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PricewaterhouseCoopers (www.pwc.com) provides industry-focused assurance, tax and advisory services to build public trust and enhance value for its clients and their stakeholders. More than 163,000 people in 151 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice.

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The Maltese firm is the leading and largest practice of accountants and auditors in Malta with a total headcount of over 300 people, including 16 partners.
# Table of Contents

1. **Introduction**  
Background – Malta: A leading location for Asset Management  
Financial services  
Asset Management  

2. **Regulatory framework**  
The Investment Services Act  
Collective Investment Schemes  
Professional Investor Funds (Hedge Funds)  

3. **Scheme and fund structures**  
Legal structures  

4. **Investment service providers**  
Rules for Investment Services Providers  
Manager  
Administrator  
Investment Advisor  
Custodian  
Auditor  

5. **Listing on the Malta Stock Exchange**  
Background  
Primary listing  
Secondary listing  
Admissibility of closed-ended Collective Investment Schemes  
Listing fees  

6. **Taxation**  
Taxation of a Collective Investment Scheme  
Taxation of the shareholders of a Collective Investment Scheme  
Duty on documents and transfers (stamp duty)  
Investment services companies  
Double taxation relief  
Advance revenue rulings  
VAT  

Appendices:  
Registration and Application Fees  
Redomiciliation of Funds  
Facts about Malta  

PricewaterhouseCoopers  
Asset Management Contacts in Malta  

PricewaterhouseCoopers  
Global Asset Management Industry Group  

Useful links  
Glossary
Foreword

Malta’s development as a financial services centre of repute has accelerated since membership of the European Union in 2004. The industry is an important pillar of the economy and is one of the faster growing sectors, taking advantage of a number of key attributes that Malta offers – including a highly-skilled workforce, excellent service, competence, technical infrastructure and robust legislative and regulatory frameworks. A recently published report by The Global Financial Centres Index ranked Malta fourth out of sixty-six financial centres, based on external benchmarking data and current perceptions of competitiveness.

PricewaterhouseCoopers Malta is the leading and largest professional services organisation on the island, with fifteen partners and over three hundred staff. We provide a range of assurance, tax, and advisory services to a large and varied client base, and are particularly focused on the asset management industry. This guide is one of an increasing number of initiatives, including surveys and newsletters, which are designed to share our knowledge with the industry. As the dynamics of the market and competitive environment for the financial services sector increase in their complexity, being able to identify and adapt to new challenges will determine the industry’s dominant players.

Whilst all reasonable care has been taken in preparing this guide, there is of course no substitute for specific advice. Should readers require further information, we shall be glad to assist and encourage you to contact one of the members of our asset management team listed at the end of this publication.

We look forward to being of service to you.

Kevin Valenzia
Territory Senior Partner

18 January 2010
Background – Malta: A leading location for Asset Management Services

Malta’s strategic position at the centre of the Mediterranean, with trade routes from Gibraltar to its west and to Suez in the East, has facilitated trading routes throughout history. This developed the Archipelago’s capacity in providing services and influenced its culture, identity and economic activity. Malta’s location at the heart of the Mediterranean region and on the Southern periphery of Europe, even today, remains of significant importance in the drive towards its development as a centre of international business.

Malta was a British colony until 1964. Today it is an independent Republic, a member of the British Commonwealth, the Council of Europe, and the United Nations and most importantly, Malta became a member of the European Union (EU) on 1st May 2004.

The Government is democratically elected and all sides of the political spectrum have agreed to Malta’s economic development strategy. This strategy is designed to continue to develop Malta as a manufacturing base, as a quality tourist resort, and as a provider of a growing range of services, particularly financial services.

Malta has an excellent business infrastructure with good telecommunications, extremely well equipped ports and freeport, a well-developed manufacturing infrastructure, and has a sophisticated European business environment.

Malta is endowed with a skilled, multi-lingual, flexible and adaptable labour force. The official languages are Maltese and English; all Maltese citizens speak the latter fluently. Business correspondence is conducted mainly in English and all laws are published in both languages. Moreover, most of the population are also fluent in Italian.

Financial services

Background

Over the past two decades, Malta has completed a programme of reforming all its finance sector legislation in line with best practices observed in Organisation for Economic Co-operation and Development (OECD) countries. It is also actively involved with the OECD, the EU and the Commonwealth in modelling global regulatory policy.

Financial services is one of the fastest growing sectors in the Maltese economy and one of the most important employers of trained professional staff. Although the financial services sector is dominated by banking, the investment and fund management industry is becoming more of a draw for foreign companies together with insurance companies, including captives, and online gaming companies.

The Investment Services Act, 1994 (as amended) is the principal legislation governing investment services in Malta. It provides the statutory basis for the licensing and regulation of persons providing investment services, which include fund management services, fund administration services and Collective Investment Schemes (CIS). Detailed Regulations and the Malta Financial Services Authority (MFSA) Investment Services Rules complement the Investment Services Act (ISA), and set out the regulatory regime for CISs in line with the latest EU directives and international regulatory practice.

Measures taken in establishing Malta as a financial services centre

Together with the establishment of a financial services centre, other measures that have been taken include:

- Ensuring that income originating from overseas is not subjected to double taxation, even if there is no double taxation agreement in existence. This is achieved by providing relief from double taxation on a unilateral basis and through a system of flat rate foreign tax credits. Subject to certain conditions, there is also a system of tax refunds to shareholders on dividend distributions;
• Advance rulings by the Commissioner of Inland Revenue so that the investor may have certainty and clarity on international tax issues;

• A system for groups of companies allowing offsetting of losses between fellow subsidiaries;

• A definition of participating holdings in foreign companies leading to a participation exemption;

• A law regulating collective investment schemes and asset management services in general;

• Company law provisions dealing with SICAVs and limited partnerships;

• Easy entry through redomiciliation into Malta of offshore funds;

• Passporting regulations that provide for the passporting, by way of either the freedom to provide services provisions or the establishment of a branch;

• Professional secrecy legislation - this provides levels of protection of personal and commercial privacy comparable to other western countries, offering reassurance to foreign investors without obstructing proper supervision;

• Money laundering regulations;

• Ratification of the Hague Convention on recognition of Trusts and incentives for the management of unit trusts from Malta whilst still allowing such trusts to be governed by foreign trust law;

• Insider trading rules.

The regulation of the local financial services market is entrusted to the MFSA. The MFSA comprises a dedicated authorisations unit and several specialised units that together provide a structure for the supervision of persons or companies engaged in the different financial services activities.

**Competent Regulatory Authority**

The MFSA was established by law on 23 July 2002. It is a fully autonomous public institution and reports to Parliament. The MFSA is the single regulator for all financial services, which includes banking, insurance, investment services, trustee services, pensions, collective investment schemes and their service providers. The MFSA also manages the Registry of Companies and has taken over responsibility as the Listing Authority.

The International Tax Unit of the Inland Revenue Department and the Companies Registry are also housed at the MFSA’s offices and have the task of ensuring that all taxation and company registration matters relating to international activity are dealt with swiftly and effectively. The International Tax Unit is also responsible for issuing advance revenue rulings that give certainty to the tax treatment of all international transactions.

Creating the MFSA as a single regulator was a structured part of Malta’s long-term strategy to create a mainstream finance centre in the country. Finance companies have benefited from a reduction in bureaucracy, streamlined procedures, lower fees and compliance costs, and a more consistent implementation of standards.

The organisational structure of the MFSA ensures that its regulatory and operational functions are exercised within strict legal demarcations. The Board of Governors presided by the Chairman, sets out policy and general direction and is assisted by the Legal and International Affairs Unit. The Director of this Unit is also the Secretary to the Board of Governors. The Supervisory Council, headed by the Director General, is exclusively responsible for issuing licenses and regulation and is composed of the Directors responsible for Authorisations, Banking, Securities, Insurance and regulatory developments. Operations are the responsibility of the Board of Management and Resources composed of the Directors responsible for Human Resources, Information Technology and Administration led by the Chief Operations Officer. Co-ordination between these two organs is ensured at Co-ordination Committee level.
The MFSA has a staff count of over 160 people, consisting of specialist regulators, lawyers, accountants and support staff that are involved in communications and organisational administration.

The Authorisations Unit of the MFSA is the unit responsible for the licensing of CISs, including Professional Investor Funds (PIFs), and may be contacted as follows:

The Director,
Authorisations Unit,
Malta Financial Services Authority,
Notabile Road,
Attard, BKR 3000
Telephone (+356) 21 441155
Fax (+356) 21 449308
E-Mail: su@mfsa.com.mt
Website: www.mfsa.com.mt

The MFSA comprises several specialised units, which provide a structure for the licensing and supervision of persons or companies engaged in the different financial services activities. Furthermore, it is prepared to assist sponsors in organising and establishing funds and investment services firms in Malta. In order to ensure access to the most up-to-date regulatory information, the MFSA has established relationships with other major international financial services regulators.

To ensure that the Maltese standards conform to those of other international centres, the MFSA has drawn upon EU directives and other legislation and regulations, including those of the United Kingdom.

The MFSA’s main functions are to:

- regulate and supervise financial services;
- promote the interest of consumers of financial services; provide relevant information and Rules to the public;
- investigate allegations of practices and activities detrimental to consumers of financial services;
- monitor the working and enforcement of laws;
- advise the Government generally on the formulation of policies in the field of financial services;
- ensure high standards of conduct and management throughout the financial system.

Amongst the MFSA’s objectives, the following are perceived to be essential:

- Network with other organisations in order to maximise the effectiveness of the regulatory regime and the management activities;
- Operate risk based regulatory practices to better anticipate threats, which may potentially harm companies and ultimately consumers;
- Continuously upgrade technology to enhance the operational effectiveness and to improve public access to Registry of Companies and other information;
- Sustaining and improving organisational excellence through continuous staff training.

10 reasons that make Malta an attractive asset management centre

1. EU membership/passporting rights
2. EU compliant legislation
3. Efficient tax environment
4. Redomiciliation allowed
5. Swift application process
6. Availability of quality, personalised professional services
7. An accessible and efficient regulator, the Malta Financial Services Authority
8. The application of International Financial Reporting Standards in the preparation of financial statements
9. Relatively inexpensive compliance costs
10. The use of English as Malta’s business language
**Asset Management**

Malta is increasingly being seen as a suitable jurisdiction for the establishment of funds investing in the emerging and established markets, for fund administration and for global custody services provided to these funds. This is mainly attributed to the fact that Malta is particularly well situated as a regional headquarters or distribution centre for funds and financial services and banking companies targeting the wider Mediterranean area, North Africa and the Middle East. It has a number of strengths as a base for funds targeting professional and institutional investors (political and economic stability, developed financial services and legal framework, efficient stock exchange, a range of double tax treaties, unilateral relief, competitive cost structures and a detailed and flexible regulatory regime).

Furthermore, Malta offers a number of advantages for the establishment of funds and to the providers of investment services. These include:

- A well-developed and modern infrastructure with a complete digital telecommunications network and extensive air links;
- High professional standards, with many accountants, bankers, lawyers, and stockbrokers holding overseas qualifications, mainly from the United Kingdom, and having overseas experience;
- Malta has been a member of the EU since May 2004;
- International Financial Reporting Standards (IFRS) have always been the official accounting standards used as the basis for the preparation of company financial statements along with the Companies Act;
- An ever-increasing influx of fresh graduates specialising in financial services each year;
- Costs in Malta are lower than in other comparable financial centres;
- An efficient tax regime and a wide double taxation treaty network;
- Regulation by the MFSA ensures high standards of supervision and investor protection together with the flexibility needed in developing a progressive financial services sector (all substantively in line with EU Directives); Malta tops the list of Member States with Denmark for the timely implementation of internal market rules;
- Flexible investment structures available (e.g., SICAVs, Trusts, Corporations, Partnerships, etc.) and various product features;
- MFSA is an active member of CESR and IOSCO. Shortly after becoming a member of CESR, the MFSA negotiated and obtained approval for a UCITS fund to invest in hedge fund indices;
- Procedures designed to ensure rapid start-up. In the case of funds aimed at professional investors the MFSA has committed itself to issue approval of fund licensing within one week and full fund licensing within not more than 6 weeks.;
- A well-developed legal system;
- A convenient time zone, one hour ahead of GMT;
- An operational and reputable Stock Exchange;
- An additional advantage for the establishment of funds relates to redomiciliation. Regulations are in place to permit the redomiciliation of funds both in and out of Malta. Redomiciliation normally means that contracts with prime brokers and custodians remain unchanged, the assets need not be transferred and the status of unit holders is unaffected by the move.

A number of tax related advantages may also apply, including:

- Tax refunds may be available to shareholders of Maltese companies operating as hedge fund managers;
- Maltese branches of overseas companies registered in Malta are registered under the Income Tax Act (ITA) so as to benefit from Malta's tax accounting and tax refund rules;
- Dividends, interest and royalties paid by a Maltese Company to non-residents of Malta are exempt from any withholding or other taxes in Malta;
- Any gains realised by a non-Maltese shareholder on disposal of shares in a Maltese company are generally not subject to tax in Malta;
- There are no capital taxes in Malta;
- Malta does not have any thin capitalisation rules;
- There are no exchange control restrictions and capital can be denominated in any currency;

Malta was one of a group of jurisdictions that benefited from being placed immediately (following the recent G20 meeting) on the OECD's white list of countries and territories that had both embraced and substantially implemented the tax standards.
The funds industry has grown significantly in recent years and, a number of reputable international organisations have already established operations in Malta and formed CISs, mainly SICAVs, and taken advantage of the possibility of servicing foreign-based funds in Malta.

The number of CIS licenses issued has increased from five licenses in 1995 to three hundred and ninety-eight licences at the end of 2008, as seen in the table below:

<table>
<thead>
<tr>
<th></th>
<th>End of 2006*</th>
<th>End of 2007**</th>
<th>End of 2008†</th>
<th>Sept 2009**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail schemes non-UCITS</td>
<td>87</td>
<td>120</td>
<td>111</td>
<td>62</td>
</tr>
<tr>
<td>Retail schemes UCITS</td>
<td>22</td>
<td>47</td>
<td>51</td>
<td>51</td>
</tr>
<tr>
<td>PIFs</td>
<td>91</td>
<td>129</td>
<td>238</td>
<td>288</td>
</tr>
<tr>
<td>Total</td>
<td>200</td>
<td>296</td>
<td>398</td>
<td>401</td>
</tr>
<tr>
<td>Recognised Private CISs</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>3</td>
</tr>
</tbody>
</table>

* Source: MFSA Annual Report 2008  
** Source: MFSA statistics

A significant number of non-domiciled funds also started being serviced by Malta-based fund management and administration companies in 2008.

The growth of the Maltese fund industry is expected to continue over the long-term, considering the fact that the government continues to support tax efficient vehicles, within which CISs are one of the two most frequently selected vehicles.

Malta has also incorporated Undertaking for Collective Investments in Transferable Securities (UCITS) III into the collective investment regulations, which enables a Scheme to be registered as a UCITS and is presently transposing the recent UCITS IV Directive.

As a result of Malta’s accession to the EU, industry players can take advantage of the passporting provisions of the UCITS Directive and market their UCITS funds in Malta.

Foreign non-UCITS funds may continue to be marketed in Malta in accordance with the current regulatory requirements.
The adoption of the Euro currency in Malta on 1 January 2008 facilitates trading transactions with other European countries.

Registration of PIFs is the area where significant growth is being experienced and this is expected to continue to increase.

The following table contains dates of when the following EU Directives were transposed into Maltese legislation:

<table>
<thead>
<tr>
<th>Directive</th>
<th>Directive No.</th>
<th>Came into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital requirements directive</td>
<td>2006/48/EC</td>
<td>In January 2007, a new online financial return template for investment services licence holders, which may be accessed through the MFSA website, was launched. This was launched as part of the transposition of the EU capital requirements directive.</td>
</tr>
<tr>
<td>Directive on capital adequacy of Investment firms &amp; Credit institutions (recast)</td>
<td>2006/49/EC</td>
<td>June 2006</td>
</tr>
<tr>
<td>MiFID</td>
<td>2004/39/EC</td>
<td>In 2007, the MiFID came into force across the EU through the Investment Services Act, 2004, and the Investment Services Rules (formerly known as Guidelines)</td>
</tr>
<tr>
<td>Transparency directive</td>
<td>2004/109/EC</td>
<td>Implemented through the amendments of the listing rules which came into effect on 1 March 2007</td>
</tr>
<tr>
<td>Prospectus directive</td>
<td>2003/71/EC</td>
<td>4th quarter of 2005</td>
</tr>
<tr>
<td>Market abuse directive</td>
<td>2003/6/EC</td>
<td>April 2005</td>
</tr>
<tr>
<td>UCITS III</td>
<td>n/a</td>
<td>Upon accession to the EU on 1 May 2004, Malta implemented the UCITS III regime</td>
</tr>
<tr>
<td>UCITS IV</td>
<td>2009/65/EC</td>
<td>Currently being transposed</td>
</tr>
</tbody>
</table>
2. Regulatory framework

The Investment Services Act

Background

The ISA is the principal legislative enactment governing the asset management industry in Malta. It provides the statutory basis for the licensing and regulation of persons providing investment services or operating a CIS including UCITS Schemes and PIFs, in or from Malta, or in respect of an entity set up under Maltese law and for the recognition of Fund Administrators.

Other regulations, which complement the ISA, specifically within the context of CISs, are:

- Subsidiary legislation which includes the following legal notices:
  - LN 250 of 2008 – Investment Services Act (Investment advertisements and Prospectus exemption) Regulations
  - LN 329 of 2007 – Investment Services Act (Exemption) Regulations
  - LN 329 of 2006 – Investment Services Act (Performance Fees) Regulations
  - LN 241 of 2006 – Companies Act (Investment Companies with variable share capital) Regulations
  - LN 392 of 2005 – Investment Services Act (Prospectus of CISs) Regulations
  - LN 207 of 2004 – Investment Services Act (Undertaking for Collective Investments in transferable securities and management companies) Regulations
  - LN 353 of 2002 - Investment Services Act (Recognition of Private Collective Investments Schemes) Regulations
  - LN 359 of 2008 – Investment Services Act (Licence and other fees)
  - LN 240 of 1998 – Investment Services Act (Control of assets) Regulations
  - LN 386 of 2003 – Investment Compensation Regulations
  - LN 87 of 2008 – Investment Services Act (Capital Adequacy) Regulations
  - LN 327 of 2007 – Investment Services Act (Tied Agents) Regulations
  - LN 326 of 2007 – European Passport Rights for persons operating multilateral trading facilities Regulations
  - LN 325 of 2007 – European Passport Rights for Investment Firms Regulations

- The Investment Services Rules, issued by the MFSA, constitute an integral part of the special ‘contractual’ relationship that may exist between the license holder and the MFSA. These include all licence conditions for CISs.

- Related legislation including:
  - Companies Act
  - Trusts and Trustees Act and Recognition of Trusts Act
  - Prevention of Money Laundering Act
  - Prevention of Financial Markets Abuse Act
  - Financial Markets Act
  - Special Funds (Regulation) Act
  - Securitisation Act

Definition of CIS

The Act defines a “CIS” as a scheme or arrangement, which has as its object, or as one of its objects, the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange. Moreover, such a Scheme is also required to operate according to the principle of risk spreading and to satisfy one of the following conditions:

- the contributions of the participants and the profits or income, out of which payments are to be made to them, are pooled; or
- at the request of the holders, units are or are to be re-purchased or redeemed out of the assets of the Scheme or arrangement, continuously or in blocks at short intervals; or
- units are, or have been, or will be issued continuously or in blocks at short intervals.

Schemes which do not satisfy the principle of risk spreading may also qualify as CISs provided that they are offered to a specified class of investors. The characteristics of a CIS, as defined by the Investment Services Act, 2004, are in line with the UCITS Directive.

Collective Investment Schemes

CISs are therefore set up to collect funds from the public, pool these funds and invest the pool in assets according to the specific investment objectives and policies set out in a published Prospectus or Offering Memorandum.

There are two types of CISs, these being:

- Open-ended Schemes where the size of the Scheme expands/contracts depending on the buying/selling activities (respectively) of the investors. In this manner, the value of a unit reflects the Net Asset Value (NAV) of the Scheme;
- Closed-ended Schemes where the size of the Scheme is fixed to a number of units in issue throughout its duration. In this case, the value of a unit depends on supply and demand for the units in the Scheme.
In order to operate the CIS in Malta, a valid CIS licence issued from MFSA must first be obtained. The MFSA will issue/revoke a licence on a case-by-case basis and a licence from the MFSA must be obtained before the CIS commences any dealings with prospective investors.

Criteria considered by the MFSA when granting/refusing a CIS Licence application

A CIS licence may only be granted if the MFSA is satisfied that the Scheme will comply in all respects with the relevant regulations and that its directors, officers, trustees, or general partners (in case of a trust or limited partnership respectively) are fit and proper persons to carry out the functions required of them as regards the Scheme.

The MFSA will focus on the following areas before granting/refusing a licence:

- The protection of investors and the general public;
- The protection to the reputation of Malta taking into account Malta’s international commitments;
- The promotion of competition and choice;
- The reputation and suitability of the applicant and all other parties involved in the Scheme;
- The experience and track record of accomplishment of all parties involved with the Scheme.

The MFSA ordinarily expects all of the service providers of a Maltese UCITS Scheme and a Maltese Non-UCITS Scheme to be based in Malta and regulated by the MFSA. Service Providers generally include, amongst others, a Manager, a Custodian, an Administrator and an Investment Advisor.

Foreign Service Providers, when accepted by the MFSA as Service Providers of a Maltese UCITS Scheme or a Maltese Non-UCITS Scheme, should be established and regulated in a Recognised Jurisdiction. Recognised Jurisdictions include EU and EEA Members and other countries, to be approved on a case by case basis, that are considered as having EU-equivalent rules.

The MFSA may also accept Service Providers which may not be established and regulated in a Recognised Jurisdiction where the MFSA considers that the Service Provider is subject to regulation to an equal or comparable level in the jurisdiction concerned.

The Application Process

Phase 1 - Preparatory

The MFSA recommends that the promoters arrange to meet the representatives of MFSA to provide the Authority with a comprehensive description of the proposed activity in order to discuss and guide the promoters on the relevant regulatory requirements and on the completion of the Application documents. No documentation will be held by MFSA upon this initial meeting. The promoters should then submit a draft application form with all supporting documentation as specified in the application form itself for review. The MFSA may ask for further documentation or enquiries. The “fit and proper” checks will begin upon receipt of the draft application form.

The MFSA will consider the nature of the activity, the type of investors, and the markets in which the investment services will be provided and a decision on which Standard Licence Conditions (SLCs) should apply. The applicant will be required to abide by these ongoing conditions if and when licensed.

Phase 2 – Pre-Licensing

Once the review of the draft Application has been completed, the Authority will issue its “in principle” approval for the issue of a licence. The Applicant will then be required to finalise the outstanding matters and other issues raised by the Authority, and submit the signed copies of the revised application form (together with supporting documentation).

Phase 3 – Post-Licensing and Pre-Commencement of Business

The Applicant may be required to satisfy post-licensing matters before commencing business.

Overseas-based Schemes, which are already supervised by a competent and reliable primary regulator, will have tailored Standard License Conditions to reflect the above and may even dispense with the need for such applicant to duplicate a requirement already imposed by the primary regulator.
Fees

An application fee is payable on submission of the application form for a CIS Licence or notification of a European UCITS proposing to be marketed in Malta, and it is not refundable. Annual fees are payable on the date of grant of the Licence and annually thereafter. Fees for CISs are charged on a fund by fund basis. Further details are available in part A of the Investment Services Rules for Retail CISs as summarised in Appendix I of this publication.

Non-UCITS CISs Licences

General Requirements

The Manager and the Custodian are required to be separate persons that act independently of each other in the interest of the Unit Holders. The Manager must have an established place of business in Malta and sufficient financial resources and liquidity to conduct its business effectively and meet its liabilities. The assets of the Scheme must be entrusted to the Custodian. Any independence issues between the Scheme’s manager and Custodian must be declared to the MFSA as soon as the Licence Holder becomes aware of it.

When an Administrator is appointed, the Administrator shall have an established place of business in Malta and must be a Recognised Administrator. The appointment of a Recognised Administrator by a Scheme/Manager shall remain the ultimate responsibility of that Scheme/Manager. Every party involved with a Scheme must have the appropriate expertise and experience to carry out its functions.

The Scheme must submit half-yearly reports (within 2 months of the end of period) and annual reports (within 4 months of the end of period) to the MFSA and any other information the MFSA may require. The financial year-end must be agreed with MFSA and all accounting records must be retained for a minimum period of 10 years.

The Scheme must comply with all local and foreign regulations. Any correspondence, advertisement or other documentation must contain wording along the following lines “Licensed as a CIS by the MFSA”.

The issue of bearer units and terms of issue must be agreed in advance with MFSA. If the units of a Scheme are not freely transferable, the MFSA’s permission is required before the transfer of Units from a Unit holder to any other party. In the case of closed-ended Schemes, the authorised share capital and/or issued share capital of the Scheme may not be increased/decreased without the advance permission of the Authority. Where the Scheme is not listed, the advance permission of the MFSA is necessary before taking any steps in seeking a listing.

A Scheme may not grant loans or act as a guarantor on behalf of a third party.

Prospectus

A Scheme must publish a full Prospectus and, in the case of an open-ended Scheme a simplified Prospectus should it wish to do so, which shall be dated and kept up to date. If only a full Prospectus is published it will be offered to investors and the public free of charge and must be available in printed form at the registered office of the Scheme/Manager or other financial intermediaries placing/selling the Units of that Scheme. Should both be published, the simplified Prospectus will be offered free of charge, whilst the full Prospectus shall be offered free of charge on request. The Prospectus must have been sent to and agreed upon with the MFSA before publication. A Prospectus must contain enough information for the investors to make an informed judgement about the investment proposed which includes:

- the assets and liabilities of the Scheme
- the financial position
- the profit and loss
- the rights attached to the Units of the Scheme.

Any significant new information or correction of misstatement in the Prospectus must be made available in a supplement to the full prospectus.

A Scheme shall observe its investment objectives, policies and restrictions, with the investment policies being clearly defined in the Scheme’s Prospectus.

The Prospectus should also include a clear investment policy and adequate information such that Unit holders are aware of the risks that they will be exposed to.
Investment Restrictions and Policies

The Investment Restrictions are summarised below:

a. A Scheme may not invest more than 10% of its assets in Securities that are not traded or dealt on a Market, which the Custodian and Manager have agreed as being appropriate for the Scheme, is listed in the full Prospectus, is regulated, operates regularly, is recognised and is open to the public, has adequate liquidity and arrangements in respect of the transmission of income and capital and is not the subject of an MFSA restriction;

b. The Scheme may not invest more than 10% of its assets in Securities issued by the same body;

c. Not more than 10% of the assets may be kept on deposit with any one body, which may be increased to 30% if money is deposited with a bank licensed in any EEA state, or foreign bank which has been approved by the Authority;

d. The Scheme may not hold more than 10% of any class of security issued by any single issuer;

e. The Scheme or its Manager, may not acquire instruments to give it the right to exercise control over 20% or more of the share capital or votes of a company or enable it to have significant influence over the management of the issuer;

f. If approved by the MFSA, the Scheme may invest up to 100% of its assets in securities issued or guaranteed by any State;

g. The Scheme may acquire Units of other CISs where:

i. Not more than 20% of the Scheme’s Assets may be invested in the other CIS;

ii. If both Schemes are managed by the same management company, the Manager of the Scheme shall give up all charges, which it is entitled to, in relation to the acquisition/disposal of such Units. Any commissions received by the manager as a result of an investment in the units of another Scheme, will be paid into the property of the Scheme;

h. Techniques and instruments relating to transferable securities may be employed for the purposes of efficient portfolio management under conditions and within limits agreed upon with the MFSA. The Scheme may not be leveraged or geared in any way using futures, options or other derivatives;

i. The Scheme may invest in nil/partly paid shares and subscribe for placing/underwriting as long as the amount paid does not exceed 5% of the value of the Scheme, except that, if the amount exceeds that figure, cash not required for the other purposes or for the efficient management of the portfolio shall be available to cover the full amount outstanding;

j. Subject to the provisions of the Scheme’s Constitutional Documents, the Scheme may borrow as long as the borrowings do not exceed 10% of the value of the Scheme or its assets when set up as an investment company/limited partnership or unit trust/common contractual fund, accordingly;

k. The Scheme may not carry out uncovered sales of securities or other financial instruments;

l. The Scheme may not combine investments in securities/deposits made and counterparty exposures arising from over-the-counter derivative transactions undertaken with a single body in excess of 35% of its assets;

m. Investors are to be notified in advance of any changes to the investment policies and restrictions of the Scheme. Any changes to the Investment Objectives need to first be approved by the unit holders of the Scheme and all linked pending redemptions, satisfied.

Where the Scheme is in the form of a limited partnership whose capital is divided into shares, or an umbrella fund, or a feeder fund, or a fund of funds, the MFSA sets out a number of supplementary conditions applicable to each specific structure.

UCITS CISs Licences

General Requirements

An Investment Fund established under the UCITS directive may market its Units in Malta. As per LN 207 of 2004, as amended, a European UCITS is exempt from requiring a local licence if prior to commencement of marketing its units in Malta, it sends a written notification of its intention to the MFSA together with:

- A confirmation by the foreign authority that it fulfils the conditions imposed by the Directive;
- Its fund rules or its instruments of incorporation;
- Its full and simplified Prospectuses including any amendments;
- Its latest Annual and subsequent half yearly report (where appropriate);
- Details of arrangements made for the marketing of its units in Malta.
UCITS may commence marketing its units locally after the expiry of two months from notifying the MFSA, unless prior to the expiry of the two months, the Authority has informed the European UCITS and the foreign Authority with a reasoned decision that the arrangements made for the marketing of units do not comply with the provisions of the regulations.

Once authorised, the European UCITS must comply with any law, regulations and Investment Services Rules governing its advertising of units in Malta. It must also satisfy the MFSA that adequate measures have been taken to ensure facilities are available locally such that it is able to pay Unit holders, repurchase or redeem Units and make available the information that European UCITS are obliged to provide.

It must also distribute locally in Maltese or English, the following documents and information in accordance with the procedure provided in its home Member/EEA State:
- The full and simplified Prospectus;
- The annual and half-yearly reports; and
- The fund rules and instruments of incorporation.

It may use its generic name as it uses in the home Member State/EEA State, unless the MFSA, for the purpose of clarification, requires the name to be accompanied by certain explanatory particulars. In the case of a temporary suspension of the repurchase or redemption of units, the European UCITS must immediately communicate its decision to the MFSA as well as to its supervisory authority.

A Maltese Management Company may open a branch in a Member/EEA State by notifying the MFSA of its intention to establish such a branch. If the Authority is satisfied, the MFSA may issue a “consent notice” to the authorities of the host member state within three months of notification. If the MFSA does not authorise such decision, it will inform the applicant within two months of receipt of notice. The host State may inform the Management Company within two months of receipt of the “consent notice”. The branch may commence to operate on the expiry of the said two month period or upon receipt of the communication from the host authority.

A Maltese UCITS may also market its units in another Member/EEA state by sending written notification to the MFSA and the competent authority of the host State. Such notification should include:
- its licence;
- fund rules or memorandum and articles of association;
- the full and simplified Prospectus;
- the latest annual and half-yearly reports; and
- the arrangements made for marketing its units in the host State.

Unless the host State provides a reasoned decision to the local authority and the applicant that the arrangements made for marketing the units do not comply with the UCITS directive, the Maltese UCITS may commence business within two months.

Note that in January 2009, the European Parliament approved the fourth UCITS EC Directive, which is updated with all legislation, incorporating all previous directives, and is expected to apply from 2011. This is the result of an industry call for a more efficient way of doing cross border business for fund managers and for funds to compete against substitute products.

Private CISs

A Private CIS does not require a licence, however it must be subject to recognition by the competent authority. A fee shall be payable in respect of recognition on the initial application date and annually thereafter. A Private CIS must comply with the following additional criteria:
- The number of participants should be limited to 15 persons;
- The participants should be close friends or relatives of the promoter;
- The Scheme should not qualify as a PIF;
- The Scheme should essentially be private in nature and purpose;
- Provided that if one of the participants is a company, the company will be subject to recognition by the MFSA under the regulations of the Investment Services Act, 1994.
Professional Investor Funds (Hedge Funds)

All hedge funds set up in Malta are established as PIFs. Such funds are non-retail CISs, which can be either private or public in nature, and must be licensed to operate in or from Malta. CISs, which qualify as PIFs and were licensed after 17 July 2007 are also subject to the Investment Services Rules for PIFs.

Malta set up a PIF regime so as to encourage fund promoters to consider Malta as a viable and attractive jurisdiction for the licensing of hedge funds and other alternative investment funds. PIFs are subject to a minimum investment threshold and consequently enjoy less stringent regulations than those applicable for retail funds.

The PIF regime provides for three principal classes of PIFs:

a) Extraordinary Investors
b) Qualifying Investors
c) Experienced Investors.

Extraordinary Investor Funds are suitable vehicles for hedge funds, with no investment or borrowing restrictions and a minimum entry level of €750,000 or equivalent (for each fund member or joint fund members).

Qualifying Investors Funds have a minimum initial investment of €75,000 or equivalent. A benefit of both these types of funds is that there is no requirement to appoint a Custodian/Prime Broker, as long as the Directors ensure that there are adequate safekeeping arrangements, which must be described in the Offering Document.

In the case of Experienced Investor Funds, such fund must appoint a custodian and the minimum investment (per member) is of €10,000 or equivalent.

Since PIFs are not intended for the general public but for professional or wealthy investors, they are not burdened with the restrictions usually imposed on retail funds, therefore offering greater flexibility.

PIFs also benefit from not being subject to investment restrictions (apart from PIFs sold to Experienced Investors, which have certain other investments restrictions) and are not required to appoint service providers located in Malta/licensed by the MFSA, and can also opt not to appoint an external Investment Manager.

In accordance with the Investment Services Rules for PIFs, the MFSA may only grant a CIS licence to a PIF if it is satisfied that the PIF will comply, in all respects, with the provisions of the Act, the relevant Regulations and Rules, and the directors, officers, trustees or General Partners, are fit and proper persons to carry out the functions required of them in connection with the PIF.

The MFSA commits itself to providing feedback on the application documents within seven business days for the Experienced or Qualifying Investors, and 3 days for the Extraordinary Investors, provided all relevant details are received by the MFSA.

Following the Application documents, the board of directors and the service providers of a PIF must pass the Fit and Proper test, i.e. satisfy the criteria of integrity, competence and solvency.

The MFSA issues its 'in principal' approval for the issue of a licence once the review of the draft application and supporting documentation is completed. Upon the resolution of all pre-licensing issues, the licence is issued.

Note that as per the MFSA regulatory framework, the Applicant may also be required to satisfy a number of post-licensing matters prior to formal commencement of business.
Investment Restrictions and Policies for Experienced Investors

The Scheme shall comply with the following investment restrictions within six months from the launch of the Scheme or upon reaching a value equivalent to €2,500,000 whichever is sooner.

The exposure to the underlying assets when investing in financial derivative instruments should be calculated using the Commitment Approach indicated in Section 13 of Part B II of the Investment Services Rules for Retail Collective Investment Schemes.

A Scheme may only enter into repurchase/reverse purchase, stock lending or borrowing agreements:
- when Scheme or Manager see this as appropriate and in the interest of investors and with an acceptable risk level; and
- in accordance with good market practice subject to adequate collateral.

The Scheme is also required to comply to the following diversification requirements:

a. The Scheme may invest up to 20% of its total assets in securities issued by the same body and up to 30% of its assets in money market instruments. This limit may be increased:
   i. up to 100% in the case of securities and money market instruments issued or guaranteed by an OECD or EU/EEA Member State, its local authorities or public international bodies.

   ii. up to a maximum of 35% in the case of instruments guaranteed by a credit institution authorised in the EEA or which is subject to equivalent prudential requirements;

   iii. 20% increased to 30% in the case of transferable securities traded in or dealt on a regulated market which operated regularly, is recognised and is open to the public.

b. The Scheme may invest up to a maximum of 35% of its total assets in deposits held with a single body.

c. The Scheme may invest up to a maximum of 30% of its total assets in any single collective investment scheme that is not a UCITS or other open ended CIS subject to risk spreading requirements which are at least comparable to those applicable to the Scheme itself.

d. Where the Scheme is a fund of hedge funds it shall invest in at least five hedge funds.

e. In the case of transactions with OTC derivatives, the Scheme shall limit exposure with a single counterparty to 20% of its total assets unless acceptable collateral is provided to reduce exposure. Exposure is to be calculated on the maximum potential loss incurred by the scheme if the counterparty defaults.

f. The Scheme shall limit its aggregate maximum exposure (through securities, money market instrument, deposits and OTC derivatives transactions) to a single issuer/counterparty to 40% of its total assets.

g. Where the Scheme has been set up as a Feeder Fund, the underlying fund shall satisfy the leverage restrictions applicable to the Scheme.
3. Scheme and fund structures

Legal structures

The Maltese Companies Act, 1995 provides for the formation of corporate CISs. It provides for the creation of an investment company with variable share capital (the SICAV) and for an investment company with fixed share capital (the INVCO) which may be set up using the ordinary corporate form.

The Maltese Companies Act also provides the statutory basis for the registration of the different types of commercial partnerships, namely: a limited liability company, a partnership “en nom collectif”, and a partnership “en commandite or limited partnership”. Commercial partnerships, once constituted, enjoy a distinct legal personality.

Moreover, the Act provides that the share capital of a company may be denominated in any convertible currency and its accounts be drawn up in the same currency.

CISs can be established in one of three forms:

Corporate form

i. Company
   - INVCO (Investment company with fixed share capital);
   - SICAV (Investment company with variable share capital).

ii. Commercial Partnership
   - Partnership en commandite.

By way of trust

- Unit Trust.

By way of contract

- Mutual Fund.

INVCO - Company with fixed share capital

The INVCO must be a public company having fixed share capital. In order to qualify as such, the applicant must comply with the following requirements:

i. Its activities must consist of the investment of funds in securities with the aim of spreading investment risk and giving the members the benefit of the results of the management of its funds;

ii. The holdings in any other company are limited to 15% of the value of the INVCO’s investments;

iii. It is prohibited from distributing its capital assets and from retaining more than 15% of its income from the securities in one accounting period.

An INVCO must also comply with the following requirements:

i. Each share must have a nominal value; and

ii. A reduction in share capital must be first approved by the MFA and will only take effect after three months from the date of publication of the relevant notice informing third parties; and

iii. A number of conditions governing the distributions made by the INVCO.

SICAV – Company with variable share capital

The SICAV under Maltese law is normally incorporated as an open-ended CIS, vested with a separate legal personality, and is formed under the Companies Act as an investment company with variable share capital. The SICAV may be a private or a public company, and must have the word “SICAV” indicated in the name with which it is registered at the Malta Registry of Companies.

In terms of the Companies Act, the objects of a SICAV must be limited to the collective investment of its funds in securities and in other movable and immovable property, with the aim of spreading investment risk and giving the shareholders (investors), the benefit of the results of the management of the SICAV’s funds.

The Companies Act and the Investment Services Rules stipulate a number of requirements which the SICAV must comply with, and also require the insertion of a number of clauses in the Memorandum and Articles of Association in order to be able to obtain a CIS license. These are as follows:

i. The share capital must be equal to the value of issued share capital;

ii. The issued share capital must be divided into a specified number of shares without a nominal value;
iii. A SICAV can only issue fully paid-up shares;

iv. The actual value of the share capital shall be at all times equal to the value of the underlying investments after deducting the SICAV's liabilities;

v. A SICAV must repurchase any of its own shares upon a request being made by the shareholder.

In 2002, Malta introduced legislation which allowed SICAVs to create segregated classes within the same umbrella structure. Such legislation was implemented as an exception to the company law provisions and for such legislation to apply, the SICAV must specifically include a clause on the provision for the segregation of assets and liabilities in its Memorandum and Articles. Another requirement is the segregation of documents, which must be clearly distinct for each sub-fund, although there may be clauses within the offering memorandum or articles of the SICAV, which allow for expenses to be borne by the SICAV in total and then split amongst the sub-funds according to the promoters of the SICAV.

Partnership 'en commandite'

A partnership 'en commandite' is set up in accordance with the Companies Act, 1995. The promoter of the Scheme is generally the partner who is responsible for the day-to-day administration of the investment partnership. The general partner, however, usually has unlimited liability for the repayment and discharge of all debts and obligations of the partnership irrespective of its interest in the partnership. On the other hand, the limited partners are generally liable for the repayment and discharge of all debts and obligations of the investment partnership, but only to the extent of their respective interest in the partnership. They usually have no part in the management of the partnership and have no authority to act on behalf of the partnership in connection with any matter.

Unit trusts

Unit trusts are structured as open-ended or close-ended entities created by a deed of trust between a management company and a trustee. The trustee holds legal title to all investments acquired, but the beneficiaries of the investments are the underlying investors. The trustee is ultimately responsible for all of the trust's operations, including investment and safeguarding of the trust's assets, maintaining the register of unit holders, settling investment transactions, collecting and distributing the income of the trust, approval of the trust's auditors, contractual agreements, and expenditures. Most of these functions are typically delegated to a third party – frequently the trust's manager – under the trustee's supervision.

An applicant can register trusts in Malta in three different ways:

a. register a Maltese unit trust regulated by the Trusts Act;

b. register a foreign unit trust with the MFSA in accordance with the provisions of the Trusts Act;

c. have a non-registered foreign unit trust subject to the provisions of the Recognition of Trusts Act, 1994.

Mutual funds

Mutual funds can be set up as an open-ended investment Scheme established by contract and do not have a separate legal personality.

The investors are the co-owners of the various funds, which have been pooled together into the mutual fund, and of the assets acquired through the investment of such funds.

This fund need not be licensed as a CIS under the Investment Services Act and the specific requirements contained in the Rules should then be included in the contract setting up the fund.

Conclusion

Within each of the above three categories, one may find special kinds of Schemes, which include feeder funds, funds-of-funds or umbrella funds. The category most suited to set up any such fund will depend on the special characteristics of the Scheme.
4. Investment service providers

Rules for Investment Service Providers

Malta has an increasing number of third-party service providers offering services such as administration, management and investment advisory services.

In terms of the ISA, the manager, custodian and trustee of a CIS are required to hold a licence in relation to services provided as a functionary.

In order to obtain a licence to act as a functionary for a collective investment fund, certain information has to be provided to the MFSA. In general, the applicant will need to furnish information concerning the collective investment fund in relation to its functions, and should be established and regulated in a Recognised Jurisdiction. In deciding whether or not to issue a permit, the MFSA will consider the protection of the public and whether or not it is in the best economic interest of the island.

There are currently five categories of Investment Services Licence. These are set out in the table below, together with the amount of initial capital for each category. The initial capital includes both equity capital and reserves.

<table>
<thead>
<tr>
<th>Licence Holder Category</th>
<th>Minimum Initial Capital</th>
</tr>
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<tbody>
<tr>
<td>Category 1 (A)</td>
<td>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 CISs).</td>
</tr>
<tr>
<td>Category 1 (B)</td>
<td>Licence Holders authorised to receive and transmit orders, and/or provide investment advice in relation to one or more instruments and/or place instruments without a firm commitment basis solely for professional clients and/or eligible counterparties but not to hold or control Clients’ Money or Customers’ Assets.</td>
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<tr>
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<tr>
<td>Category 2</td>
<td>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.</td>
</tr>
<tr>
<td>Category 3</td>
<td>Licence Holders authorised to provide any Investment Service and to hold and control Clients’ Money or Customers’ Assets.</td>
</tr>
<tr>
<td>Category 4</td>
<td>Licence Holders authorised to act as trustees or custodians of CISs.</td>
</tr>
</tbody>
</table>
Manager

A Manager approved by the MFSA may be appointed by the Scheme. In such a situation, the Manager must have an established place of business in Malta and sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities. The Manager must also have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act in that capacity.

The MFSA shall be entitled to be satisfied, on a continuing basis that the Manager of the Scheme has the appropriate expertise and experience to carry out its functions, and any appointment and/or the replacement of the Manager shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the Manager of the Scheme.

Retail UCITS CIS

In the case of a Retail UCITS CIS, in addition to the above, the Manager shall qualify as a Maltese Management Company pursuant to the UCITS Regulations, 2004.

Where the Manager wishes to delegate to third parties, the relevant provisions of Part B of the Investment Services Rules for Investment Services Providers dealing with outsourcing shall apply, subject to the additional requirements as set out in the Investment Services Rules for Retail CISs Part B – Standard Licence Conditions.

Administrator

Retail UCITS and Non UCITS CIS and Professional Investor Funds

An Administrator may be appointed by the Scheme or the Manager, if not, the Manager shall be responsible for the Administration function. A third party Administrator shall have an established place of business in Malta, shall be a Recognised Administrator in terms of Article 9A of the Investment Services Act, 1994 and shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA.

The MFSA shall be entitled to be satisfied, on a continuing basis that the Administrator of the Scheme has the appropriate expertise and experience to carry out its functions, and any appointment and/or replacement of the Administrator shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the Administrator of the Scheme.

Investment Advisor

Retail UCITS, Non-UCITS CIS and Professional Investor Funds

An Investment Advisor may be appointed by the Scheme or the Manager. Where appointed, the Advisor must have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities, as well as the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Investment Advisor.
The MFSA shall be entitled to be satisfied, on a continuing basis that the Advisor of the Scheme has the appropriate expertise and experience to carry out its functions, and any appointment and/or replacement of the Investment Advisor shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the Investment Advisor of the Scheme.

**Custodian**

A Custodian shall be entrusted with the safekeeping of the assets of the Scheme and shall also be responsible for monitoring the extent to which the Manager is abiding by the investment and borrowing powers laid out in the full Prospectus and otherwise in accordance with the provisions of the Constitutional Document of the Scheme and the Licence Conditions. A custodian should be established in Malta and in possession of a Category 4 Investment Services License issued by the MFSA in terms of the Investment Services Act, 1994. Supplementary conditions, however, apply for a custodian of a collective investment scheme.

**Retail UCITS/Non-UCITS CISs**

The license holder shall be a separate person from the Manager and shall act independently and solely in the interests of the unit holders. Any facts, relationships, arrangements, or circumstances, which may at any stage bring that independence into question, shall be declared to the MFSA, as soon as the Scheme becomes aware of any such matter.

The License Holder shall have an established place of business in Malta and shall be:

a. a credit institution, constituted and licensed under the laws of Malta; or
b. a branch established in Malta, of a credit institution authorised in a EU Member State or EEA state; or
c. a branch established in Malta of an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions; or
d. a company incorporated in Malta which is wholly owned by a credit institution, provided that the liabilities of the Licence Holder are guaranteed by the credit institution and the credit institution is either a Maltese credit institution or is an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions; or

e. a company incorporated in Malta which is wholly owned by a Maltese or foreign institution or company which is deemed by the MFSA to be an institution or company which provides unit-holders with protection equivalent to that provided by a Licence Holder fulfilling the requirements of (a), (b), (c) or (d) above and provided the liabilities of the company acting as Custodian are guaranteed by the institution or company and the institution or company has paid-up share capital of EUR5 million or its equivalent in foreign currency.

In the case of (d) and (e) above, the Licence Holder shall be required to have a minimum of one Director on its Board who is resident in Malta.

The Custodian shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities and shall also have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Custodian.

**Professional Investor Funds**

A PIF promoted to Experienced Investors should appoint a third party Custodian responsible for the safekeeping of the assets of the PIF and for undertaking monitoring duties over the PIF’s Manager. The appointed Custodian should be independent from the Manager and need not be established and regulated in Malta.

In the case of a PIF promoted to Qualifying or Extraordinary Investors, although the MFSA recommends and would ordinarily expect the appointment of a Custodian, which may be a Prime Broker, for safekeeping the PIF’s assets, there is no obligation for such an appointment. Where no Custodian is appointed, responsibility for the establishment of proper arrangements for the safekeeping of the PIF’s assets remains with the Directors’ General Partner(s)/ Trustee and officers of the PIF. The applicant will be required to outline – as part of the application process – the arrangements that will be put in place to ensure adequate safekeeping of the assets of the PIF.

Where the PIF wishes to appoint a Custodian established in Malta, the Custodian should be in possession of a Category 4 Investment Services Licence issued in terms of Article 6 of the
**Investment Services Act.** The MFSA shall be entitled to be satisfied, on a continuing basis that the Custodian has the appropriate expertise and experience to carry out its functions, and any appointment and/or the replacement of the Custodian shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the Custodian of the Scheme.

The Custodian shall be separate and independent from the Manager and shall act independently and solely in the interests of the unit holders. Any facts, relationships, arrangements, or circumstances, which may at any stage bring that independence into question, shall be declared to the MFSA, as soon as the Scheme becomes aware of any such matter.

**Auditor**

*Retail UCITS, Non-UCITS CIS and Professional Investor Funds*

The auditor appointed by the Scheme shall also be approved by the MFSA and shall be replaced should the MFSA request such replacement.

A letter of engagement shall be sent to the Scheme, clearly defining the extent of the auditor's responsibilities and the terms of the appointment and the Scheme shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

For each annual accounting period, the Scheme shall require its auditor to include, in the annual report of the Scheme, an audit report and shall notify the MFSA immediately if it is informed that its auditor intends to qualify the audit report. In the case of PIFs, for each annual accounting period, the Scheme shall require its auditor to prepare a management letter in accordance with International Standards on Auditing.
5. Listing on the Malta Stock Exchange

Background

Chapter 15 within the MFSA Listing Rules sets out the requirements for the admissibility to listing of units in CISs, both open or close ended, whether incorporated in Malta or outside the territory of Malta.

In order to qualify for a listing, a Scheme must be duly licensed by the MFSA pursuant to the provisions of the ISA, or is a UCITS, licensed by a regulatory authority in an EEA state or member state of the EU.

The listing authority requires every application for the authorisation for admissibility to listing of any such Scheme to be supported by a Prospectus.

Primary listing

Application procedures & requirements – Authorisation for Admissibility for Primary Listing

All applicants must appoint a Sponsor who will be responsible for preparing the applicant for authorisation for admissibility to listing and for dealing with the listing authority on all matters arising in connection with the application.

When considering the application, the listing authority reserves the right to assess each case on its own merits and, based on the relevant circumstances, may modify or request additional authorisation requirements as it deems fit.

Basic conditions to be fulfilled by a Scheme seeking a listing:

- The units must be freely transferable;
- The number of directors of a Scheme must at least be one;
- Corporate directors are not eligible, unless the corporate director is the manager of the Scheme;
- A Scheme must adopt rules governing dealings by directors as to minimise the possibility of insider dealing;
- Copies of the directors’ service contracts, if any, must be made available to the general public for inspection at the time of the annual general meeting (AGM) of the Scheme;
- Any other activity of the directors, manager or investment advisor should not result in the Scheme being disadvantaged in any way due to possible conflicts of interest between their obligations arising as a result of such activities and their obligations to the Scheme;
- Directors and proposed directors, and in the case of a unit trust, the directors of the Manager, will be personally responsible for the information contained in the Prospectus;
- The directors of the Scheme and the Manager must acknowledge to the listing authority in writing that they accept full responsibility for the Scheme’s compliance with all listing requirements and continuing obligations.

A formal application must be lodged with the listing authority at least five business days prior to the date of hearing of the application by the listing committee of the listing authority. The application form must be completed and signed by a duly authorised representative of the Scheme and the sponsor.

The formal application must be accompanied by one copy of the Prospectus marked in the margin showing where the relevant requirements have been met, and any other document or information, which the listing authority may require.

When a formal application for authorisation for Admissibility to listing is made to the listing authority, concurrently with the submission to the MFSA of the application for a licence pursuant to the provisions of the Investment Services Act, the listing authority shall only consider the application for authorisation if the appropriate Investment Services Act licence is duly granted to the Scheme by the MFSA; or in the case of UCITS, the Scheme is licensed by a competent authority of an EU member state or EEA state.

The listing authority shall notify the applicant of its decision to accept or refuse an application for admissibility to listing, within 40 days from the date the application/request for additional information is received.

Every Prospectus, must contain:

- A statement that application has been made to a RIE for admission to listing of the units issued or to be issued by the Scheme;
- Any additional information as may be required by the listing authority;
- The name of the RIE on which the primary listing is or is to be listed;
- Particulars of any other RIE on which any of the units are listed or dealt in or where listing or permission to deal is being sought or an appropriate negative statement; and
- Particulars of any Exchange where the Scheme had previously sought a listing but had been refused and the reasons for such a refusal. The Prospectus must be accompanied by a letter signed by every director of the Scheme confirming that the equivalent offering document includes all such information within their knowledge that investors and their professional advisors would reasonably require to make an informed assessment of the assets and liabilities, the financial position and losses of the Scheme.

**Continuing obligations**

Every Scheme applying for authorisation for admissibility to listing is required to comply with the continuing obligations as set out in the listing rules, except if the Scheme is specifically exempt from any such obligations by the listing authority. The following criteria must be adhered to:

- the Scheme, management company, custodian and advisors, may give information concerning the Scheme, in strict confidence, to outside advisors or persons with whom it is negotiating with a view of raising finance;
- where it is being proposed to announce information which might affect the market price of the Scheme’s units, arrangements shall be made with the RIE so that an announcement is immediately made known to the market;
- give notice to the listing authority of any major new developments in its sphere of activity;
- update its Prospectus whenever there are material changes in the contents or when the listing authority so requires;
- notify the RIE, where it is listed, of any information necessary to enable unit holders to make an informed assessment of the financial position of the Scheme;
- ensure that all the necessary facilities and information are available to enable holders of its units to exercise their rights;
- a Scheme shall ensure that all the necessary facilities and information are available to enable holders of its units to exercise their rights;
- communicate to the RIE any decision to effect dividend/interest payment or any other form of distribution;
- issue and send to the listing authority and to all unit holders an annual report and audited accounts within four months of the end of the financial period to which they relate;
- ensure that copies of the directors’ service contracts, if any, are available for inspection to the general public;
- a Scheme shall notify the listing authority, without delay, of any change in the holding of its units by any director and/or of any person connected with the director;
- notify the listing authority on a quarterly basis, or more frequently, when so required by the listing authority, of the total number of units in issue whether in bearer or in registered form as appropriate and the total number of units in issue held by the manager;
- notify immediately the listing authority of any changes in the general character or nature of the Scheme and any renewal or termination of or variation to the Scheme.

**Secondary listing**

**Application procedures – Authorisation for Admissibility for Secondary Listing**

A Scheme seeking authorisation for admissibility for secondary listing in Malta, must be duly licensed by the MFSA in terms of the Investment Services Act, 1994, or in the case of a UCITS, be licensed by a regulatory authority, before it can be listed and must comply with all the application procedures and requirements for Schemes seeking authorisation for admissibility for primary listing.

The listing authority reserves the right, at its absolute discretion, to refuse to grant authorisation for admissibility to listing to a Scheme, if the Scheme is listed on a stock exchange or otherwise regulated in a jurisdiction, being a non-recognised jurisdiction which, in the opinion of the listing authority, does not provide the same degree of investor protection as that provided by Maltese regulations.
Continuing obligations

Where a Scheme is granted a secondary listing in Malta, the listing Authority reserves the right to exempt the Scheme from any or all requirements of primary listing, and to require instead, a certificate of compliance issued by the overseas exchange where the Scheme has primary listing.

Overseas Schemes granted a secondary listing should comply with a number of requirements as listed below:

- The overseas Scheme’s annual report and audited accounts must be prepared in accordance with International Financial Reporting Standards, independently audited and reported on in accordance with International Standards on Auditing;
- The overseas Scheme must appoint, and maintain throughout the period that the securities are authorised as admissible to listing, a licensed sponsor to deal with all matters appertaining to authorisation for admissibility to listing;
- The overseas Scheme must adhere to all MFSA requirements as regards to the advertising and promotion of CISs;
- An overseas Scheme offering or planning to market its products in the territory of Malta will not be required to have a registrar in Malta, but provision must be made for a register of holders to be maintained in such place as the listing authority may agree, and for transfers to be registered locally by a paying agent duly appointed by the Scheme;
- All requirements as the listing authority may impose from time to time;
- All documents issued or sent must be in the Maltese or English language.

Admissibility of closed-ended CISs

This section applies to the admissibility of closed-ended CISs investing in securities, listed or unlisted, including warrants, money market instruments, bank deposits, currency investments, commodities, options, future contracts, precious metals or property.

Investments may also take the form of partnership arrangements, participations, joint ventures and other forms of non-corporate investments, as well as other securities as may be held with the authorisation of the listing authority.

The Scheme and its management should comply with the following requirements:

- that the Scheme, either on its own or in conjunction with any connected person, must not take legal or effective management or control of any underlying investments in companies or other entities in which it invests;
- that any custodian, management company, any of their connected persons and every director of any investment company and management company, is prohibited from voting at any meeting to the extent that they have a material interest in the business to be conducted;
- the Scheme’s auditors are independent of the Scheme, any management company and any custodian, and comply with International Standards on Auditing;
- a Scheme will not issue further shares of the same class as existing shares for cash at a price below the NAV per share of those shares unless it is authorised by the shareholders.

Unless otherwise agreed to by the listing authority, Schemes authorised as admissible to listing under this section will be required to comply with the continuing obligations of Schemes authorised as admissible for primary listing.

Listing fees

The advance booking form must be accompanied by the payment of an initial and non-refundable listing fee of €1,165. The annual listing fee is payable in advance within one month of the Scheme obtaining a listing, and subsequently within one month of the anniversary of the listing.

If the CIS is given a secondary listing on the Malta Stock Exchange, an initial fee due will be equivalent to 50% of the rates due in respect of a primary listing.
6. Taxation

Taxation of a CIS

For Maltese income tax purposes, a CIS, whether registered under the laws of Malta or otherwise, is defined as “any Scheme or arrangement which is licensed under the Investment Services Act”. In order to fall within the purport of the tax regime set out below, the CIS must be licensed in terms of the Maltese Investment Services Act.

Therefore, on the basis that a CIS is licensed under the Investment Services Act, the income tax regime in Malta for CISs is based on the classification of funds into prescribed or non-prescribed funds. This classification would refer to each particular sub-fund of a CIS and where the CIS includes more than one fund within it, different classifications may apply for the different sub-funds depending on the nature/characteristics of each particular sub-fund.

The classification for income tax purposes of a fund as a prescribed fund or a non-prescribed fund may be subject to change depending on the satisfaction of the respective conditions (as described below) over time.

Prescribed funds

In general, a prescribed fund is a Maltese resident fund (i.e. a CIS formed under the laws of Malta) which has declared that the value of its assets situated in Malta amount to at least 85% of the value of the total assets of the fund.

Investment income (other than investment income paid by another licensed CIS) as defined in the Income Tax Act received by a prescribed fund is subject to a final withholding tax.

“Investment income” includes the following categories of income:

- local bank interest and foreign bank interest (the latter subject to certain conditions);
- interest, discounts or premiums payable by the Government of Malta;
- interest, discounts or premiums payable by a corporation or authority established by law;
- interest, discounts or premiums payable in respect of a public issue by a company resident in Malta or otherwise.

The applicable rate of withholding tax for prescribed funds is 15% on local bank interest and 10% on other investment income as listed above.

Any other type of income or gains, i.e. income not falling within the definition of investment income (except for income from immovable property situated in Malta which is taxed at the normal rates of tax), received by a prescribed fund is not subject to tax in the hands of the CIS.

Non-prescribed funds

A fund (or sub-fund) which does not satisfy the conditions to be classified as a prescribed fund, will, by default, be classified as a non-prescribed fund. Therefore, a non-prescribed fund is in general a fund within a CIS, registered under the laws of a foreign country (which is licensed under the Investment Services Act) or a fund within a Maltese registered CIS having more than 15% of the value of its total assets situated outside Malta. A blanket income tax exemption applies to all income and gains derived by non-prescribed funds (except for income from immovable property situated in Malta which is taxed at the normal rates of tax).

General Maltese income tax provisions applicable to both prescribed and non-prescribed funds

A CIS is not entitled to a credit or to a refund of any tax at source or withholding tax deducted from income received. Capital gains, dividends, interest and any other income derived from foreign sources/investments held by a CIS may be subject to tax imposed by the country of origin concerned, and such taxes may not be recoverable by the CIS or its shareholders.

Taxation of the shareholders of a CIS

Capital gains

a) Non-resident investors – prescribed and non-prescribed funds

Capital gains realised on transfers or redemptions of CIS units by non-resident investors, whether the units are held in a prescribed or a non-prescribed fund, are exempt from Maltese tax. In order for this tax exemption to apply:

(i) the non-resident must be the beneficial owner of the units being disposed of and such person should not be owned and controlled by, directly or indirectly, nor acting on behalf of a individual or individuals who are ordinarily resident and domiciled in Malta; and
(ii) the CIS is not a company, the assets of which consist wholly or principally of immovable property situated in Malta.

b) Resident investors - Non-prescribed funds
Capital gains realised by resident shareholders of a CIS on the redemption, liquidation, or cancellation of units in a resident non-prescribed fund, may be subject to a 15% final withholding tax and the obligation to deduct such tax at source lies with the CIS. In the case of a non-resident non-prescribed fund, in order for the 15% final withholding tax to apply, the Maltese investor has to request the deduction of such withholding tax to be effected through a Maltese authorised financial intermediary.

However, the resident shareholder has the option to receive the capital gain without the deduction of the aforesaid 15% withholding tax, in which case the investor would be required to declare the gains in his income tax return and will be subject to tax at the normal rates.

Capital gains realised on direct transfers (i.e. not through a redemption, liquidation or cancellation of the fund units) to third parties of units in non-prescribed funds must be declared by the transferor in his tax return and tax is charged at normal rates. In this case, the withholding tax rate of 15% would therefore not apply. On an eventual redemption, the gain on redemption is calculated without reference to the direct intermediate transfer.

Resident investors - Prescribed funds
Capital gains realised by resident investors by way of a transfer or redemption of shares in prescribed funds, are exempt from income tax for as long as the CIS is listed on a stock exchange recognised under the Maltese Financial Markets Act (including the Malta Stock Exchange).

Dividends

a) Non-resident investors
Distributions of dividends by a CIS, whether these are reinvested or otherwise, to non-resident investors (both individual and corporate) that are not owned and controlled directly or indirectly, by individuals who are ordinarily resident and domiciled in Malta, are not subject to tax in Malta, whether by way of withholding or otherwise, upon distribution.

(b) Resident investors - Distributions from CISs not registered under the laws of Malta
Distributions of dividends from foreign registered CISs, are taxable in the hands of a Maltese investor (whether corporate or individual). However, subject to certain conditions, the investor may request an authorised financial intermediary to deduct a 15% final withholding tax from such dividends. No further tax would be incurred in this case.

Distributions from CISs registered under the laws of Malta
Dividends from foreign source profits of the CIS which are allocated to its Untaxed Account (i.e. untaxed profits) and distributed to a Maltese resident person (other than a company), are subject to a withholding tax of 15%. This withholding tax should be deducted by the CIS, and the dividend would be passed on to the shareholders net of the tax.

Dividends from the Malta source profits which are allocated to the Maltese Taxed Account of the CIS, should not be subject to a withholding tax or to further tax in the hands of the shareholders.

Duty on documents and transfers (stamp duty)
An exemption from stamp duty applies in respect of transfers of securities by a licensed CIS and in respect of transfers by investors of the units in a licensed CIS.

Investment services companies
Investment services companies receiving management fees and other similar sources of income should be taxable in Malta at the normal corporate tax rate of 35%. However, on a distribution of such income to non-Maltese resident shareholders, a tax refund of six-sevenths of the tax suffered by the investment services company on the distributed profits should normally be due to the shareholders.
Double taxation relief

Malta has an extensive network of double taxation treaties with around fifty treaties currently in force and another eleven treaties being negotiated.

Treaty partners include many European countries such as Germany, Italy, the Netherlands and the United Kingdom, Canada, as well as various Asian countries.

The treaties are mostly based on the OECD Model Convention. There are 50 treaties currently in force and 14 treaties are initialled/signed but not yet in force.

Malta has a considerable number of MoUs with various non-EU jurisdictions the latest being with South Africa. Malta will be signing yet another MoUs on banking and securities with China on the 26th January, 2010.

Advance revenue rulings

Maltese tax law envisages the possibility of the issue of advance revenue rulings in specified circumstances, including the following:

- that specified anti-avoidance provisions do not apply to a particular transaction affected for bona fide commercial purposes;
- on the tax treatment of any transaction concerning financial instruments or other securities;
- on the tax treatment of transactions involving international business activities.

VAT

CISs

CISs are generally considered to provide exempt without credit supplies and therefore should not be required to register for Maltese VAT purposes. The fund would typically not charge VAT and will not have a right to recover any VAT incurred. There is the possibility of recovering a portion of VAT incurred depending on proportion of customers established outside EU.

Investment services companies

The supply of services consisting of the management of any investment scheme by a person duly licensed or recognized under the Investment Services Act, provided that these services are limited to those activities that are specific and essential to the core activity of the scheme, should constitute exempt without credit supplies. As mentioned above, there is the possibility of recovering a portion of VAT based on proportion of customers established outside EU.

There is no value added tax on fund administration as well as custody services.
### Appendix I: Registration and Application fees

As per Legal Notice 359 of 2008, the Licence Fees for Investment Services Providers, Fund Administrators and CISs are listed below:

<table>
<thead>
<tr>
<th>Licence Fees:</th>
<th>Application / Notification Fee Due: on application</th>
<th>Licence Fee</th>
<th>Supervisory Fee Due: date of issue of licence; every subsequent year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>€</td>
<td>€</td>
<td>€</td>
</tr>
<tr>
<td><strong>a) Investment Services Licences</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category 1a</td>
<td>750</td>
<td>1,300</td>
<td>Revenue up to €50,000: €1,300</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Tranches of €50,000 up to a €1,000,000 maximum: €250 per tranche or part thereof</td>
</tr>
<tr>
<td>Category 1b</td>
<td>750</td>
<td>1,800</td>
<td>Revenue up to €50,000: €1,800</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Tranches of €50,000 up to a €1,000,000 maximum: €250 per tranche or part thereof</td>
</tr>
<tr>
<td>Category 2</td>
<td>1,500</td>
<td>3,000</td>
<td>Revenue up to €50,000: €3,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Tranches of €50,000 up to a €5,000,000 maximum: €350 per tranche or part thereof</td>
</tr>
<tr>
<td>Category 3</td>
<td>2,000</td>
<td>4,000</td>
<td>Revenue up to €50,000: €4,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Tranches of €50,000 up to a €5,000,000 maximum: €350 per tranche or part thereof</td>
</tr>
<tr>
<td>Category 4</td>
<td>4,000</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>b) CISs which fall within the scope of Article 4 of the Act; and include schemes formed in accordance with or existing under the laws of a country other than Malta which carry on an activity in Malta</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scheme</td>
<td>2,000</td>
<td></td>
<td>2,500</td>
</tr>
<tr>
<td>Up to fifteen sub-funds (per sub-fund)</td>
<td>450</td>
<td>450</td>
<td></td>
</tr>
<tr>
<td>Sixteen sub-funds or over (per sub-fund)</td>
<td>250</td>
<td>150</td>
<td></td>
</tr>
<tr>
<td><strong>c) Professional Investor Funds (PIFs):</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;In principle&quot; approval</td>
<td>600</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scheme</td>
<td>1,500</td>
<td>1,500</td>
<td></td>
</tr>
<tr>
<td>Per sub-fund</td>
<td>1,000</td>
<td>500</td>
<td></td>
</tr>
</tbody>
</table>
### Recognition Fees:

<table>
<thead>
<tr>
<th>Category</th>
<th>Application / Notification Fee Due: on application</th>
<th>Licence Fee</th>
<th>Supervisory Fee Due: date of issue of licence; every subsequent year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>d) Person providing Administrative services</strong></td>
<td>€3,000</td>
<td>€1,200</td>
<td></td>
</tr>
<tr>
<td><strong>e) Private Collective Investment Schemes</strong></td>
<td>€1,750</td>
<td>€500</td>
<td></td>
</tr>
<tr>
<td><strong>f) European Investment Firms establishing a branch in Malta</strong>:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) authorised by their home Member State or EEA State to receive and transmit orders in relation to one or more instruments and, or provide investment advice and, or place instrument without a firm commitment basis, in terms of the Directive but are not authorized to hold and control clients’ money or customers’ assets</td>
<td>€750</td>
<td>€1,200</td>
<td></td>
</tr>
<tr>
<td>ii) authorized by their home Member State or EEA State to provide any investment services in terms of the Directive and to hold and control clients’ money or customers’ assets but not to operate a multilateral trading facility or to deal for their own account or underwrite or place instruments on a firm commitment basis</td>
<td>€1,000</td>
<td>€3,000</td>
<td></td>
</tr>
<tr>
<td>iii) authorized by their home Member State or EEA State to provide any investment services in terms of the Directive, and to hold and control clients’ money or customers’ assets</td>
<td>€1,650</td>
<td>€3,600</td>
<td></td>
</tr>
<tr>
<td><strong>g) European Management Companies establishing a branch in Malta</strong></td>
<td>€1,250</td>
<td>€4,000</td>
<td></td>
</tr>
<tr>
<td><strong>h) European UCITS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) European UCITS Scheme</td>
<td>€2,000</td>
<td>€2,500</td>
<td></td>
</tr>
<tr>
<td>ii) Up to 15 sub-funds (per sub-fund)</td>
<td>€450</td>
<td>€450</td>
<td></td>
</tr>
<tr>
<td>iii) 16 sub-funds and over (per sub-fund)</td>
<td>€250</td>
<td>€250</td>
<td></td>
</tr>
</tbody>
</table>

*In terms of regulation 3 of the European Passport Rights for Investment Firms Regulations

### Registration Fees:

<table>
<thead>
<tr>
<th>Category</th>
<th>Application / Notification Fee Due: on application</th>
<th>Licence Fee</th>
<th>Supervisory Fee Due: date of issue of licence; every subsequent year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>i) Tied agents registered by the competent authority in terms of Regulation 5 of the appointment of tied agents’ regulation</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) Where the tied agent is an individual</td>
<td>€100</td>
<td></td>
<td>€350</td>
</tr>
<tr>
<td>ii) Where the tied agent is not an individual</td>
<td>€150</td>
<td></td>
<td>€200 and €300 per individual employed by such tied agent and who is directly involved in the provision of tied agents activities</td>
</tr>
</tbody>
</table>
Appendix II: Redomiciliation of Funds

The MFSA has recently published guidelines regarding the redomiciliation of offshore funds to Malta under the Companies Act, Continuation of Companies Regulations, 2002. The Guidelines provide a simple, one-stop procedure to be followed by funds intending to redomicile to Malta. The Guidelines specify the documentation required from fund promoters and outline the way the process is handled by the Authorisation Unit and the Registry of Companies at the MFSA.

Companies including insurance and securities firms have been using Malta’s redomiciliation legislation since it came into force in 2002 largely because the process is seamless and allows the companies to retain the same legal personality. Specific guidelines for funds have now been released following an increase in the number of managers enquiring about the redomiciliation procedures as the Malta funds regime allows funds to have external administrators and custodians in contrast to other jurisdictions which require the service providers to be present in the domicile. This flexibility makes Malta the most effective and efficient EU jurisdiction when redomiciliation is being considered.

Guidelines to redomiciliation of offshore funds

Malta has legislative provisions regulating both inward and outward continuation of companies. With respect to the continuation of a foreign collective investment scheme, reference should also be made to Article 31 of the Investment Services Act, 1994. The following are the steps to be followed with respect to the redomiciliation of a professional investor fund:

- an application for a Collective Investment Scheme licence under the Investment Services Act, 1994 is first submitted to the Authority:
  a) the application should be accompanied by the relevant documentation (listed in the annex to the application form). Such documentation should be submitted in draft form for the Authority’s review and should be drafted on the basis of the Scheme postredomiciliation, i.e. referring to the Scheme as a Malta based scheme and to the Board members and service providers to be servicing the Scheme once this is redomiciled;
  b) the Registrar of Companies should also be approached at this stage with respect to the proposed redomiciliation;
  c) relevant due diligence enquiries would be undertaken by the Authority including with any existing regulator of the overseas scheme;
  d) the Authority would vet the draft documentation provided (including the draft proposed Memorandum & Articles of Association and the Offering Memorandum) and communicate its comments to the promoter;
  e) the proposed structure and the documentation to be used by the Scheme would need to be in line with the requirements specified in the Investment Services Rules for Professional Investor Funds;
  f) the Authority would proceed to issue its in principle decision following resolution of any main issues arising with respect to the scheme, the documentation provided, and also following receipt of sufficient and satisfactory replies to the MFSA’s due diligence enquiries;
  g) following communication of the ‘in principle’ decision and assuming this is an ‘in principle approval’, (which would list the pre-licensing outstanding issues), the promoters would proceed to finalise the relevant documentation required by the MFSA (‘Authorisations Unit’) and the Registrar of Companies;
  h) the Authorisations Unit would liaise with the Registrar of Companies accordingly. Subject to satisfactory resolution of all the applicable requirements communicated by the Authorisations Unit and Registrar of Companies, the Scheme would be licensed on the same date it is redomiciled to Malta.

- Other specific documentation that is ordinarily requested by the Authorisations Unit with respect to a redomiciliation includes the following:
  i. recent copies of the audited financial statements of the scheme;
  ii. a copy of the (pre-redomiciliation) existing Memorandum & Articles of Association (with details of the current directors) and Offering Memorandum;
iii. a signed resolution from the existing Board of Directors of the scheme confirming:
- the Directors’ intention to re-domicile the Scheme to Malta; to apply for a CIS Licence in favour of the Scheme; and authorising the relevant persons authorised to sign the application form on behalf of the company and to effect the necessary changes relating to the re-domiciliation including the changes to the company as per the proposed final version of the Offering Memorandum and the Memorandum & Articles of Association applicable to the scheme following re-domiciliation;
- that there are no regulatory issues relating to the said re-domiciliation and no pending litigation or disputes and that the Directors are not aware of any potential litigation or disputes.
iv. if there is a change in the composition of the Board of Directors, the MFSA would also ordinarily be provided with a signed Board of Directors’ resolution from the new Board of the Scheme (upon redomiciliation) confirming inter alia that:
- the Directors endorse the application for a Collective Investment Scheme Licence in favour of the Scheme;
- the Directors of the Scheme have reviewed the final revised version of the Offering Memorandum and assume responsibility thereof.
Appendix III: Facts about Malta

Geography and climate

Malta lies in the centre of the Mediterranean Sea, 100 Km (60 miles) south of Sicily and 300 Km (180 miles) north of the nearest point on the African coast.

The total area of Malta and its sister Island, Gozo, is 316 square kilometres (122 square miles). Malta is the larger Island, occupying 246 square kilometres (95 square miles). Gozo lies to the north-west, less than half an hour away by ferry. The topography of the islands is low-lying to the south-east and hilly toward the north-west. At various points, the shoreline is deeply indented, providing excellent natural harbours. Although it has some sandy beaches, the coast of Malta is predominantly rocky, including some spectacular hills. Valletta, the capital city, lies on a promontory between the two main harbours.

Malta has a mild climate. The hottest summer month is August, having an average maximum temperature of 31°C (87°F). The coldest winter month is February, with an average minimum temperature of 9°C (49°F). The average annual rainfall is 520 millimetres (21 inches). There are about 300 days of sunshine each year.

The population of the Maltese islands as at 1 January 2009 is approximately just over 413,000.

History

Malta was inhabited even in prehistoric times, as is evidenced by its numerous megalithic temples and other sites, which are among the oldest free-standing buildings in existence and, of these, among the finest. In recorded history, the Phoenicians were the first foreign people to occupy the islands, and they were followed by the Carthaginians. After the destruction of Carthage, Malta was absorbed into the Roman Empire. St. Paul the Apostle was shipwrecked on the islands in A.D. 60, and the country has been Christian ever since. In the later years of the Roman Empire, Malta formed part of the Byzantine bloc.

The Arab expansion reached Malta in A.D. 870. The country remained under Arab domination until 1090, when Count Roger of Normandy added Malta to his conquest of Sicily. Malta shared in the fortunes of Sicily until 1530, when, in an attempt to strengthen the southern frontiers of his domains against Islam, Charles V of Spain offered Malta to the Knights of St. John of Jerusalem, an international order of chivalry founded in the early years of the Crusades. For the next three centuries, the destinies of Malta and the Knights of St. John were linked.

The Knights of St. John were driven out of Malta by Napoleon in 1798, and the French ruled for two years. Malta became a British Crown Colony in the early nineteenth century and remained so until September 21, 1964, when it became an independent sovereign state. In 1974, Malta was declared a republic. Malta is a member of the Commonwealth and of the United Nations. Soon after independence, Malta was admitted to the Council of Europe.

In 1990, Malta applied for European Union membership. Accession negotiations were concluded in December 2002 and the accession treaty signed in April 2003. Malta became an EU Member State in May 2004.

Political system

Malta is a parliamentary democracy. The head of state is the President, who is appointed by the House of Representatives and whose role is mainly ceremonial. The House of Representatives is elected by universal suffrage every five years. The Prime Minister is usually the leader of the party commanding the greatest measure of support in the House. Ministers are nominated to the Cabinet by the Prime Minister from among the elected members. Various local administrative matters are delegated by specific legislation to local councils.

Legal system

The legal structure is based on the civil-law pattern of continental Europe, but most administrative, financial and fiscal legislation is based on British laws. There are three principal jurisdictions - civil (including commercial), criminal and voluntary. There is one Court of Appeal for all jurisdictions. The Constitutional Court, however, is the ultimate competent court for judgements on the conformity of laws and administrative action with the Constitution. There are a number of administrative tribunals from whose decision an appeal can be made (usually on a point of law only) to the Court of Appeal.
Malta recognises the right of individual petition to the European Courts of Justice, and the European Convention on Human Rights forms part of Malta's domestic law.

Judges are appointed by the government. They cannot be removed before retirement age, except for proved inability to exercise their functions properly and following a two-thirds vote in the House of Representatives.

**Language**

The official languages in Malta are Maltese and English.

Maltese is basically a Semitic language in structure. Today, however, it contains many European words (mostly Italian and English). The language has its own distinct characteristics and its own literature. It is written in Latin script.

 Practically all Maltese people are bilingual. Official publications, including laws, are issued in both English and Maltese. Legal documents may be drawn up in Maltese or in English. Most commercial and banking documents are drawn up in English, and most correspondence, official or otherwise, is in English.

Maltese and English are taught at primary school level. Subjects at secondary school level include at least another language, with Italian, French and German being the most widespread.

**Religion**

About 90% of Maltese are Roman Catholics. There are several other religious communities, both Christian and non-Christian, many of whom have their own places of worship.

**Education**

School attendance is compulsory up to the age of 16. Education is provided by a number of government and private schools. A substantial majority of secondary school leavers continue with their education in the university and in a number of technical and vocational institutes. At present, over 10,000 students attend the University of Malta, including some 750 students from 80 different countries.

State schools are free while a number of schemes provide for financial assistance to University and other tertiary school students. A large number of Maltese university graduates follow specialisation courses abroad.

**The Economy**

The Maltese economy has grown rapidly and continuously in recent years, with GDP at constant prices growing at an average of over 3.4 percent per annum during the years 2005 – 2008 (based on estimates). In line with worldwide economic conditions, GDP contracted in the first three quarters of 2009, by around 2.4 percent. The 12-month moving average rate of inflation was 2.56% in November 2009. Unemployment in July 2009 stood at 4.9%. Gainfully employed persons include a relatively high percentage in the public sector (around 28 percent). The government maintains an ongoing review of human-resources development in the public sector, aimed at improving systems and efficiency in public service. The Employment and Training Corporation (ETC) provides specialised training in all employment sectors besides acting as a recruitment agency.

The Maltese economy is based on the free-enterprise system. While a major part of the economy is privately controlled public utilities are mostly provided through government-controlled entities.

**Manufacturing**

The manufacturing sector accounts for just under 13% percent of GDP in 2009. Following the strong growth registered during 2007, total manufacturing turnover increased further in 2008. Average employment in the sampled manufacturing enterprises declined by 418 employees or 2.3 per cent in 2007 and by 613 employees or 3.4 per cent in 2008. During the first three quarters of 2009, employment decreased by 5.6%. The local manufacturing industry continues to be characterised by a large number of small firms (those with less than 10 employees). The larger firms, however, account for over 90 percent of total manufacturing output. Apart from ship repair, the majority of manufacturing industries produce light consumer goods and electronic and engineering components. Electronics and high-tech industries are the fastest growing sector.

Over 200 export-oriented foreign companies operate profitable manufacturing subsidiaries in Malta, benefitting from attractive incentives.

In May 2004, with the entry of Malta into the European Union, goods produced in the EU or goods that are already in free circulation in the EU are exempt from the payment of customs duties, and only goods exported to non-EU countries are subject to the payment of export duties.
Tourism

The tourist industry is a major source of foreign-currency earnings and source of employment in Malta. Since the early 1990’s the number of tourist arrivals has exceeded one million per annum. Arrivals are predominantly from the United Kingdom, followed by Germany and Italy. Cruise liner passengers have increased by circa 35% from 2005. Malta projects itself as both a holiday and a cultural resort. It is also becoming increasingly popular as a venue for conferences and English-language study. A number of international hotel chains, including many five-star hotels, are represented in Malta.

Service industries

Malta has strengthened and modernised the legislative framework regulating financial services. Over the past years Parliament has revised existing legislation and enacted new laws on banking and financial institutions, insurance, companies, trusts, financial services, shipping and taxation. Complemented by an efficient regulatory regime, including tight laws against money laundering, and supported by highly qualified human resources, ideal geographical location and efficient infrastructure, these measures have contributed towards the development of a modern and successful financial services centre.

Malta is also a competitive yachting centre and a popular cruise-liner hub.

Transport and communications

Roads: Towns and villages, industrial and business centres, and holiday and leisure resorts are linked by an adequate road network. There are no railroads or internal waterways.

Malta boasts some of the finest natural harbours in the world. Extensive conventional and roll-on/roll-off services by national and international shipping lines carry freight and cargo from Malta directly to Mediterranean, north European, Middle Eastern and Asian ports. All factories are located within 30 minutes of a harbour and the airport.

The Freeport: The Malta Freeport Corporation embraces three prime activities namely, container handling, industrial storage and oil products handling. The corporation is recognised as a high profile transhipment hub and presently enjoys third place amongst all Mediterranean transhipment ports. It handles over one million TEUs per annum and has network connections to over 95 ports world-wide.

Air transport: Air connections with major European countries are efficient and frequent. Thirteen international airlines operate regular scheduled flights to 46 destinations. The national airline, Air Malta, operates regular scheduled flights to the major European cities—a total of over 28 direct destinations with 200 flights a week. The Malta International Airport, which handles more than 2.5 million passengers annually, is a modern, spacious and efficient terminal.

Postal services: Postal services are efficient and reliable. Letters to Europe normally take two days to reach their destination. For faster service the major international courier service companies operate to and from Malta. The Malta Post Office operates an Expedited Mail Service (EMS Datapost) with guaranteed delivery times.

The telecommunications system has been upgraded according to plans drawn up by the International Telecommunications Union. International connections have been significantly expanded through satellite technology and high-capacity fibre-optic cables linking Malta with Europe. A mobile cellular telephone service including GSM and a pager system are in place.

Internet usage is rising rapidly in 2009 was 65% for micro enterprises (i.e. those employing up to 9 people) and 96% for larger enterprises and 67% for households. Internet usage for households in 2009 was approximately 67% of the total population and is rising rapidly.

Mineral and energy resources

Malta has few natural resources other than its geographical position, climate and adaptable labour force. Most of its industrial inputs and consumer goods must be imported.

Following seismic and geological analyses and studies, several onshore and offshore wells have been drilled, but no strikes have yet been made.

Agriculture and fisheries

Agriculture and fisheries contribute only about 1.6% to GDP. Agriculture is beset by inherent problems such as land fragmentation and scarcity of water for irrigation purposes. Schemes are in place to improve the income of farmers and fishermen and thus preserve these traditional, indigenous activities. The development of fish farming for export is of recent origin.
Foreign trade and balance of payments

In a small island economy like that of Malta, increased export and domestic economic activity are automatically reflected in the level of imports. International trade activity results in visible trade imbalances. However, as a result of surpluses arising from services, principally tourism, and from net investment income from overseas, Malta generally ends up with a surplus on current account. Similarly, net capital inflows have been invariably positive. Malta has a strong external reserves position, representing about eight months' imports.

Malta's main trading partners are the members of the EU, which account for more than 43 percent of exports and 73 percent of imports of goods and services as at November 2009.

Currency

Since 1 January 2008, the unit of currency is the Euro (€).

Hints for the business visitor

Visitor's visas

Citizens from a number of countries do not require a visa to enter Malta provided that the stay does not exceed 3 months. These countries include all western European states, Australia, Canada, Japan, New Zealand, Singapore, and the United States. Citizens of other countries may apply for an entry visa at a Maltese embassy or consulate before proceeding to Malta. Where no embassy or consulate is available, a written request should be made to the Commissioner of Police. Since 2008 Malta's requirements on visas fall in line with EU policy and Malta joined the Schengen area in January 2008. For people from outside the EU, details of visa-exempt countries and visa application procedures are available on the Ministry of Justice and Home Affairs website at www.mjha.gov.mt.

International time

Maltese time is the Central European Time (CET), which is one hour ahead of Greenwich Mean Time (GMT) and six hours ahead of U.S. Eastern Standard Time (EST). In line with the CET, Malta goes on Summer Time, which is one hour ahead of normal time, from the last week of March to the last week of October.

Business hours

With few exceptions, employees in private industry generally work a 5-day, 40-hour week. Normal working hours are as follows.

- **Industry**: 7:00 a.m. to 4:30 p.m., with various arrangements for the midday break.
- **Commerce (retail)**: Shop opening hours are from 9:00 a.m. to 7:00 p.m. At the option of the shop licensee, hours may be extended to 10:00 p.m. on any day. Many shops close for a lunch break.
- **Government departments**: Public hours vary, but staff works as follows: 7:45 a.m. to 5:15 p.m. with a 45 minutes' break. From June 16 to September 30, 7:30 a.m. to 1:30 p.m. with no break.
Our Asset Management Contacts in Malta

PricewaterhouseCoopers (PwC) is the leading accounting and consulting firm to the asset management industry in Malta, employing over 300 professionals in its Audit and Assurance Services practice. We have a large number of both national and international clients, and have frequently played a leading advisory role in client matters relating to the Maltese Regulatory Authority, the MFSA.

We have invested extensively over the years in building our Maltese Asset Management practice and we can cover all aspects of the Asset Management value-chain.

Should you have any questions, please do not hesitate to contact one of our following local experts:

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Malta Financial Services Authority
http://www.mfsa.com.mt/

FinanceMalta
http://financemalta.org/

Central Bank of Malta
http://www.centralbankmalta.org/

Government of Malta Portal
http://www.gov.mt/

Laws of Malta
http://www2.justice.gov.mt/lom/home.asp

Malta Funds Industry Association
http://www.mfia.org.mt/about.html

Malta Stock Exchange
http://www.borzamalta.com.mt/
Glossary

CESR – Committee of European Securities Regulators
CIS – Collective Investment Scheme
EU – European Union
IFRS – International Financial Reporting Standards
LN – Legal Notice
MFSA – Malta Financial Services Authority
MiFID – Market in Financial Instruments Directive
NAV – Net Asset Value
PIF – Professional Investor Scheme
PwC – PricewaterhouseCoopers
RIE – Recognised Investment Exchange
SICAV – Société d’Investissement a Capital Variable (investment company with variable capital)
SLC – Standard Licence Conditions
UCITS – Undertaking for Collective Investments in Transferable Securities