

# THE FUND INDUSTRY IN MALTA

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 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.



ADVOCATES  
DEGUARA FARRUGIA

## Investment Funds

### Legal and Regulatory Framework

The Investment services Act, 1994 (the 'ISA') establish the regulatory framework for collective investment schemes and investment services. The ISA vests the responsibility for the licensing, regulation and supervision of CISs and investment services in the Malta Financial Services Authority (the 'MFSA'). In terms of the ISA as a general rule CISs and investment services providers require a licence in order to operate in or from Malta. Special regulatory regimes exist for professional investor funds, retirement funds, private funds and fund administrators.

The ISA provides for the setting up of CISs in one of the following forms:

\* An investment company with variable share capital or SICAV (that is, an open-ended fund), that may take the form of either a private limited liability company or a public limited liability company registered and incorporated in accordance with the Companies Act.

\* An investment company with fixed share capital (that is, a closed-ended fund), that may only take the form

of a public limited liability company registered and incorporated in terms of the Companies Act.

\* A mutual fund, that is, a fund duly set up in terms of the Civil Code, not having a corporate nature and which is regulated by contractual arrangements made between a management company and its investors who or which essentially entrust the management company with funds in terms of a pre-determined investment policy.

\* A limited partnership duly registered in terms of the Companies Act.

\* A unit trust, that is, a trust established in terms of the Trusts and Trustees Act for the purpose of, or having the effect of, or providing for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

\* A contractual fund, that is, a collective investment scheme established by means of a deed of constitution entered into by the manager and the custodian of such

a collective investment scheme, under which the unit holders participate and share in the property of the scheme as evidenced by units issued by the manager.

Maltese financial services legislation recognizes three types of CISs as follows:

\* Retail Collective Investment Schemes - CISs that are available to, and which collect funds from, the general public. These are the most highly regulated CISs.

\* Professional Investor Funds - CISs that target experienced investors, or qualifying investors, or extraordinary investors. Professional Investor Funds target investors in accordance with their minimum investment threshold. Such funds are non-retail and hence not subject to some of the usual restrictions on their investment or borrowing powers as normal retail funds.

\* Private Collective Investment Schemes - CISs that are regulated by the ISA (Recognition of Private Collective Investment Schemes) Regulations, which essentially are private in nature and limit the number of participants to fifteen persons.

## Retail CISs

Maltese legislation permits the setting up of two types of retail CISs that is, UCITS schemes and non-UCITS schemes.

One of the main advantages of setting-up a retail CIS in compliance with UCITS regulation is that these types of funds may be may be passported to and marketed in other EU jurisdictions thereby allowing fund managers and promoters to tap into the European investor base. The

Commission has recently enacted a fourth level of regulation in this respect, known as UCITS IV. This latest version of the UCITS directive creates a single market for service providers to UCITS funds except custodians.

There are no prescribed eligibility requirements for investors in such schemes, nor are there any minimum investment requirements imposed upon prospective investors in such schemes. Retail CISs are subject to a number of investment, leverage and borrowing restrictions as duly

set out in the relative Investment Services Rules.

A UCITS scheme is required to draw up a full prospectus and a simplified prospectus, including such information as is prescribed in the relative Investment Services Rules. A non-UCITS scheme is, on the other hand, only required to draw up a full prospectus having such information as prescribed in the applicable Investment Services Rules.

## Professional Investor Funds

Compared to the regulation of retail funds, the PIF regime is less onerous and more flexible. Regulatory requirements vary depending on the category of investors targeted by the fund as shown in the table below:

Regulatory Requirements	Experienced Investors	Qualifying Investors	Extraordinary Investors
Qualifying Criteria	<ul style="list-style-type: none"> <li>* Person with a minimum of one year's work experience in the financial sector</li> <li>* Persons with reasonable experience in the acquisition and disposal of similar funds/property/risk profiles</li> <li>* Persons who have carried out investment transactions of a significant size with a certain frequency</li> <li>* Persons who can otherwise justify that they have the relevant expertise , experience and knowledge</li> </ul>	<ul style="list-style-type: none"> <li>* Entities with net assets of more than €750,000</li> <li>* Individuals or entities with reasonable experience in the acquisition and disposal of similar funds/risk profiles/property</li> <li>* Individuals with a net worth exceeding €750,000</li> <li>* Senior employees/directors of service providers to the PIF</li> <li>* Relations/close friends of the promoter</li> <li>* Entities with a minimum of €3.75 million under discretionary management investing on their own account</li> <li>* Qualifying or extraordinary investor funds</li> <li>* Investment vehicles owned by persons/entities satisfying any of the above qualifications</li> </ul>	<ul style="list-style-type: none"> <li>* Entities with net assets exceeding €7.5million</li> <li>* Individuals with a net asset worth exceeding €7.5 million</li> <li>* senior employees/directors of service providers to PIF</li> <li>* extraordinary investor funds</li> <li>* Investments vehicles owned by persons/entities satisfying any of the above qualifications</li> <li>discretionary management investing on their own account</li> <li>* Qualifying or extraordinary investor funds</li> <li>* Investment vehicles owned by persons/entities satisfying any of the above qualifications</li> </ul>

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Minimum Investment	€10,000	€75,000	€750,000
Investment Restrictions	<ul style="list-style-type: none"> <li>* Limitations on investment in Financial Derivative Instruments</li> <li>* Generally, may invest up to 20% of its assets in securities issued by the same body, and up to 30% of its assets in money market instruments issued by the same body</li> <li>* May invest up to 35% of its assets in deposits held with a single body</li> <li>* No restrictions in respect of investments in a UCITS</li> <li>* May invest up to 30% of its assets in a CIS which is not a UCITS</li> <li>* Fund of hedge funds must invest in at least 5 different hedge funds</li> <li>* Other restrictions for funds investing directly or indirectly in immovable property</li> </ul>	None	None
Borrowing Restrictions	<ul style="list-style-type: none"> <li>* Borrowing on a temporary basis for liquidity purposes is permitted and not restricted. Borrowing for investment purposes or leverage via the use of derivatives is restricted to 100% of the net asset value.</li> <li>* Limitations on stock lending or borrowing agreements</li> </ul>	None (except some restrictions which may apply to property funds)	None
Reporting	* Interim and annual	* Interim and annual	* Interim and annual
Offering Document	* To provide investors with an Offering Memorandum in terms of the Investment Services Rules	* To provide investors with an Offering Memorandum in terms of the Investment Services Rules	* Not required to provide Investors with an Offering Memorandum, but may offer investors a Marketing Document in terms of the Investment Services Rules
Service Providers	<ul style="list-style-type: none"> <li>* Custodian –compulsory</li> <li>* Other functionaries may be appointed</li> </ul>	<ul style="list-style-type: none"> <li>* Custodian – Optional</li> <li>* Other functionaries may be appointed</li> </ul>	<ul style="list-style-type: none"> <li>* Custodian – Optional</li> <li>* Other functionaries may be appointed</li> </ul>

## Outline of Applicable Income Tax Rates

CIS taxation is currently regulated by the Income Tax Act, the Collective Investment Schemes (Investment Income) Regulations, and also 'Guidelines on the Provisions of the Income Tax Act relating to Collective Investment Schemes and the Investment Income Provisions' as issued by the Malta Inland Revenue Department.

The abovementioned legislative enactments and guidelines provide a comprehensive framework for the taxation of funds' investment income, gains generated by disposals of units, and dividends distributed by such funds, such framework effectively translating into a favourable Malta tax treatment of CISs.

The distinction between prescribed and non-prescribed funds is fundamental for the purposes of

determining the tax treatment of a CIS and its investors. A prescribed fund is a fund of a Malta-based scheme that has declared that the value of its assets situated in Malta that will be allocated to that fund for the purposes of its operations is expected to be at least 85% of the value of its total assets that will be so allocated. All other funds which do not satisfy the aforementioned criterion (that is, non-resident funds and resident funds not satisfying such criterion) are classified as non-prescribed funds.

Fund	Prescribed Funds	Non-Prescribed Funds
Investment Income	<ul style="list-style-type: none"> <li>* 15% (local bank interest)</li> <li>* 10% (on other income)</li> <li>* 35% (income from immovable property in Malta)</li> </ul>	<ul style="list-style-type: none"> <li>* 0%</li> <li>* 35% (income from immovable property in Malta)</li> </ul>
Disposal of Units	<ul style="list-style-type: none"> <li>* Up to 15% (resident investors)</li> <li>* 0% (non-resident investors)</li> </ul>	<ul style="list-style-type: none"> <li>* Up to 15% (resident investors)</li> <li>* 0% (non-resident investors)</li> </ul>
Dividends	<ul style="list-style-type: none"> <li>* 0% (dividends paid from Maltese Taxed Account)</li> <li>* 15% (dividends paid from Untaxed Account to Malta resident individual)</li> <li>* 0% (dividends paid from Untaxed Account to non-residents)</li> </ul>	<ul style="list-style-type: none"> <li>* 0% (dividends paid from Maltese Taxed Account)</li> <li>* 15% (dividends paid from Untaxed Account to Malta resident individual)</li> <li>* 0% (dividends paid from Untaxed Account to non-residents)</li> </ul>

# THE FUND INDUSTRY IN MALTA

## Our Services

Our Investment funds team provides a wide range of services including:

\* Legal advice and assistance relating to fund establishment

\* Assistance with compilation and submission of licence application and related documentation

\* Drafting of constitutional/corporate documentation and offering documents;

\* Liaising with regulator;

\* Fiscal advice to fund managers and promoters;

\* Legal advice as to the ongoing regulatory requirements;

\* Fund re-domiciliation services;

\* Acquisition and disposition up to the final exit planning and liquidation;

\* Drafting and reviewing of agreements including fund management, fund administration and custody agreements;

\* Acting as company secretary, compliance officers, money

laundering reporting officers and directorship services;

\* Fiduciary services

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\* Back and middle office services for funds including registered office services;

\* Through our network of preferred working partners which include fund managers, administrators, investment and financial advisors, we can offer integrated legal and administration services.

