



Investment Funds Assets Managment

Malta International Financial Centre

Malta is growing year-on-year as a financial centre of excellence, with the fund industry being one of the financial centre's main engines for growth. Malta has over 518 domiciled funds registered with an aggregate Net Asset Value ("**NAV**") of over Euro 17.7 billion. The country is a welcoming place for high-net-worth individuals due to its mixture of innovative products, experienced professionals and strong regulatory framework. It offers all the regularly sought investment vehicles available to wealthy clients, while allowing investors to protect their assets.

The jurisdiction is a centre of excellence for the asset management industry and an attractive base from both a cost and a tax efficiency perspective. In fact, Malta has witnessed an increasing number of third-party service providers offering services such as administration, management and investment advisory services. Malta is a signatory to over 70 double-taxation treaties, covering most of the world's high-growth markets, thus facilitating international business.

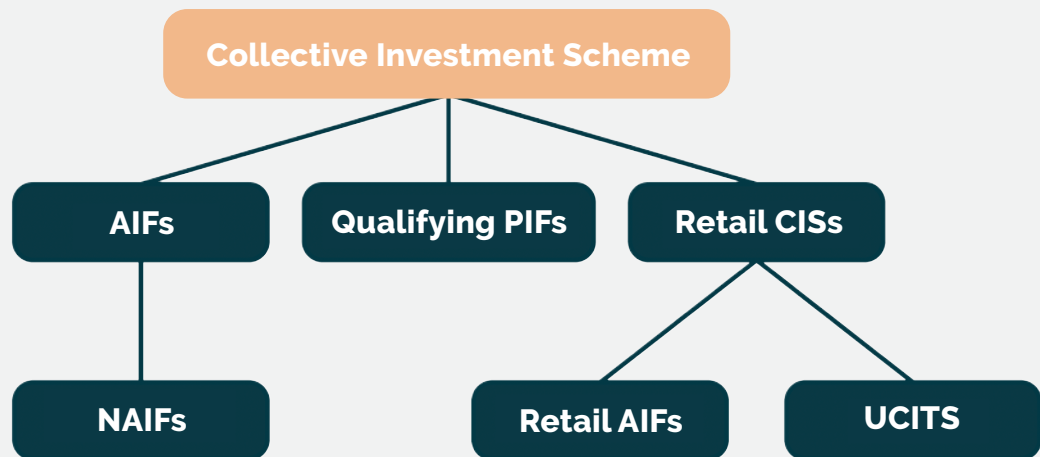
Regulatory Framework & Legal Form

Collective Investment Schemes ("**CIS**") domiciled in Malta require a license from the Malta Financial Services Authority ("**MFSA**"), in terms of the Investment Services Act, 1994 ("**ISA**"). Similarly, managers, investment advisors, custodians and prime brokers establishing operations in Malta need to apply for the appropriate investment services license in terms of said legislation. Service providers are not required to have a local presence in Malta. However, in the event that a service provider is not established in an EU/EEA Member State or a signatory to a memorandum of understanding with the MFSA, the details pertaining to the service provider must be disclosed to the MFSA for prior approval. The service provider may thus be accepted by the MFSA, provided that it is considered to be adequately regulated.

The most common legal form to set up an investment fund in Malta is an 'investment company with variable capital' ("**SICAV**"). Nevertheless, other legal entities may be used such as incorporated cells, contractual funds, limited liability partnerships and unit trusts.

Fund Options & Fund Managers

Maltese Fund Regime



Professional Investor Funds (“PIFs”)

In terms of Maltese legislation, PIFs are just one type of CIS. A PIF may be promoted to Qualifying Investors and may be used as an investment vehicle for non-traditional investments, as well as specialist instruments.

A “Qualifying Investor”, is an investor which invests a minimum of Euro 100,000, or its currency equivalent, in a PIF, AIF or a NAIF, which investment may not be reduced below this minimum amount at any time, by way of a partial redemption. Such investor must also declare, in writing, to the fund manager and the PIF, AIF or NAIF, that it is aware of and accepts the risks associated with the proposed investment.

Moreover, the investor must satisfy at least one of the following criteria, in that it must be:

- ☒ a body corporate which has net assets in excess of Euro 750,000 or which is part of a group which has net assets in excess of Euro 750,000 or, in each case, the currency equivalent thereof;
- ☒ a trust where the net value of the trust's assets is in excess of Euro 750,000 or the currency equivalent;
- ☒ an individual whose net worth or joint net worth with that of the person's spouse, exceeds Euro 750,000 or the currency equivalent; or
- ☒ a senior employee or director of a service provider to the PIF, AIF or NAIF.

PIFs Promoted to Qualifying Investors

- ✓ **Minimum investment:** Euro 100,000
- ✓ **Set up time:** Approximately 6 months
- ✓ **Investment restrictions:** None (except on property funds)
- ✓ **Borrowing restrictions:** Up to 100% NAV
- ✓ **Offering Document:** Required
- ✓ **Third Party Manager:** Required or Self-Managed
- ✓ **Fund Administrator:** Manager may delegate fund administration to a third-party administrator
- ✓ **Custodian:** Optional, provided adequately safekeeping measures
- ✓ **Auditor:** Required
- ✓ **Money Laundering Reporting Officer (MLRO):** Required
- ✓ **Compliance Officer (may also act as MLRO):** Required
- ✓ **Listing:** Optional

A PIF may be **self-managed**, without the need to appoint a third-party manager. In this manner, the promoters do not need to have a presence in Malta. The management and the assets of the fund would be undertaken by an investment committee, a portfolio manager and a board of directors.

Non-Retail Alternative Investment Funds (“AIFs”)

AIFs fall within the remit of the Alternative Investment Fund Managers Directive 2011/61/EU (“**AIFMD**”). Such legislation provides for a harmonised framework for the management and marketing of AIFs across the EU. AIFs are defined as collective investment undertakings which raise capital from a number of investors, with a view of investing therein in accordance with a defined investment strategy, and which do not require authorisation under the UCITS Directive.

PIFs Promoted to Qualifying Investors

IFs may either be retail AIFs or professional AIFs, and are domestically regulated by the Investment Services Act, Malta ("**ISA**"). AIFs authorised in terms of this law can be marketed to Professional Investors as defined in Markets in Financial Instruments Directive II ("**MiFID II**") and/or to Qualifying Investors having a minimum investment requirement of Euro 100,000.

This category of funds may be self-managed. Therefore, the appointment of an Alternative Investment Fund Manager ("**AIFM**") is not mandatory.

The fund must have an initial capital of at least Euro 300,000, in order to have sufficient financial resources at its disposal to conduct its business effectively, to meet its liabilities and to be prepared to cope with the risks to which it is exposed.

The AIF may be marketed with a passport in jurisdictions outside of Malta.

Alternative Investment Funds Managers ("**AIFMs**")

The AIF may appoint an AIFM, who would be responsible for portfolio management and risk management and other permitted services. However, appointment of an AIFM is not mandatory. The Alternative Investment Fund Managers Directive ("**AIFMD**") and its implementing regulation, subjects fund managers within scope to authorisation or registration requirements. An AIFM approved by the MFSA is allowed to trade across the EU, with open access to all Europe's 400 million consumers. The AIFMD framework also provides for a de minimis regime for small AIFMs. De minimis AIFMs are managers which, whether directly or indirectly, manage portfolios of AIFs whose assets under management collectively do not exceed the following amounts:

- ☒ Euro 100 million; or
- ☒ Euro 500 million for AIFMs managing only unleveraged AIFs with no redemption rights, exercisable within 5 years from the date of initial investment in each AIF.

Notified Alternative Investment Funds (NAIFs)

The NAIF framework is a clear sign of a shift from the concept of AIFs being regulated and supervised products. The MFSA aims to provide AIFMs with a solution to market AIFs within the EU in the shortest possible time-frame, indicating the time frame of 10 business days from the date of filing of a duly completed notification pack, for the AIF to be included in the NAIF list. The new framework will be applicable to AIFs that are set up and not licensed. Thus, a NAIF will not require licensing by the MFSA and will not be subject to on-going MFSA supervision.

The rationale of the framework is to expedite the offering of NAIFs to the market, as well as to reduce both set up and ongoing running costs. To this end, the AIFM has the responsibility of ongoing management and monitoring of the NAIF, including any obligations that may arise under the AIFMD.

The NAIF may be set up in any structure under Maltese legislation, and may target professional and qualifying investors, as

set out by the rules issued by the MFSA. Any EU/EEA full-scope AIFMs, licensed by the MFSA or in possession of the management passport in terms of the AIFMD, may request that the MFSA includes an AIF on the list of NAIFs. The NAIF framework will only be available to full scope EU/EEA AIFMs, which will mean a reliance on the EU/EEA AIFM regulatory status, rather than regulating the AIF itself.

Important characteristics which pertain to a NAIF are that it may be open or closed ended and is passportable. Interestingly, third country AIFMs may also submit requests for a notification of an AIF, if passporting rights have been granted to the country where the AIFM has been established.

The NAIF regime is not available to self-managed AIFs, loan funds, non-AIFs, AIFs managed in a third country (non-EU jurisdiction), AIFMs (until/unless the passport is extended to incorporate non-EU jurisdictions) and AIFs investing in non-financial assets.

Retail Funds:

Retail AIFs & UCITs

Retail Funds include Undertakings for Collective Investment in Transferable Securities ("**UCITS**") and Retail AIFs.

UCITS are harmonised European retail fund products that can operate throughout the EU on the basis of a single authorisation from one Member State, provided that it follows certain notification procedures. The schemes may be offered in any EU and EEA states. UCITS are subject to prescriptive restrictions on the type of eligible assets that they may invest in – however this does not preclude UCITS from adopting different investment fund structures.

The ISA provides the statutory basis for regulating investment funds constituted in, or from, Malta. UCITS are a special class of investment funds which fall within the provisions of the ISA. Maltese UCITS funds may take advantage of the UCITS brand,

which is recognised globally as a liquid, transparent and regulated product, which are able to be freely marketed across Europe and distribute their units cross-border by following the notification procedures set out in the UCITS Directive.

The setting up of a UCITS fund in Malta carries a number of significant advantages including EU passporting rights, cost efficiency in terms of set up and annual maintenance and a tax exemption on income and capital gains.

UCITS may either be self-managed or managed by a company approved by the MFSA, which holds a Category 2 Investment Services License. The minimum share capital required by a UCITS fund is Euro 125,000 if it is third-party managed, or Euro 300,000 if it is self-managed. The scheme may also be listed on the Malta Stock Exchange.



Management Company **Passport (MCP)**

The MCP, under the UCITS IV Directive, ended the requirement that a management company needs to be established in the same country in which the UCITS is established. A Malta-based UCITS can now be managed by a UCITS Management Company established in another EU member state.

The provisions of the UCITS IV Directive also enable the setup of master-feeder UCITS structures, by which one UCITS invests at least 85% of its NAV in another UCITS. The advantage of this type of structuring means that the management and administration of the master fund may be centralised in one jurisdiction – allowing promoters to rationalise their platforms, build up economies of scale and potentially reduce costs to the investor.

Re-Domiciliation **Of Funds**

Maltese law permits the re-domiciliation of companies into and out of Malta. This adds to the jurisdiction's attraction to fund promoters and has prompted a number of offshore companies, which provide fund management services and offshore investment funds, to move to a reputable onshore jurisdiction, such as Malta.

In terms of Maltese law, it is possible to re-domicile closed-ended or open-ended SICAVs, as well as limited liability partnerships, into Malta. The re-domiciliation of funds ensures that the fund retains the same legal personality while preserving the continuity of the fund's performance and track history. There arises no requirement to transfer the scheme's assets and no capital gains tax incidence is triggered. Moreover, in the case of a transfer of units, the custody or prime brokerage contract remains unaltered, while unit holders remain as previously registered, thus having their status unaffected by the re-domiciliation.

Retail Funds:

Retail AIFs & UCITs

The Maltese tax framework seeks to attract and promote the setting up of CISs and fund managers in Malta. To this end, Maltese tax legislation provides for the following fiscal measures:

- ☑ an exemption from income tax and capital gains tax at both the fund level and at a non-resident investor level, as long as more than 85% of the value of its assets is situated outside of Malta;
- ☑ investment income received by the fund is not subject to any withholding tax, as long as more than 85% of the value of the fund's assets is situated outside of Malta;
- ☑ no withholding tax is due on dividends paid out to non-resident investors;
- ☑ no tax is payable by non-resident investors when they dispose of their investment
- ☑ no stamp duty is charged on share issues or transfers;
- ☑ no tax is imposed on the NAV of the scheme;
- ☑ Malta-licensed fund managers can avail themselves of a low effective tax burden in Malta, amounting to 5% per annum, through a system of tax refunds available to shareholders of such companies;
- ☑ upon subscription to shares/units in the fund, no Malta VAT is chargeable by the fund to investors. Fund management and administration services are VAT exempt in Malta.



There are four categories of Investment Services Licences as follows:

Category 1 Investment Firm (MiFID Licence)

Licence holders authorised to receive and transmit orders in relation to one or more instruments and/or provide investment advice and, or place instruments without a firm commitment basis but not to hold or control clients' money or customers' assets. (This Category does not include managers of collective investment schemes.)

Minimum initial share capital: €50,000

MFSA application fee: €2,500

Annual /Supervisory fee: For revenue up to €50,000: €2000; further tranches of €50,000 up to a maximum of €1,000,000: €350 per tranche or part thereof

Category 1 minus (MiFID Licence)

Licence holders authorised to receive and transmit orders, and, or provide investment advice in relation to one or more instrument and, or place instruments without a firm commitment basis solely for professional clients and, or eligible counterparties but not to holder control clients' money or customers' assets. (This Category does not include managers of collective investment schemes.)

Minimum initial share capital: €20,000 (with PI cover) / €50,000 (without PI cover)

MFSA application fee: €3,000

Annual /Supervisory fee: For revenue up to €50,000: €2,750; further tranches of €50,000 up to a maximum of €1,000,000: €350 per tranche or part thereof

Category 2 (MiFID Licence)

Licence holders authorised to provide any investment service and to hold or control clients' money or customers' assets, but not to operate a multilateral trading facility or deal for their own account or underwrite or place instruments on a firm commitment basis.

Minimum initial share capital: €125,000

MFSA application fee: €5,000

Annual /Supervisory fee: For revenue up to €250,000: €4,500; further tranches of €250,000 up to a maximum of €5,000,000: €400 per tranche or part thereof

Category 3 (MiFID Licence)

Licence holders authorised to provide any investment service and to hold and control clients' money or customers' assets.

Minimum initial share capital: €730,000

MFSA application fee: €7,000

Annual /Supervisory fee: For revenue up to €250,000: €6,000; further tranches of €250,000 up to a maximum of €50,000,000: €400 per tranche or part thereof

Recognised Persons – Depositories

Licence holders authorised to act as Depositories

Minimum initial share capital: €730,000

MFSA application fee: €17,000

Annual /Supervisory fee: €15,000

Recognised Persons – Depositories Lite

Licence holders authorised to act as Depositories Lite

Minimum initial share capital: €125,000

MFSA application fee: €7,500

Annual /Supervisory fee: €5,000

Recognised Fund Administrators

Licence holders authorised to act as Depositories Lite

MFSA application fee: €3,000

Annual /Supervisory fee: €1,500

Organised Trading Facilities (OTFs)

An OTF is a multilateral trading system where multiple buyers and sellers can trade bonds, structured finance products, emission allowances, or derivatives. Operators must ensure investor protection and efficient execution.

Key Points:

- Not a regulated market or an MTF.
- Trades bonds, structured finance products, emission allowances, or derivatives.
- Operators must ensure investor protection and efficient execution.

Systematic Internalisers (SIs)

SIs execute client orders outside trading venues on an organized, frequent, systematic, and substantial basis. They aid price transparency between OTC and venues.

Key Points:

- Deals on own account by executing client orders outside trading venues.
- Introduced by MiFID II for equity markets, extended to bonds.
- Subject to pre-trade transparency obligations similar to venues.

Placing of Financial Instruments

Placing involves marketing and offering newly-issued or unlisted financial instruments. Investment firms must obtain an Investment Services License from the MFSA.

Key Points:

- Activity of marketing and making available financial instruments.
- Can be done with or without a firm commitment basis.
- Requires an Investment Services License from the MFSA.

Tied Agents

Tied agents promote investment services under the responsibility of one License Holder. They must be registered with the MFSA and demonstrate competence and good repute.

Key Points:

- Acts on behalf of one License Holder.
- Promotes investment services and transmits client instructions.
- Requires registration with the MFSA.

Requirements for UCITS, AIFMs, and MiFID Investment Firms

ESMA launched a Common Supervisory Action on Valuation of Assets for UCITS ManCos and AIFMs investing in less liquid assets. Investment firms must integrate sustainability risks into their management and consider them in organizational arrangements and risk management policies.

Key Points:

- UCITS and AIFMs must integrate sustainability risks.
- Investment firms must adjust organizational arrangements and risk management policies.
- Sustainability risks must be considered in providing financial advice and portfolio decisions.

Notified Professional Investor Funds (NPIFs): An Introduction

Since the launch of Malta's PIF regime in 2000, the country has been dedicated to providing additional avenues for smaller or emerging managers. In 2023, the MFSA introduced the Notified PIF (NPIF) framework to facilitate this, offering a streamlined approach to fund establishment for AIFMs meeting specific criteria.

Key Facts about NPIFs:

Target Audience	AIFMs with less than €100m leveraged AUM or €500m unleveraged AUM, qualifying for the lighter regulatory regime under the EU's Alternative Investment Fund Managers Directive.
Investor Base	Only available to qualifying and professional investors, with a minimum investment of €100k per investor.
Benefits	Offers a swift time to market of ten business days, reduced setup and operational costs, and full compliance with the PIF regime for investor protection.
Legal Structure	Can be structured in various legal forms under the Maltese Companies Act, including common funds, unit trusts, investment companies, or limited partnerships.
Tax Regime	Subject to the same tax regime as PIFs, with the opportunity to benefit from Malta's double tax treaties.
Service Provider Requirements	Monitored by appointed service providers, with the option to appoint a fund administrator as the designated service provider. Annual accounts must be audited, and a fund manager and Money Laundering Reporting Officer (MLRO) must be appointed.

Notification Process:

Resolution	The NPIF's board of directors approves a resolution certifying compliance with minimum criteria.
Request Submission	The governing body prepares and submits a written request for inclusion in the list of NPIFs.
Competent Authority Review	The notification request is submitted to the competent authority within 30 calendar days.
Inclusion in List	The competent authority includes the NPIF in the list within ten working days of submission.
Ongoing Maintenance	An official list of NPIFs is maintained by the MFSA.

Preauthorized Non-EU Domiciles

Third-country AIFMs authorized in jurisdictions with cooperation agreements with the MFSA.

In the absence of bilateral agreements, the MFSA may accept other forms of agreements deemed acceptable.

Additional Regulatory Considerations (2024):

ESG and SFDR Compliance: Fund managers operating in or from Malta must integrate sustainability risks into investment decision-making processes. In line with the EU Sustainable Finance Disclosure Regulation ("**SFDR**"), UCITS and AIFs are required to make relevant ESG disclosures if they promote environmental or social characteristics or have sustainable investment objectives.

Substance Requirements: The MFSA expects effective management and control of fund structures to be exercised from Malta. This includes appointing locally resident directors, ensuring decision-making occurs in Malta, and maintaining an operational presence that aligns with the nature and scale of the fund.

Tax Rulings for Funds: While Malta offers several built-in tax incentives for investment funds and non-resident investors, fund promoters may apply for advance tax rulings from the Maltese tax authorities. This ensures greater certainty on the treatment of the fund's structure and asset location for cross-border planning.

Our Expertise:

Our Investment Funds and Asset Management Practice Area boasts extensive experience in structuring and licensing collective investment schemes, alternative investment funds, professional investor funds, and NAIFs. We offer comprehensive assistance in navigating the intricacies of fund development and policy strategies.

Conclusion:

NPIFs represent an innovative opportunity for investors and fund promoters alike. With their streamlined setup process and adherence to regulatory standards, NPIFs offer a promising avenue for investment in Malta's dynamic financial landscape

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