UCITS Schemes

Malta was among the first countries to transpose the UCITS IV Directive and hosts a number of UCITS schemes, which have become popular due to their brand and tax efficiency. The UCITS IV provisions have further enhanced the country’s domicile appeal, making room for more growth.

UCITS (Undertakings for Collective Investment in Transferable Securities) are harmonised European retail fund products that can operate throughout the EU on the basis of a single authorisation from one member state, provided that it follows certain notification procedures. UCITS offer a high degree of investor protection and are recognised by regulators worldwide. They can be marketed to both retail and institutional investors.

Benefits of Malta-based UCITS

- **EU passporting rights:** UCITS established in Malta can be marketed in all EU/EEA member states.
- **Up-to-date regulatory framework:** Malta is ranked first for transposing EU directives into national law.
- **Lower costs:** Cheaper set-up and running costs.
- **Economies of scale:** Larger distribution network that can be achieved through a UCITS scheme results in a reduction in costs for investment.
- **Structuring opportunities:** Possibility to set up umbrella funds, allowing different sub-funds and share classes.
- **Flexible regulator:** The MFSA combines a high standard of regulation with an efficient response to industry needs. Every licence is subject to standard conditions. These standard conditions can be adapted to suit specific circumstances as long as standards are not compromised.
UCITS Schemes

Key Features of UCITS

Structures: Open-ended SICAVs. However, unit trusts, contractual funds and limited partnerships can also be used.

Legislation: Investment Services Act

Permitted business: Schemes may be offered to the Malta general public and in any other EU/EEA state.

Fund promoter: The promoter is responsible for the fund’s structure, set up, strategy and distribution. No eligibility requirements apply for the promoter of a Malta UCITS.

Corporate Requirements:
- The scheme’s head office and registered office are to be both established in Malta.
- There must be a minimum of 2 directors, at least one independent from the manager and the custodian. Self-managed schemes shall have at minimum one Maltese resident director.
- Local substance is a requirement, yet depends on the fund’s structure.

Custodian: Required. Must be a licensed institution or such other body or association acceptable to the MFSA, with a place of business in Malta.

Administrator: Optional.
- The manager is responsible for the administration of the scheme when a third-party administrator is not appointed.
- Yet where appointed, the administrator must be a recognised administrator.
- May be different from the custodian.
- Services may include: valuation, transfer agency and registrar, corporate secretariat and listing agent.

Fund Manager: Optional
- The fund may either be self-managed or managed by a company approved by the MFSA.
- Must have satisfactory financial resources and liquidity at its disposal.
- Managers must demonstrate sufficient and relevant experience.
- All roles, responsibilities and experience must be described in the fund prospectus.

Investment advisor: Optional.
- Must have satisfactory financial resources and liquidity at its disposal.
- Must demonstrate sufficient and relevant experience.

Compliance Officer: Required.

Audit: Required. Must be approved by the MFSA and held responsible for certifying the fund’s annual report and accounts, which should include an audit report.

License Application: Amongst others, the documents required are:
- Constitutional documents
- Prospectus and marketing documents to investors.
- Details on all services providers involved.
- Agreements with the fund’s service providers
- Personal questionnaire and curriculum vitae of the directors.
- Three-year marketing plan
- Other documents which have an effect on the member’s rights.

Approval time: Generally 2 to 3 months, but dependent on factors such as the fund’s complexity and the submission of complete applications. Nevertheless, the MFSA will review the draft application and the support documentation, whilst providing feedback within three weeks from submission of the application.

Listing: UCITS may apply for a listing on the Malta Stock Exchange.

Capital Requirement:
- Third-party managed: UCITS Manager’s minimum capital requirement €125,000
- Self-managed UCITS: €300,000

Reporting requirements:
- Monthly statistical return to the MFSA, half-yearly compliance reports and annual reports.

Regulatory fees:
- Application for a License:
  - €2,500/scheme
  - €450/sub fund
  - None for 16 sub-funds or more.
- Supervisory Fees:
  - €3,000/scheme
  - €500/sub fund
  - None for 16 sub-funds or more.

Taxation: Exempt from income and capital gains tax, subject to not investing in immovable property in Malta.

VAT: Exempt without credit.
**General Requirements:** The Licence Holder shall not engage in activities other than the management of UCITS, with the exception of the additional management of other Schemes which are not UCITS, but the units of which cannot be marketed in other Member States or EEA States and for which the Licence Holder is subject to the MFSA’s prudential supervision.

Management of a UCITS includes the following functions:
- Investment management
- Marketing
- Administration:
  - legal and fund management accounting services
  - customer inquiries
  - valuation and pricing (including tax returns)
  - regulatory compliance monitoring
  - maintenance of unit-holder register
  - distribution of income
  - unit issues and redemptions
  - contract settlements (including certificate dispatch)
  - record keeping

The MFSA may authorise the Licence Holder to provide, in addition to the Management of UCITS, the following services:
- management of portfolios of investments including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in the Act
- as non-core services:
  - investment advice concerning one or more of the instruments listed in the Act
  - safekeeping and administration in relation to units of collective investment undertakings

**Management Company passport (MCP)**
In the wake of the implementation of the UCITS IV Directive and the adoption of the Alternative Investment Fund Managers Directive (AIFMD) Malta has become particularly attractive to fund managers. The management company passport (MCP) under the UCITS IV directive ended the requirement that the management company needs to be established in the same country in which the UCITS is established. A Malta-based UCITS can now be managed by a UCITS Management Company established in another EU member state. The provisions of the UCITS IV Directive also enable the setup of master-feeder UCITS structures, by which one UCITS invests at least 85 per cent of its Net Asset Value in another UCITS. The advantages of this type of structuring mean that the management and administration of the master fund may be centralised in one jurisdiction allowing promoters to rationalise their platforms, build up economies of scale and potentially reduce costs to the investor. Both the UCITS IV Master-Feeder provisions and the MCP make Malta an attractive fund domicile for the set-up of new funds and for re-domiciliation.

**UCITS Passporting Procedure**
UCITS schemes based in EU member states wishing to market their units in Malta are only required to complete the notification procedure under the Investment Services Act (Marketing of UCITS) Regulations. Under UCITS IV, this process is completely regulator-to-regulator based. The UCITS only submits a notification letter and documentation to its home state regulator, which then transmits the information electronically to the MFSA within 10 working days. The home regulator will notify the UCITS of the date of transmission of the documentation and the UCITS can start marketing in Malta immediately. Conversely, Malta-based UCITS wishing to market their units outside Malta must inform the MFSA of their intention and await confirmation that the host regulators have been notified.