

# Setting up a UCITS in Malta

## An Overview

A high-level overview of the main factors to be considered when setting up a UCITS (undertakings for collective investment in transferable securities) 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.

UCITS Schemes are open-ended Schemes, with passporting rights within the EU, therefore capable of being marketed in other EU/EEA Member States.



# Establishing a UCITS in Malta

## 1. Preliminary considerations - Determine UCITS 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.

### 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.

### Minimum Investment Levels

There are no minimum investment levels for UCITS but additional rules are applicable including as regards distributions of income, performance fees, compliance handling procedures and other areas.

### Investment Restrictions

UCITS funds are subject to various investment restrictions relating to liquidity, diversification and the nature of investments (eg. derivatives) depending on the investment in question.



## 2. Service Providers

### UCITS Manager

A UCITS may appoint a single external UCITS manager which would be responsible for: (1) portfolio management and (2) risk management and other permitted services.

The UCITS manager can either be a European UCITS manager or alternatively may have an established place of business in Malta.

If a UCITS does not appoint an external UCITS manager, it will be considered as a self-managed UCITS and be subject to particular licence conditions applicable to self-managed UCITS funds.

### Custodian

A Custodian must be appointed and this must have an established place of business in Malta.

### Auditor

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

### Compliance Officer

The UCITS shall ensure that a Compliance Officer is appointed.

The role of the Compliance Officer is to assume responsibility for the compliance function and for any reporting as to compliance required by the applicable licence conditions.

The Compliance Officer shall be based in Malta.

The UCITS shall request its Compliance Officer to prepare a Compliance Report at least on a six-monthly basis.

### Money Laundering Reporting Officer

The UCITS shall at all times have a Money Laundering Reporting Officer (MLRO) to assume responsibility for compliance with AML/CFT obligations.

### Other Service Providers

#### Administrator

The Scheme in the case of a self-managed Maltese UCITS or the Manager will typically appoint an Administrator.

#### Investment Adviser

The Scheme or the Manager may appoint an Investment Adviser.

An aerial photograph of a meeting taking place in a large, circular atrium. Five people are seated around a round table, looking at documents. The floor is covered in light-colored gravel, and the walls are made of light-colored stone or concrete. The atrium is surrounded by a curved, modern architectural structure with a white railing.

### 3. Governing Body of the UCITS

The Board/governing body shall be composed of a minimum of three members 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 the Custodian, the UCITS Manager and other service providers of the UCITS. The Board should hold regular board meetings and shall ensure that detailed minutes are taken which minutes are to be kept in Malta.

### 4. Additional considerations for Self-Managed UCITS

#### General

A self-managed UCITS is authorised to carry out investment management functions in respect of its assets only and in this respect must set up clearly segregated portfolio and risk management functions. The self-managed UCITS must have sufficient substance in Malta to carry out at least one of the said functions itself.

#### Investment Committee

The governing body of a self-managed UCITS is entrusted with the management of the assets of the UCITS but it shall establish an in-house Investment Committee which should consist of at least three members, which may include members of the governing body.

#### Risk Management Function

The Self-Managed UCITS shall establish and maintain a permanent risk management function which shall be segregated from the portfolio management function.

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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



## Contacts



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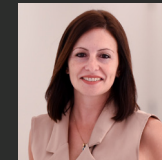


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