



Setting up an AIF in Malta

An overview

A high level overview of the main factors to be considered when setting up an Alternative Investment Fund ('AIF') 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 an AIF in Malta



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')
- A Unit Trust

Single/Umbrella Structure

A Maltese SICAV may be constituted as a multiclass 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.
- **Investor shares** – these are usually the shares or units issued to investors.

Retail AIF vs non-Retail AIF including minimum investment levels

Non-Retail AIF

The minimum investment level applicable to non-Retail AIFs sold to Qualifying Investors is EUR 100,000 per investor.

Retail AIF

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

Investment Restrictions

Non-Retail AIF

As regards AIFs which are sold to Qualifying or Professional Investors, 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.

Retail AIF

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

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AIFs must appoint certain external service providers and may choose to appoint others.

AIFM

An AIF may appoint a single external AIFM which would be responsible for: (1) portfolio management and (2) risk management of the AIF and other permitted services.

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

If an AIF does not appoint an AIFM, it will be considered as a self-managed AIF and be subject to particular licence conditions applicable to self-managed AIFs.

Custodian

The Custodian is appointed by either the AIF or the AIFM on behalf of the AIF. Such custodian must have an established place of business in Malta.

Auditor

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

Money Laundering Reporting Officer

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

Compliance Officer

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

Other Service Providers

Administrator

The AIF or the AIFM will typically appoint an Administrator.

Prime Broker & Counterparties

The AIF may appoint one or more Prime Brokers or counterparties.

External Valuer

The valuation function of the AIFM (or the self-managed AIF) shall be performed by: (i) an independent external valuer; or (ii) the AIFM (provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon employees is prevented).

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 AIFM and other service providers of the AIF. 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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General

A self-managed AIF 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 AIF 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 AIF is entrusted with the management of the assets of the AIF 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.

The terms of reference of this Investment Committee and any changes to it are subject to a notification to the MFSA.

The majority of Investment Committee meetings (the frequency of which will be based on the nature of the AIF's investment policy, however, it should be at least quarterly) are to be physically held in Malta.

Investment Committee meetings are considered 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 the Investment Committee meetings should be available in Malta for review during the MFSA's compliance visits.

Risk Management Function

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

Additional considerations for selfmanaged AIFs



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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)

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