework for Funds

Malta's regulatory framework is geared to ensure the highest standards of probity and transparency while allowing operators the freedom to compete and innovate. The industry is overseen by a single regulator, the Malta Financial Services Authority (MFSA), which was set up in 2002 to consolidate the work previously carried out by several agencies. The MFSA aims at combining a high standard of regulation with an efficient response to industry needs.

The Investment Services Act provides the statutory framework for the licensing and supervision of investment services and collective investment schemes (CISs). The legislative framework is flexible enough to adapt to different business models within parameters set by Maltese and EU legislation.

The MFSA's Rulebook distinguishes between Retail Collective Investment Schemes and Professional Investor Funds:

Retail Collective Investment Schemes include both UCITS and non-UCITS Schemes. These types of schemes are subject to strict regulatory requirements, based on the UCITS Directive (including the incorporation of the new eligible assets regime) which is fully transposed into the Maltese regulatory framework.

Professional Investor Funds (PIFs) are governed by a customised version of the Rules and, by comparison to retail funds, benefit from a lighter form of regulation through the disapplication of certain provisions. The PIF framework is used by hedge funds and for other forms of alternative investment.

As legal structures go, PIFs may be set up as open-ended and closed-ended investment companies, investment partnerships or unit trusts. Alternatively they may be formed through other non-corporate investment instruments. They may be stand alone funds or they may incorporate a number of segregated sub-funds or managed accounts.

There are three separate categories of PIF, each having its own particular licence parameters depending on the level of sophistication of the end investor. The most commonly used type is the 'Qualifying Investor Fund' (minimum investment 75,000). This type of fund has no investment or borrowing restrictions and may make unlimited use of leverage. Such funds need not appoint a custodian or prime broker provided adequate safekeeping arrangements are in place.

The 'Extraordinary Investor Fund', in its turn, is typically suited for private equity investment. In this case, the minimum investment threshold is 750,000. In addition to the advantages enjoyed by qualifying investor funds, this type of PIF also benefits from customised disclosure requirements and even faster licensing turnaround times, particularly where the directors, service providers and founder shareholders originate from recognised jurisdictions.

At the other end of the scale, 'Experienced Investor Funds' (minimum investment per investor 15,000) require the appointment of a custodian and can use leverage only up to 100% of NAV. However these types of PIFs are not bound by any of the investment restrictions that apply to retail funds.

PIFs that do not appoint a third party manager may be set up as self-managed funds. In such case, the management of the assets will be the responsibility of the Board of Directors. The Board may in turn delegate certain functions to an in-house Investment Committee whose role is to monitor and review the investment policy, establish and review guidelines for investments and issue rules for stock selections, set up the portfolio structure and asset allocation and make recommendations to the Board of Directors. The day-to-day investment management of the PIF's assets may be delegated to a portfolio manager appointed by the Investment Committee. Self-managed PIFs must have a minimum capital of 125,000.

The turnaround time for a Qualifying Investor Fund could be as little as 7 days, while that for Extraordinary Investor Fund would be 3 days. Continuation provisions incorporated in the legislation also allow funds to re-domicile to and from Malta at the least possible cost while listing of funds on the Malta Stock Exchange is also an option.

A fund may set up Special Purpose Vehicles (SPVs) in any jurisdiction that is not blacklisted by the FATF, provided this is in line with the fund's objectives and policies as disclosed in the offering document. The fund's directors must also retain control on the Board of Directors of the SPV.

Service Providers

The regulatory framework for service providers is based primarily on the EU Markets in Financial Instruments Directive and the Capital Requirements Directive. Managers, Investment Advisers, Custodians and Prime Brokers establishing operations in Malta would need to apply for the appropriate licence under the Investment Services Act. On the other hand Fund Administrators intending to provide purely administrative services may apply to the MFSA for recognition certificate. Funds domiciled in Malta may also be serviced by administrators, managers or custodians authorised in other EEA or recognised jurisdictions.

Credit institutions, constituted and licensed in Malta, or exercising the freedom of establishment rights under EU legislation, as well as branches or subsidiaries of overseas credit institutions that are subject to prudential requirements equivalent to those applicable to Maltese credit institutions, are among the institutions that are eligible for a custody licence under the Investment Services Act.

Business environment

Malta is well positioned to continue making headway in financial services. As a domicile it is widely respected and provides a highly attractive business environment. Legal and accounting expertise is fully developed, underpinned by the presence of the major accountancy firms and traditionally strong links with City law firms. Advantages include a quality human resource; an internationally

accepted tax regime with an extensive network of bilateral treaties; a unique legal system that combines the continental civil law system with Anglo Saxon commercial law principles; an excellent IT and communications infrastructure, and good air links with other financial centres and surrounding markets.

In a country whose professional resources are already well-supported by a deep pool of multilingual administrative staff, the funds industry is investing heavily in training at the specialised end. As a result Malta is fast becoming a serious alternative for fund promoters. It is moreover an established onshore jurisdiction forming an integral part of the EU single market in financial services.

Strongly biased in favour of quality rather than quantity, Malta is approaching critical mass as a fund domicile and this is drawing more managers and administrators to establish operations. The advent of the single management passport in the EU, the structural shift that is taking place in the financial services landscape and increased specialisation on the local scene are all factors that will influence Malta's development going forward. As a result, fund services - in particular custody and management services - are set to become stronger in the not too distant future.

International Benchmarking

The World Economic Forum's Competitiveness Index 2008-2009 has ranked Malta 34th (out of 134 countries) for financial market sophistication, with a banking system that is the 10th soundest in the world.

The Internal Market Scoreboard, published by the European Commission in January 2009, has placed Malta and Denmark in joint first position in the implementation of internal market directives - further evidence of the sound internal structures that are in place and confirmation of Malta's status as one of them most integrated economies in the EU.

A European Commission Report on Trade and Foreign Investment Indicators published on 19 January 2009, places Malta among the top five EU performers with respect to foreign direct investment inflows as a percentage of GDP.

Malta is on the OECD White List published following the G20 meeting in April 2009.

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