Setting up a PIF in Malta

An overview

A high-level overview of the salient factors to be considered when setting up a Professional Investor Fund in Malta (PIF). This document should serve as a basis for more detailed discussions and the identification of the documentation and steps required to complete the licensing process with the Malta Financial Services Authority (MFSA) in a particular set of circumstances.
Establishing a PIF in Malta
1. Preliminary considerations – Determine PIF legal and internal structure

Legal vehicle
The most common legal form for collective investment schemes (CISs) licensed in Malta is an investment company with variable share capital (SICAV) - usually formed as a public company. However, it is also possible for such CISs to take the form of:
- an investment company with fixed share capital (INVCO);
- an investment company being a SICAV incorporated cell company;
- an investment company being an incorporated cell of recognised incorporated cell company (RICC);
- a limited partnership;
- a unit trust; or
- a common contractual fund.

Capital structure and shareholding
The share capital of a SICAV is usually divided between:
- founder shares – these are usually subscribed for by the original subscribers to the SICAV’s Memorandum and Articles of Association and are many times the only shares carrying voting rights; and
- investor shares – these are usually the shares or units issued to investors.

Single / Umbrella structure
In terms of Maltese law, a SICAV may be constituted as a multi class company with its share capital divided into different classes of shares not constituting any distinct sub-fund.
A SICAV may also be constituted as a multi fund company whereby its share capital is divided into different classes of shares where one class or a group of classes of shares constitute a distinct sub-fund to which are allocated assets and liabilities distinct from assets and liabilities allocated to other sub-funds. A multi fund company may elect to have the assets and liabilities of each sub-fund to be treated for all intents and purposes of law as a patrimony separate from the assets and liabilities of each other sub-fund.

Minimum investment levels
The investors to whom such a fund is permitted to distribute, whether private or institutional, must fall within certain criteria including:
(a) they must invest a minimum of EUR 100,000 or its currency equivalent in the PIF which investment may not be reduced below this minimum amount at any time by way of a partial redemption; and
(b) they must have net assets or net worth of EUR 750,000 or equivalent or be a senior employee or director of a service provider to the PIF.

Investment restrictions
In principle, no particular material investment restriction should apply in practice, however, additional considerations and some restrictions may apply in specific scenarios such as the fund intending to invest through loans or intending to invest in ‘virtual currencies’.
Compliance Officer
The PIF shall ensure that a Compliance Officer is appointed to assume responsibility for the compliance function and for any reporting as to compliance required by MFSA’s rules. The PIF shall request its Compliance Officer to prepare a Compliance Report at least on a 6 monthly basis.

Management Structure
A PIF may appoint an external third party manager or be self-managed. In either case the total assets under management of the manager of the fund (or the fund itself if it is self-managed) cannot exceed €100m or €500m if unleveraged and have no redemption rights within 5 years of initial investment – i.e. meet the de minimis thresholds set out in the AIFMD.

Board of directors
The Board shall be composed of one or more directors (the MFSA governance guidelines require a minimum of three) with at least one being resident in Malta. All directors will need to satisfy the MFSA “fit and proper” test on a continuing basis and must be independent from any Custodian, the Manager and other service providers of the PIF. The Board should hold regular board meetings and shall ensure that detailed minutes are taken which minutes are to be kept in Malta.

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Money Laundering Reporting Officer
The PIF shall at all times have a Money Laundering Reporting Officer (MLRO) to assume responsibility for compliance with the scheme’s Prevention of Money Laundering obligations.

Marketing Passport
PIFs do not benefit from the marketing passport available under the AIFMD but need to adhere to the relevant local private placement rules in every jurisdiction they distribute to.
2. Select and conclude arrangements with external providers

In terms of the relevant MFSA rules, the PIF must appoint certain external service providers and may choose to appoint others (as set out below). In addition, a PIF may delegate/sub-delegate to third parties the task of carrying out certain functions provided that such delegation/sub-delegation complies with the requirements established by the MFSA. The MFSA must be notified before the said delegation arrangements become effective.

Custodian
Although the MFSA recommends and would ordinarily expect the appointment of a Custodian for safekeeping the PIF’s assets, which may be a Prime Broker, there is no obligation to have either.
Where no Custodian is appointed, responsibility for the establishment of proper arrangements for the safekeeping of the PIF’s assets remains with the Directors/ General Partner(s)/ Trustee and officers of the PIF. Where the PIF wishes to appoint a Custodian established in Malta, the Custodian should be in possession of a Category 4 Investment Services Licence.

Manager
If the PIF opts to appoint an external manager (i.e. not be self-managed):
   i. Where the proposed de minimis Manager is established in Malta, such Manager should be in possession of a Category 2 Investment Services Licence and authorised by the MFSA to provide management services to collective investment schemes;
   ii. Where the proposed de minimis Manager is established in the EU, such Manager must meet the de minimis thresholds set out in the AIFMD - should the EU manager of the PIF exceed the de minimis thresholds set out in the AIFMD, the fund would need to upgrade its license to an Alternative Investment Fund (AIF) license; and
   iii. Where the proposed Manager is established outside the EU, the MFSA must be comfortable that such manager is regulated in a reputable jurisdiction.

Administrator
The PIF is expected to appoint an Administrator. In the event that such administrator is established in Malta, such person must be in possession of a Fund Administration Recognition Certificate issued by the MFSA and it must satisfy the MFSA’s requirements as to having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as such.

Auditor
The PIF is required to appoint an auditor approved by the MFSA.

Investment Adviser
The PIF may appoint an investment adviser in relation to which the MFSA must be satisfied that such adviser has the business organisation, systems, experience and expertise deemed necessary to act as such.

Other service providers
The possible appointment of other service providers may also be subject to some generic rules issued by the MFSA.
3. MFSA licensing process

1. **Phase One**
   - Preparatory phase
   - Kick-off meeting with the MFSA in advance of submitting the application;
   - Compilation of the following due diligence documentation (this may vary depending on the legal form chosen):
     - Directors (individuals): personal questionnaires;
     - Corporate directors: regulatory status of the proposed corporate director and identification of the individual that will represent such corporate director on the board of directors of the PIF;
     - Founder shareholders (individuals) typically holding more than 10% of the voting shares: personal questionnaires;
     - Founder shareholders (corporate entities regulated in a recognized jurisdiction) typically holding more than 10% of the voting shares: details of the regulatory status of the proposed corporate founder shareholder;
     - Founder shareholders (corporate entities not regulated in a recognized jurisdiction) typically holding more than 10% of the voting shares: personal questionnaires of (i) the directors of the proposed corporate founder shareholder; (ii) the qualifying beneficial owners of the proposed corporate founder shareholder, and (iii) the last three years audited financial statements of the proposed corporate founder shareholder;
     - MLRO and Compliance Officer: personal questionnaires;
   - Completion of draft application form and supporting documentation;
   - Submission of the draft application pack and payment of the application fee to the MFSA.

2. **Phase Two**
   - Pre-Licensing
   - If satisfied with the draft documentation provided, the MFSA should issue its ‘in principle’ approval for the issue of the licence;
   - At this stage the applicant will be required to finalise any outstanding matters and submit signed copies of the revised application pack;
   - The licence should be issued once all the pre-licensing issues are resolved.
   - The incorporation of the PIF may also require liaison with the Maltese Registrar of Companies. In the case of a SICAV, the Memorandum and Articles of Association (as approved by the MFSA) together with the relevant supporting documents and the applicable company registration fees will need to be submitted to the Registrar.

3. **Phase Three**
   - Post-Licensing/Pre-Commencement of Business
   - The applicant may be required to satisfy a number of post-licensing matters prior to formal commencement of business.
4. Additional consideration for self-managed PIFs

**Investment Committee**

The Board of Directors of a self-managed PIF is expected to establish an in-house Investment Committee made up of at least three members, whose composition may include members of the Board of Directors. If no Investment Committee is established its functions shall be taken over by the directors of the self-managed PIF. The MFSA must be satisfied that the proposed members of the Investment Committee are fit and proper as well as sufficiently competent to take on such role.

The terms of reference of the Investment Committee and any changes thereto are subject to the prior approval of the MFSA. The majority of Investment Committee meetings (the frequency of which should depend on the nature of the self-managed PIF's investment policy, but which should be at least quarterly) are to be physically held in Malta.

Investment Committee meetings are deemed to be physically held in Malta if the minimum number of members that form a quorum necessary for a meeting are physically present in Malta. The minutes of meetings of the Investment Committee should be available in Malta for review during MFSA’s compliance visits.

**Additional documentation to be provided during the licensing process**

Additional documentation is required by the MFSA in respect of self-managed PIFs including:

i. personal questionnaire and detailed curriculum vitae of the members of the investment committee, of the portfolio manager and where appointed of the risk manager;

ii. terms of reference regulating the procedures of the investment committee;

iii. confirmation from the Portfolio Manager(s) that they will (a) operate in accordance with the investment objective and policy as described in the PIF’s offering documents and investment guidelines issued by the Investment Committee, (b) report to the Investment Committee on a regular basis any transactions effected on behalf of the PIF, and (c) provide the Investment Committee with any information as the Investment Committee may require from time to time; and

iv. confirmation from the Portfolio Manager(s)/ Investment Committee that they have appropriate resources available to them to ensure on-going access to the market information which they would need to take account of in making investment management decisions.
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We have been there to support our clients with tailored solutions from initial set-up considerations to maintaining a long-term stable relationship with the regulator and acting as a regulatory help desk.

We can help guide you along each step of the process in establishing your presence in Malta – this is how we can help:
Contact us

Bernard Attard
+356 2564 6792
bernard.attard@mt.pwc.com

Lucienne Pace Ross
+356 2564 7293
lucienne.pace.ross@mt.pwc.com

Chris Mifsud Bonnici
+356 2564 6935
chris.mifsud.bonnici@mt.pwc.com

Nadia Mifsud
+356 2564 7234
nadia.mifsud@mt.pwc.com

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