



FUNDS IN MALTA

Professional Investor Fund

Malta is fast becoming a very popular jurisdiction in which to register funds of various types. Below is a very brief introduction on the Professional Investor Fund (PIF).

The Malta Financial Services Authority (MFSA) is responsible for the licensing, regulation and supervision of all collective investment schemes, including PIFs. It is a “one-stop-shop” financial services regulator with a simple vertical structure that makes it 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.

Maltese financial services and tax laws are up to date with EU directives and in line with EU requirements. The MFSA constantly refers new proposed regulations to the industry so as to achieve “market sensitive” regulations, and published guidelines in a variety of spheres makes life easier.

Collective investment schemes, including PIFs, are regulated by the Maltese Investment Services Act. The Act provides for two types of licenses:

- (i) Licenses to operate collective investment schemes, including PIFs and
- (ii) Licenses to enable practitioners to carry out investment services that are considered licensable activities.

Features of the Maltese legislation include the possibility of continuing overseas funds in Malta (i.e. re-domiciliation to Malta), EU passport rules, etc. PIFs are subject to minimal regulation if their only activity is operating as a PIF and where authorised functionaries are appointed to carry out any licensable activity (such as Managers, Administrator, Custodian, Prime Broker, Investment Advisor, etc.).



The Professional Investor Fund

PIFs are investment funds which differ from conventional investment funds. PIFs provide more flexibility than other funds since they are subject to minimal regulations when compared to other investment schemes. The setting up of PIFs aimed at setting up a type of fund which can be easily approved due to the reduced level of ongoing regulation and supervision. Subject to documents and information being complete, licensing of a PIF can be achieved in 4 – 5 weeks. PIFs promoted to Extraordinary Investors can be licensed much quicker, with most due diligence provided after licensing.

A PIF can be set up as an incorporated open ended investment company (SICAV) or an incorporated closed ended investment company (INVCO), a public limited liability company, a limited partnership or a unit trust and thus the PIF may be useful for hedge funds, fund of funds, specialty funds, sector specific funds, in-house funds, private funds, etc.

The PIF regime places emphasis on the investor qualifications such as disclosure and “fit and proper” tests of directors and service providers, post licensing onus on the investor, investment entry levels and investor qualification criteria. The regime consists of three categories:

- (i) PIFs promoted to Extraordinary Investors;
- (ii) PIFs promoted to Qualifying Investors; and
- (iii) PIFs promoted to Experienced Investors.

Investor qualification

The investment entry levels are for Extraordinary Investors €750,000, for Qualifying Investors €75,000 and for Experienced Investors €15,000. Investor qualification criteria – Extraordinary Investor an Extraordinary Investor includes:

1. A body corporate (single or a group), trust or individual with more than €7.5m net assets;
2. Senior employees and directors of service providers to the particular PIF;



3. Other PIFs promoted to Extraordinary Investors; and
4. The investment vehicle of a qualified person.
5. Investor qualification criteria – Qualifying Investor

A Qualifying Investor includes:

1. A body corporate (single or a group), un-incorporate, trust or individual with more than €750k net assets;
2. Persons with reasonable experience in the acquisition/disposal of similar funds or asset classes;
3. Senior employees and directors of service providers to the particular PIF;
4. Relations or close friends of the promoter (up to a maximum of 10 persons per PIF);
5. Other PIFs promoted to Extraordinary or Qualifying Investors;
6. Entities (single or group) with minimum €3.75m under discretionary management; and
7. The investment vehicle of a qualified person.

An Experienced Investor is a person having the expertise, experience and knowledge to be in a position to make his own investment decisions and understand the risks involved. Such an investor must state the basis on which he satisfies this definition, either by confirming that he is:

1. A person who has relevant work experience having at least worked in the financial sector for one year in a professional position or a person who has been active in this type of investment; or



2. A person who has reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile, or property of the same kind as
3. The property, or a substantial part of the property, to which the PIF in question relates; or
4. A person who has carried out investment transactions in significant size at a certain frequency (for example a person who within the past 2 years carried out transactions amounting to at least €50k at an average frequency of 3 per quarter); or
5. By providing any other appropriate justification.

One of the major advantages of a PIF is that it can appoint a 3rd party to act as a manager of the PIF or else opt to self-manage the fund. In addition to having a manager the fund administrative services must be provided by a third-party administrator or by the Manager. A person in Malta providing such administrative services must be licensed by the MFSA. Experienced investors must appoint a third party custodian to their PIF, this is optional when setting up a PIF with Qualifying and Extraordinary Investors provided that adequate measures for safekeeping are put in place.

When setting up a PIF there are no investment restrictions imposed on investment objectives and policies of the PIF, as long as these are disclosed in the offering memorandum. Furthermore, there are no minimum or maximum levels regarding exposure to any asset class, assets, industry sector or geographical area.

A Maltese PIF may be listed on the Malta Stock Exchange, or any other recognized exchange. The MFSA houses the listing authority so that licensing and listing on the Maltese Stock Exchange can be coordinated.

Maltese income tax provisions

A fund which has more than 15% of its underlying assets situated in Malta is referred to as a Prescribed Fund, and a fund which has less than 15% of its underlying assets situated in



Malta is referred to as a Non-Prescribed Fund. A Non-Prescribed Fund is not taxed in Malta at the fund level, nor at the nonresident unit holder level.

One must note that income of a licensed collective investment scheme, including that from PIFs but excluding income from immovable property situated in Malta is exempt from Malta tax. Nevertheless if a fund is allocated more than 85% of the total assets the fund will be subject to withholding tax at source of certain categories of investment income being received from Maltese sources at a rate which fluctuates from 10% to 15%..

The Re-domiciliation of Offshore Private Investment Funds to Malta

Maltese law permits the continuation or migration or re-domiciliation of a body corporate which had been formed, incorporated or registered in any country outside Malta. In fact, by means of subsidiary legislation¹, provision is made for both inward and outward continuation of companies. The laws of Malta also consider common and private investment funds as being a body corporate. Thus, private investment funds (PIFs) may be migrated to Malta once all criteria set out at Maltese law is satisfied. The main legislation which regulates the field of Investment Services on the Island is Chapter 370 of the Laws of Malta. This law authorises and recognises the continuation of collective investment schemes in Malta, as it is supported by subsidiary legislation referred to above.

Before considering the many possibilities Maltese law offers in the sphere of re-domiciliation, it is advisable to consider preliminary requirements which a foreign Fund must satisfy before delving into the process commencing the migration. First and foremost, one is to refer to the applicable law of the foreign jurisdiction from where the body corporate is originating. In fact, it is the applicable laws of such foreign jurisdiction which are to be first consulted, which provisions must ensure that continuance of such body corporate is surely permissible. Consequently eligibility to register such foreign body corporate to Malta must also be authorised through the charter or statutes or memorandum and articles, or any other instrument constituting which defines the Fund which in effect does authorise such continuation. Such instrument must be submitted to the Authority to set the ball rolling. This constitutive instrument must be accompanied with a so-called "Offering Memorandum", which would include the details of the current directors.



Once the above have been verified and the continuation may be deemed to be validly made at law, an application for a Collective Investment Scheme license under the Investment Services Act must be submitted to the MFSA. This application should be accompanied by the relevant documentation, which will be reviewed by the Authority² and must be drafted on the basis of the Scheme post re-domiciliation. This means that it must refer to the Scheme as a Malta based scheme and refers to the Board members and service providers of the Fund to be servicing the Scheme once it is re-domiciled.

An important document which is essential to the continuation of the Fund to Malta is the signed resolution from the existing Board of the Directors. This resolution must confirm the Directors' intention to re-domicile the Scheme to Malta; as well as authorising those persons authorised to sign the application referred to above and thus effect all necessary changes to the company as per the proposed final version of the Offering Memorandum.

In addition to the above, recent copies of the audited financial statements of the investment scheme must be submitted to the Authority. Moreover, it is to be ensured that there are no regulatory issues related to the re-domiciliation and no pending litigation or disputes that the Directors are not aware of any potential litigation or disputes.

The compilation of these documents may prove to be a daunting task for precision in the collection of documents as well as caution in the co-ordination of documents is to be followed thus ensuring that one does not risk that the Fund - which until then would still have been registered in the register abroad would not risk being struck off before it is registered as having continued in Malta. In addition to these documents a series of due diligence enquires must be undertaken by the MFSA together with reviews and evaluations of the existing regulator of the overseas scheme.

Once all documentation is vetted and consultation is carried out by the Authority, the latter would proceed to issue a principle decision with respect to the scheme. This 'in principle' decision is then communicated, together with an 'in principle approval', involving any pre-licensing outstanding issues. Consequently, the promoters are to then proceed to finalise the relevant documentation required by the Authorisations Unit and the Registrar of Companies. Once the Authorisations Unit liaises with the Registrar of Companies, and a satisfactory resolution is reached the Scheme would be said to be licensed on the same date it is validly redomiciled to Malta.



It is to be noted and highly advisable that at all times the Registrar of Companies be approached as to consultation and verification with respect to the proposed re-domiciliation. At all instances, it is to be ensured that the proposed structure and the documentation to be used by the Scheme would be in line with the requirements specified in the Investment Services Rules for Professional Investor Funds.