



Setting up a PIF in Malta

An Overview

A high-level overview of the main factors to consider when setting up a Professional Investor Fund ('PIF') in Malta. 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

Collective Investment Schemes (CISs) licensed in Malta can take one of the following forms:

- An investment company with variable share capital (SICAV) (most common vehicle used in Malta);
- An investment company with fixed share capital (INVCO);
- A Contractual Fund,
- A Limited Partnership,
- An Incorporated Cell Company
- An investment company being an incorporated cell of a recognised incorporated cell company (RICC); or
- A Unit Trust.

Minimum Investment Levels

In terms of the MFSA's regulatory regime applicable to CISs, PIFs can be promoted only to qualifying investors. The investors to whom such a fund is permitted to distribute, whether private or institutional, must fall within certain criteria including, among others:

- 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
- 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.

Single/Umbrella Structure

A Maltese 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 asset 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.

Capital Structure & 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.

Investment Restrictions

In principle, no particular material investment restriction should apply other than what is specified in the Offering Documentation, however, additional considerations and some restrictions may apply in specific scenarios such as the fund intending to invest through loans.

2. Service Providers

Management Structure

A PIF may appoint a third party manager or be a self-managed PIF. 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.

Fund Administrator

Either the manager or a delegated third party administrator - may carry out administrative services in relation to a PIF.

Custodian

A PIF may not appoint a custodian as this is not mandatory. However, it is required that a PIF appoints an entity entrusted with safekeeping the PIF's assets.

Investment Advisor

A PIF is generally not required to appoint a third party investment adviser. Furthermore, the proposed investment adviser does not need to be established and regulated in Malta.

Other Service Providers

Auditor

A PIF shall appoint an auditor approved by the MFSA.

Compliance Officer

The PIF shall have a Compliance Officer at all times. The Compliance Officer shall be responsible for the compliance function and 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 six monthly basis.

Money Laundering Reporting Officer

The PIF shall have a Money Laundering Reporting Officer ('MLRO') at all times, 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.

Other service providers

The appointment of other service providers (such as an investment advisor, independent valuer etc.) may also be subject to MFSA approval/notification.

3. Governing Body of the PIF

The Board/governing body shall be composed of a minimum of three with at least one being resident in Malta - though the MFSA may require more depending on size and complexity. All directors/members will need to satisfy the MFSA's "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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We have been there to support our clients with tailor made 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 each step of the way in establishing your presence in Malta - this is how we can help:

Ongoing regulatory support

Designing and implementing the optimal corporate structure (including corporate and VAT)

Personal tax advice and services

Assistance with executive recruitment services and building substance in Malta

Company formation and administration services

Assistance with the license application process with the MFSA and the listing application process with the Malta Stock Exchange, if needed

Assistance in relation to IT systems including cyber security

Tax compliance services (Corporate tax and VAT)

Audit and assurance services



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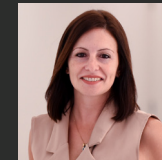


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