

# *INVESTMENT FUNDS & ASSET MANAGEMENT*

## **MALTA INTERNATIONAL FINANCIAL CENTRE**

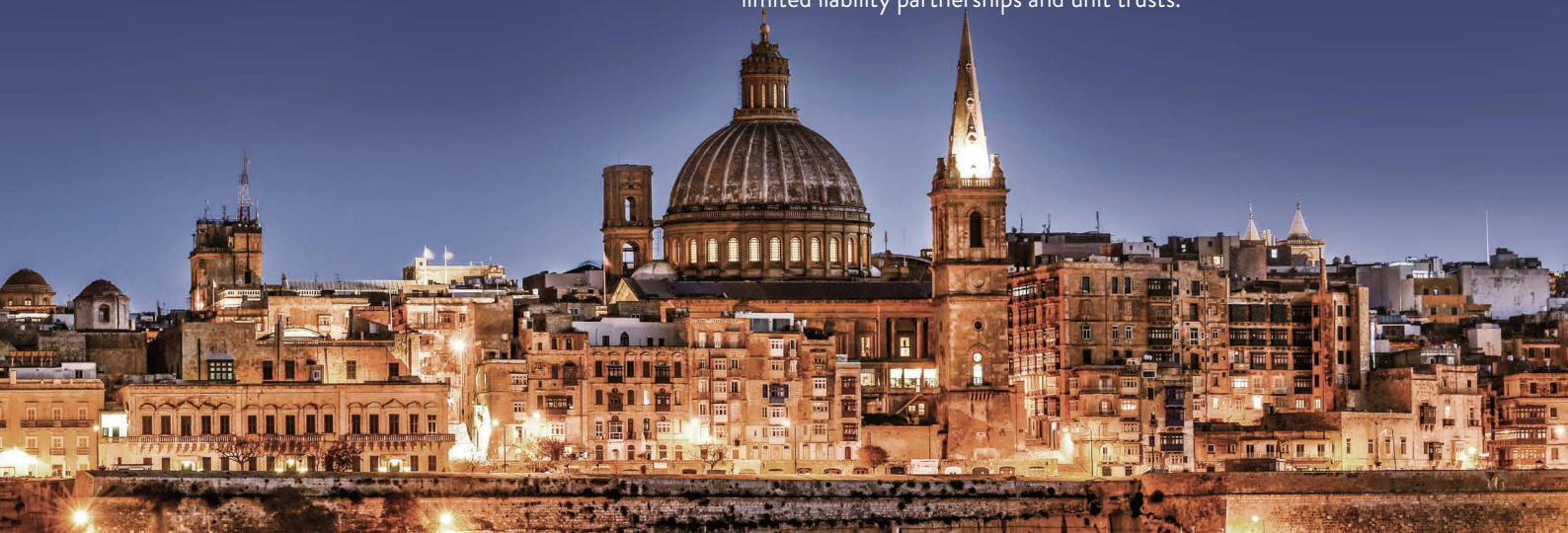
Malta is growing year-on-year as a financial centre of excellence, with the fund industry being one of the financial centre's main engines for growth. Malta hosts over 580 investment funds which have a combined Net Asset Value ("NAV") of almost Euro 9.7 billion. The country is a welcoming place for high-net-worth individuals due to its mixture of innovative products, experienced professionals and strong regulatory framework. It offers all the regularly sought investment vehicles available to wealthy clients, while allowing investors to protect their assets.

The jurisdiction is a centre of excellence for the asset management industry and an attractive base from both a cost and a tax efficiency perspective. In fact, Malta has witnessed an increasing number of third-party service providers offering services such as administration, management and investment advisory services. Malta is a signatory to over 70 double-taxation treaties, covering most of the world's high-growth markets, thus facilitating international business.

## **REGULATORY FRAMEWORK & LEGAL FORM**

Collective Investment Schemes ("CIS") domiciled in Malta require a licence from the Malta Financial Services Authority ("MFSA"), in terms of the Investment Services Act, 1994 ("ISA"). Similarly, managers, investment advisors, custodians and prime brokers establishing operations in Malta need to apply for the appropriate investment services licence in terms of said legislation. Service providers are not required to have a local presence in Malta. However, in the event that a service provider is not established in an EU/EEA Member State or a signatory to a memorandum of understanding with the MFSA, the details pertaining to the service provider must be disclosed to the MFSA for prior approval. The service provider may thus be accepted by the MFSA, provided that it is considered to be adequately regulated.

The most common legal form to set up an investment fund in Malta is an 'investment company with variable capital' ("SICAV"). Nevertheless, other legal entities may be used such as incorporated cells, contractual funds, limited liability partnerships and unit trusts.



# Fund Options and Fund Managers

## Maltese Fund Regime



### Professional Investor Funds (“PIFs”)

In terms of Maltese legislation, PIFs are just one type of CIS. A PIF may be promoted to Qualifying Investors and may be used as an investment vehicle for non-traditional investments, as well as specialist instruments.

A “**Qualifying Investor**”, is an investor which invests a minimum of Euro 100,000, or its currency equivalent, in a PIF, AIF or a NAIF, which investment may not be reduced below this minimum amount at any time, by way of a partial redemption. Such investor must also declare, in writing, to the fund manager and the PIF, AIF or NAIF, that it is aware of and accepts the risks associated with the proposed investment.

Moreover, the investor must satisfy at least one of the following criteria, in that it must be:

- a body corporate which has net assets in excess of Euro 750,000 or which is part of a group which has net assets in excess of Euro 750,000 or, in each case, the currency equivalent thereof;
- a trust where the net value of the trust's assets is in excess of Euro 750,000 or the currency equivalent;
- an individual whose net worth or joint net worth with that of the person's spouse, exceeds Euro 750,000 or the currency equivalent; or
- a senior employee or director of a service provider to the PIF, AIF or NAIF.

## PIFs Promoted to Qualifying Investors

Minimum investment: <b>Euro 100,000</b>	Fund Administrator: <b>Manager may delegate fund administration to a third party administrator</b>
Set up time: <b>Approximately 6 months</b>	Custodian: <b>Optional, provided adequately safekeeping measures</b>
Investment restrictions: <b>None (except on property funds)</b>	Auditor: <b>Required</b>
Borrowing restrictions: <b>Up to 100% NAV</b>	Money Laundering Reporting Officer (MLRO): <b>Required</b>
Offering Document: <b>Required</b>	Compliance Officer (may also act as MLRO): <b>Required</b>
Third Party Manager: <b>Required or Self-Managed</b>	Listing: <b>Optional</b>

A PIF may be **self-managed**, without the need to appoint a third party manager. In this manner, the promoters do not need to have a presence in Malta. The management and the assets of the fund would be undertaken by an investment committee, a portfolio manager and a board of directors.

## NON-RETAIL ALTERNATIVE INVESTMENT FUNDS (“AIFS”)

AIFs fall within the remit of the Alternative Investment Fund Managers Directive 2011/61/EU (“AIFMD”). Such legislation provides for a harmonised framework for the management and marketing of AIFs across the EU. AIFs are defined as collective investment undertakings which raise capital from a number of investors, with a view of investing therein in accordance with a defined investment strategy, and which do not require authorisation under the UCITS Directive.

AIFs may either be retail AIFs or professional AIFs, and are domestically regulated by the Investment Services Act, Malta (“ISA”). AIFs authorised in terms of this law can be marketed to Professional Investors as defined in Markets in Financial Instruments Directive II (“MiFID II”) and/or to Qualifying Investors having a minimum investment requirement of Euro 100,000.

This category of funds may be self-managed. Therefore, the appointment of an Alternative Investment Fund Manager (“AIFM”) is not mandatory.

The fund must have an initial capital of at least Euro 300,000, in order to have sufficient financial resources at its disposal to conduct its business effectively, to meet its liabilities and to be prepared to cope with the risks to which it is exposed.

The AIF may be marketed with a passport in jurisdictions outside of Malta.

## ALTERNATIVE INVESTMENT FUNDS MANAGERS (“AIFMS”)

The AIF may appoint an AIFM, who would be responsible for portfolio management and risk management and other permitted services. However, appointment of an AIFM is not mandatory. The Alternative Investment Fund Managers Directive (“AIFMD”) and its implementing regulation, subjects fund managers within scope to authorisation or registration requirements.

An AIFM approved by the MFSA is allowed to trade across the EU, with open access to all Europe’s 400 million consumers.

The AIFMD framework also provides for a *de minimis* regime for small AIFMs. *De minimis* AIFMs are managers which, whether directly or indirectly, manage portfolios of AIFs whose assets under management collectively do not exceed the following amounts:

- Euro 100 million; or
- Euro 500 million for AIFMs managing only unleveraged AIFs with no redemption rights, exercisable within 5 years from the date of initial investment in each AIF.

## NOTIFIED ALTERNATIVE INVESTMENT FUNDS (“NAIFs”)

The NAIF framework is a clear sign of a shift from the concept of AIFs being regulated and supervised products. The MFSA aims to provide AIFMs with a solution to market AIFs within the EU in the shortest possible timeframe, indicating the time frame of 10 business days from the date of filing of a duly completed notification pack, for the AIF to be included in the NAIF list. The new framework will be applicable to AIFs that are set up and not licensed. Thus, a NAIF will not require licensing by the MFSA and will not be subject to on-going MFSA supervision.

The rationale of the framework is to expedite the offering of NAIFs to the market, as well as to reduce both set up and ongoing running costs. To this end, the AIFM has the responsibility of ongoing management and monitoring of the NAIF, including any obligations that may arise under the AIFMD.

The NAIF may be set up in any structure under Maltese legislation, and may target professional and qualifying investors, as set out by the rules issued by the MFSA. Any EU/EEA full-scope AIFMs, licensed by the MFSA or in possession of the management passport in terms of the AIFMD, may request that the MFSA includes an AIF on the list of NAIFs. The NAIF framework will only be available to full scope EU/EEA AIFMs, which will mean a reliance on the EU/EEA AIFM regulatory status, rather than regulating the AIF itself.

Important characteristics which pertain to a NAIF are that it may be open or closed ended and is passportable. Interestingly, third country AIFMs may also submit requests for a notification of an AIF, if passporting rights have been granted to the country where the AIFM has been established.

The NAIF regime is not available to self-managed AIFs, loan funds, non-AIFs, AIFs managed in a third country (non-EU jurisdiction), AIFMs (until/unless the passport is extended to incorporate non-EU jurisdictions) and AIFs investing in non-financial assets.

## RETAIL FUNDS: RETAIL AIFS AND UCITS

Retail Funds include Undertakings for Collective Investment in Transferable Securities (“UCITS”) and Retail AIFs.

UCITS are harmonised European retail fund products that can operate throughout the EU on the basis of a single authorisation from one Member State, provided that it follows certain notification procedures. The schemes may be offered in any EU and EEA states. UCITS are subject to prescriptive restrictions on the type of eligible assets that they may invest in – however this does not preclude UCITS from adopting different investment fund structures.

The ISA provides the statutory basis for regulating investment funds constituted in, or from, Malta. UCITS are a special class of investment funds which fall within the provisions of the ISA. Maltese UCITS funds may take advantage of the UCITS brand, which is recognised globally as a liquid, transparent and regulated product, which are able to be freely marketed across Europe and distribute their units cross-border by following the notification procedures set out in the UCITS Directive.

The setting up of a UCITS fund in Malta carries a number of significant advantages including EU passporting rights, cost efficiency in terms of set up and annual maintenance and a tax exemption on income and capital gains.

UCITS may either be self-managed or managed by a company approved by the MFSA, which holds a Category 2 Investment Services License. The minimum share capital required by a UCITS fund is Euro 125,000 if it is third-party managed, or Euro 300,000 if it is self-managed. The scheme may also be listed on the Malta Stock Exchange.

## MANAGEMENT COMPANY PASSPORT (“MCP”)

The MCP, under the UCITS IV Directive, ended the requirement that a management company needs to be established in the same country in which the UCITS is established. A Malta-based UCITS can now be managed by a UCITS Management Company established in another EU member state.

The provisions of the UCITS IV Directive also enable the setup of master-feeder UCITS structures, by which one UCITS invests at least 85% of its NAV in another UCITS. The advantage of this type of structuring means that the management and administration of the master fund may be centralised in one jurisdiction – allowing promoters to rationalise their platforms, build up economies of scale and potentially reduce costs to the investor.

## RE-DOMICILIATION OF FUNDS

Maltese law permits the re-domiciliation of companies into and out of Malta. This adds to the jurisdiction's attraction to fund promoters and has prompted a number of offshore companies, which provide fund management services and offshore investment funds, to move to a reputable onshore jurisdiction, such as Malta.

In terms of Maltese law, it is possible to re-domicile closed-ended or open-ended SICAVs, as well as limited liability partnerships, into Malta. The re-domiciliation of funds ensures that the fund retains the same legal personality while preserving the continuity of the fund's performance and track history. There arises no requirement to transfer the scheme's assets and no capital gains tax incidence is triggered. Moreover, in the case of a transfer of units, the custody or prime brokerage contract remains unaltered, while unit holders remain as previously registered, thus having their status unaffected by the re-domiciliation.

## ABOUT THE FIRM

WDM International is a full-service firm, offering a multidisciplinary practice ranging from tax and legal advice to audit and business advisory. Through WDM Lex Advisory, the Firm's legal services arm, the Firm offers trust and fiduciary services, company formation, legal consultancy on maritime and aviation issues as well as a complete package for high-net-worth individuals wishing to relocate into Malta.

Specifically, in the spheres of investment funds and asset management, the Firm is at the forefront in offering a range of services to promoters interested in setting up funds and investment services entities in Malta, including:

- assistance with setting up a fund/service provider, including licensing and incorporation;
- pre and post-licensing regulatory advice, in terms of technical issues arising out of financial services regulations impacting Maltese businesses, including AIFMD, UCITS, MiFID II and CRS & FATCA;
- international tax planning and fund structuring;
- sourcing of non-executive directorships, company secretary, compliance officer and anti-money laundering reporting officer positions.

Our proficiency in financial services legislation and regulation, auditing and accounting standards and our knowledge of the funds and asset management industry enables us to guide promoters and cater for their multifaceted requirements in a seamless and cost efficient manner.

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## MALTESE TAX ADVANTAGES FOR INVESTMENT FUNDS AND INVESTMENT MANAGERS

The Maltese tax framework seeks to attract and promote the setting up of CISs and fund managers in Malta. To this end, Maltese tax legislation provides for the following fiscal measures:

- an exemption from income tax and capital gains tax at both the fund level and at a non-resident investor level, as long as more than 85% of the value of its assets is situated outside of Malta;
- investment income received by the fund is not subject to any withholding tax, as long as more than 85% of the value of the fund's assets is situated outside of Malta;
- no withholding tax is due on dividends paid out to non-resident investors;
- no tax is payable by non-resident investors when they dispose of their investment;
- no stamp duty is charged on share issues or transfers;
- no tax is imposed on the NAV of the scheme;
- Malta-licensed fund managers can avail themselves of a low effective tax burden in Malta, amounting to 5% per annum, through a system of tax refunds available to shareholders of such companies;
- upon subscription to shares/units in the fund, no Malta VAT is chargeable by the fund to investors. Fund management and administration services are VAT exempt in Malta.

