

Spring 2009

Malta Funds

Why Malta?

Malta is an emerging fund jurisdiction that offers a favourable European onshore 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 the licensing, regulating and supervision of all collective investment schemes. There are agreed time scales for launching funds so promoters have certainty and a defined time to market.

Malta has an established cluster of skilled and highly qualified people involved with the formation and servicing of funds. There is a good pool of well-educated, multi-lingual and numerate staff that is 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 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 Transferrable 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 those more complex funds that use derivatives, short positions, leveraged positions and other forms of hedging instruments are not currently permitted under the UCITS regime.

UCITS are mainly used for retail funds that hold transferrable 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 offer a global brand as a regulated investment product.

Malta Funds - PIFs

Professional Investor Funds (PIFs) are not regulated as tightly as UCITS funds and are targeted at financially literate investors. Hedge funds, private equity funds and property funds are normally structured as PIFs.

PIFs can be set up as standard or self-managed schemes. With a standard scheme the Board of Directors will appoint an external manager who would be 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 services for the fund.

PIFs are structured in three categories linked to the experience and knowledge of the professional investors. The three PIF categories are:

- Experienced Investors (€15,000)
- Qualified Investors (€75,000)
- Extraordinary Investors (€750,000)

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 have sufficient capital to be able to bear a loss. When subscribing into a fund, investors have to sign a PIF declaration confirming that they meet the PIF criteria set down in the offering memorandum.

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 €15,000 (or currency equivalent).

Qualifying Investors

There are various criteria to be met to be classified as a Qualifying 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

Various 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).

Legal Structures

Most PIFs 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 PIFs 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 and distribution procedures are permitted.

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 amounting to at least 85% of the total assets of the fund.

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

Service Providers

Service providers for PIFs such as managers, administrators and custodians etc. need not be in Malta as long as the MFSA is satisfied that the service provider fulfils the requisite fit and proper criteria and are sufficiently regulated in an approved jurisdiction.

Experienced Investor funds must have a custodian. Qualifying and Extraordinary Investor funds can opt to use a prime-broker rather than a custodian.

Re-Domiciliation

A fund can migrate to Malta without having to be wound up, subject to certain relatively straight forward conditions such as: the fund is incorporated in an approved jurisdiction, 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 onshore 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 HM Revenue and Customs designated the exchange 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 (IOSCO), the Federation of European Securities Exchanges, the European Central Securities Depository Association, the World Federation of Exchanges, the European Corporate Governance Institute and the European Capital Markets Institute.

Contact

To find out how Praxis Fund Services can assist you with fund formation and administration contact:

Nick Mahy

Managing Director
Praxis Fund Services (Malta) Limited

Email: nick.mahy@pfs.gg

Tel: +356 2546 8200

Chris Gambrell

Managing Director
Praxis Fund Services Limited

Email: chris.gambrell@pfs.gg

Tel: +44 (0) 1481 737684