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## **FUNDS IN MALTA**

Malta is fast becoming a very popular jurisdiction in which to register funds of various types. Below is a very brief introduction regarding one type of fund that is available, namely the Professional Investor Fund (PIF).

### **The Malta Financial Services Authority**

The Malta Financial Services Authority (MFSA) is responsible for the licensing, regulation and supervision of all collective investment schemes, including PIFs. It is a “one-stop-shop” financial services regulator with a simple vertical structure that makes it user friendly.

The MFSA requires the highest standards of probity and honesty, and every licence is issued subject to standard conditions. These standard conditions may, however, be adapted to suit circumstances as long as standards are not compromised. In other words, the MFSA is not a soft regulator, but rather a regulator that evolves with the market.

### **Flexible regulations**

Maltese financial services and tax laws are up to date with EU directives and in line with EU requirements. The MFSA constantly refers new proposed regulations to the industry so as to achieve “market sensitive” regulations, and published guidelines in a variety of spheres makes life easier.

Collective investment schemes, including PIFs, are regulated by the Maltese Investment Services Act. The Act provides for two types of licenses: (i) licenses to operate collective investment schemes, including PIFs and (ii) licenses to enable practitioners to carry out investment services that are considered licensable activities.

Features of the Maltese legislation include the possibility of continuing overseas funds in Malta (i.e. re-domiciliation to Malta), EU passporting rules, etc. PIFs are subject to minimal regulation if their only activity is operating as a PIF and where authorised functionaries are appointed to carry out any licensable activity (such as Managers, Administrator, Custodian, Prime Broker, Investment Advisor, etc.).

### **The Professional Investor Fund**

A PIF can be set up as an incorporated open ended investment company (SICAV) or an incorporated closed ended investment company (INVCO), a limited partnership or a unit trust.

The PIF may be useful for hedge funds, fund of funds, speciality funds, sector specific funds, in-house funds, private funds, etc.

The PIF regime places emphasis on the investor qualifications such as disclosure and “fit and proper” tests of directors and service providers, post-licensing onus on the investor,



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investment entry levels and investor qualification criteria. The regime consists of three categories:

- (i) PIFs promoted to Extraordinary Investors;
- (ii) PIFs promoted to Qualifying Investors; and
- (iii) PIFs promoted to Experienced Investors.

### **Investor qualification**

The investment entry levels are for Extraordinary Investors €750k, for Qualifying Investors €75k and for Experienced Investors €15k.

#### *Investor qualification criteria – Extraordinary Investor*

An Extraordinary Investor includes:

- (i) A body corporate (single or a group), un-incorporate, trust or individual with more than €7.5m net assets;
- (ii) Senior employees and directors of service providers to the particular PIF;
- (iii) Other PIFs promoted to Extraordinary Investors; and
- (iv) The investment vehicle of a qualified person.

#### *Investor qualification criteria – Qualifying Investor*

A Qualifying Investor includes:

- (i) A body corporate (single or a group), un-incorporate, trust or individual with more than €750k net assets;
- (ii) Persons with reasonable experience in the acquisition/disposal of similar funds or asset classes;
- (iii) Senior employees and directors of service providers to the particular PIF;
- (iv) Relations or close friends of the promoter (up to a maximum of 10 persons per PIF);
- (v) Other PIFs promoted to Extraordinary or Qualifying Investors;
- (vi) Entities (single or group) with minimum €3.75m under discretionary management; and
- (vii) The investment vehicle of a qualified person.

#### *Investor qualification criteria – Experienced Investor*

An Experienced Investor is a person having the expertise, experience and knowledge to be in a position to make his own investment decisions and understand the risks involved.

An Experienced investor must state the basis on which he satisfies this definition, either by confirming that he is:

- (i) a person who has relevant work experience having at least worked in the financial sector for one year in a professional position or a person who has been active in this type of investment; or
- (ii) a person who has reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile, or property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates; or



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- (iii) a person who has carried out investment transactions in significant size at a certain frequency (for example a person who within the past 2 years carried out transactions amounting to at least €50k at an average frequency of 3 per quarter);  
or
- (iv) by providing any other appropriate justification.

### **No investment restrictions**

There are no investment restrictions imposed on investment objectives and policies of a PIF, as long as these are disclosed in the offering memorandum. Furthermore, there are no minimum or maximum levels regarding exposure to any asset class, assets, industry sector or geographical area.

### **Leverage**

There are no leverage restrictions on PIFs promoted to Extraordinary and Qualifying Investors, whilst PIFs promoted to Experienced Investors are allowed up to 100% NAV leverage. PIFs set up as property funds promoted to Experienced Investors are subject to certain restrictions at fund and underlying level.

### **Functionaries**

Service providers such as Managers, Administrators, Custodian, etc. need not be registered in Malta as long as the MFSA is satisfied that the functionary is of sufficient standing and repute and that its regulatory status abroad is satisfactory.

A PIF may be set up without an external Manager. Responsibility for the functions normally undertaken by the Manager will then remain with the directors and officers of the PIF.

The role of the Administrator may be carried out by a separate Administrator or by the Manager itself, or by a separate Administrator delegated such duties by the Manager.

PIFs promoted to Experienced Investors must have a Custodian or Prime Broker who is independent of the Manager or Administrator. If no Custodian or Prime Broker is appointed, the responsibility for the establishment of proper arrangements for the safe keeping of the PIF's assets remains with the directors and officers of the PIF.

### **Listing**

A Maltese PIF may be listed on the Malta Stock Exchange, or any other recognised exchange. The MFSA houses the listing authority so that licensing and listing on the Maltese Stock Exchange can be co-ordinated.

### **Maltese income tax provisions**

A fund which has more than 15% of its underlying assets situated in Malta is referred to as a Prescribed Fund, and a fund which has less than 15% of its underlying assets situated in Malta is referred to as a Non-Prescribed Fund.

A Non-Prescribed Fund is not taxed in Malta at the fund level, nor at the non-resident unit holder level.



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## Licensing

Subject to documents and information being complete, licensing of a PIF can be achieved in 4 – 5 weeks. PIFs promoted to Extraordinary Investors can be licensed much quicker, with most due diligence provided after licensing.

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for more information regarding the above, please contact  
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