Investment funds in Malta
A technical guide
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It is our pleasure to present you with the first edition of Investment Funds in Malta - A technical guide. Through this publication, we aim to provide you with a clear and concise overview of the funds industry in Malta, the applicable legal and regulatory framework, as well as that of formation and other ongoing obligations.

Over the last few years, fund management and administration have been increasing considerably in Malta, with an estimated growth rate of 65% per annum. Total fund net asset value (NAV) nearly doubled between 2006 and 2007, and the trend is expected to continue in the foreseeable future.

Malta’s European Union (EU) membership in 2004 has contributed to this level of growth by expanding the island’s market potential. Accession serves as a certificate of approval of Malta’s financial legislation and regulatory regime, while also opening up investment opportunities via passporting of undertakings for collective investment in transferable securities (UCITS) schemes. Malta’s adoption of the euro in January 2008 also presents attractive opportunities for investors who were previously cautious of the fluctuations in the Maltese lira.

Over the last decade, the government and the Malta Financial Services Authority (MFSA) have designed an advanced legislative and regulatory framework that today allows Malta to offer sophisticated fund products. Additionally, the fact that all financial services are subject to one single regulator adds a sought-after advantage to investing in the Maltese islands. This setup allows funds to benefit from responsive, streamlined and flexible procedures, reduced bureaucracy, lower compliance costs and nonstandardized solutions.

The success of these initiatives is evident by the range of international fund promoters that have chosen to domicile their funds in Malta or appoint local service providers. Malta is increasingly being recognized internationally as a center of quality. With the MFSA ensuring that Malta remains at the forefront of regulatory developments, and the government’s commitment towards financial services, funds are expected to continue to benefit from the Malta alternative.

We hope you find this publication useful. We would be delighted to provide you with any additional assistance you might require.

Ronald Attard
Partner
Ernst & Young Malta
Phone: + 356 2347 1510
Email: ronald.attard@mt.ey.com
### Glossary of terms

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<td>ACL</td>
<td>Alternative companies list</td>
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<td>AFI</td>
<td>Authorized financial intermediary</td>
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<td>AML</td>
<td>Anti-money laundering</td>
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<td>CIS</td>
<td>Collective investment scheme</td>
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<td>ECB</td>
<td>European Central Bank</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<td>EU</td>
<td>European Union</td>
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<td>FATF</td>
<td>Financial Action Task Force</td>
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<td>FDI</td>
<td>Financial derivative instruments</td>
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<td>GDP</td>
<td>Gross domestic product</td>
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<td>IFRS</td>
<td>International Financial Reporting Standards</td>
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<td>INVCO</td>
<td>Investment company with fixed share capital</td>
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<td>IPO</td>
<td>Initial public offer</td>
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<td>ISA</td>
<td>Investment Services Act</td>
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<td>ITA</td>
<td>Income Tax Act</td>
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<tr>
<td>KII</td>
<td>Key investor information</td>
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<tr>
<td>MiFID</td>
<td>Markets in Financial Instruments Directive</td>
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<td>MFSA</td>
<td>Malta Financial Services Authority</td>
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<td>MLRO</td>
<td>Money laundering reporting officer</td>
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<td>MoU</td>
<td>Memorandum of Understanding</td>
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<td>MSE</td>
<td>Malta Stock Exchange</td>
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<tr>
<td>NAV</td>
<td>Net assets value</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<td>OTC</td>
<td>Over-the-counter</td>
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<tr>
<td>PIF</td>
<td>Professional Investor Fund</td>
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<td>SICAV</td>
<td>Investment company with variable share capital</td>
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<td>SLC</td>
<td>Service license conditions</td>
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<td>SPV</td>
<td>Special purpose vehicle</td>
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<td>TER</td>
<td>Total expense ratio</td>
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<tr>
<td>UCITS</td>
<td>Undertaking for collective investment in transferable securities</td>
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</table>
1. Malta as a financial services center
The Maltese Archipelago, made up of Malta, Gozo and Comino, covers an area of 316 sq km for the three islands. The Maltese islands are located 93 kilometers off the southern coast of Sicily and 290 kilometers north of the shores of North Africa. Daytime winter temperatures rarely fall below 10 degrees centigrade, and the mean temperature in the winter is between 17 and 22 degrees centigrade. Summer mean temperatures normally range between 32 and 35 degrees centigrade.

The population of Malta is approximately 404,000, while Gozo has a population of 31,000. A recently carried out census revealed that there are 1,282 persons per square kilometer in Malta. However, the annual demographic growth is fairly modest at 0.7%. Although the national language is Maltese, Malta also has English as an official language, and most educated Maltese can speak fluent Maltese, English and Italian. The language of the courts is Maltese but proceedings may be conducted in English. The Laws of Malta and the Government Gazette are printed in Maltese and English.

The island’s history was traditionally immersed in trade and business. During the 70s, Malta moved away from a military dependent economy to tourism, manufacturing, technology and other high value-added industries. Today, Malta’s size betrays the sophistication that the island has developed over the years. Malta also boasts an Anglo-Saxon tradition which has influenced its laws, business, professions, work ethics and structures.

Malta joined the EU in 2004, and subsequently adopted the euro on 1 January 2008. Malta in the EU is indeed an attractive proposition for business. The euro adoption has made Malta more attractive for investment purposes through reductions in transaction costs and international trade barriers. Given Malta’s membership in the EU, its legislation is reflective of EU legislation and directives. Therefore, apart from having a legislative structure which facilitates the conduct of business in or from Malta, it provides foreign investors in Malta with the assurance of the quality and consistency synonymous with the EU.

Today, Malta has a diversified free-market economy which mainly relies on tourism, manufacturing and financial services. The government encourages foreign investment and Malta enjoys good industrial relations. Malta also provides numerous financial incentives and maintains a low tax regime encouraging economic growth. Yet, Malta’s qualities as an investment environment are not limited to its numerous tax benefits. The island offers international investors a highly advanced telecommunications network, skilled professionals and a strategic location.
Malta as a financial services center

Over the last few years, Malta has adopted and established a comprehensive legislative and regulatory framework for financial service activities based on standards of best practice. Malta was one of the first six countries in the world to reach an advanced accord on fiscal matters with the Organization for Economic Co-operation and Development (OECD), and today is actively involved with the OECD, the EU and the Commonwealth in modeling global regulatory policy.

The financial services industry offers numerous spin-offs that are beneficial to the economy such as higher-quality tourism, transport, business services and conference business. Because of this, the government of Malta places great importance on the financial services sector. Improvements are constantly being sought to allow the country to thrive from its growth, and today, Malta offers a modern, flexible and principle-based business environment to the financial services sector. Coupled with the government’s commitment to the sector, significant growth of the financial services sector has been noted in the last few years, with financial services contributing an unprecedented 12% to the country gross domestic product (GDP) in 2006, and with a projected 25% contribution by 2015.

In 2007, the NAV of funds domiciled in Malta had increased by 78% to €8.7 billion since 2006. Additionally, total licenses of investment funds in Malta in 2007 had increased by 48% since 2006. These are shown in the following charts:

This level of growth is also attributable to a number of key features which make Malta attractive as a financial services center:

- A stable macroeconomic environment, and taxation and financial infrastructure
- A broad and advantageous double taxation treaty network
- Strong accountancy and legal professions guarantee high standards of professional services to their clients. Labor costs are also significantly lower compared with other jurisdictions
- English is an official language, fluently spoken by the vast majority of the population
- A fast and approachable regulatory authority
- Competitive fees compared with other jurisdictions
- Central time zone which facilitates global coverage

Malta was one of the first six countries in the world to reach an advanced accord on fiscal matters with the OECD
Malta has developed a reputation as a quality financial services center. On 1 November 2007, Malta became the first EU Member State to bring the new UCITS eligible assets regime into operation, opening the way for asset managers to be first to benefit from greater clarity shed over the market by the new regime. The International Monetary Fund’s (IMF) April 2008 Economic Outlook report has promoted Malta to the Advanced Economies Group, a status it now enjoys with only 31 other countries worldwide. The designation follows Malta’s entry in the eurozone, and is a recognition of the country’s success in meeting the Maastricht criteria, as well as aligning itself with other eurozone economies. Malta was the only one of the 12 most recent EU accession countries to be promoted from the Emerging Europe Group to the Advanced Economies Group.

FinanceMalta, a foundation formed between the government and the industry, was founded with the aim of further improving Malta’s profile as a finance center on a worldwide basis. FinanceMalta strives to maintain a modern and effective legal, regulatory and fiscal framework. FinanceMalta also promotes other developments through initiatives such as seminars with high net worth prospective clients, conferences and trade shows. Prospective clients will be also invited to Malta to draw upon the experiences of the industry and realize the potential of investing here.

By 2015, financial services are expected to contribute 25% of GDP
The functions of the financial services regulator

The MFSA was established through the Malta Financial Services Act of 2002. This makes the MFSA a central and autonomous public authority that provides the regulatory function for the financial services sector in Malta. The core duties of the MFSA include:

- The licensing and regulation of all types of financial services including collective investment schemes (CIS), institutional funds, investment service providers, credit institutions and financial institutions
- Authorizing the process by which securities are listed on any recognized investment exchange in Malta
- Housing the International Tax Unit of the Inland Revenue Department responsible for issuing advance revenue rulings
- Housing the Registry of Companies which deals with all matters relating to company formation
- Ongoing monitoring and close scrutiny of the conduct and management of the financial services industry
- The identification of practices which may negatively influence the economic interests of operators and consumers in the financial services sector
- Cooperation and collaboration with other financial regulatory bodies both locally and overseas

One of the goals of the MFSA is to provide companies with a reduction in bureaucracy, streamlined procedures, competitive fees and compliance costs, and a more consistent implementation of standards, all within a single point of decision-making and policy creation. The authority also endeavors to attain high levels of consumer education and protection. In fact, numerous seminars and information releases are made by the MFSA to keep interested parties abreast with the latest developments.

The Malta Stock Exchange

The Malta Stock Exchange (MSE/the Exchange) has been in operation since the end of 1992. Traded instruments on the primary listing range from equities and corporate bonds to CIS, Malta government bonds and treasury bills.

Up to 2002, the MSE was the only stock market recognized in Malta and it was the regulator of listed companies. In 2002, the operation of the stock markets was opened to competition and the role of regulator was separated from the MSE and transferred to the MFSA, which also became the regulator of registered stock markets.

In November 2007, the MSE was restructured from a body corporate created by special law to a public limited company regulated under the Companies Act, and a group structure was created. Concurrently, the relevant law was overhauled once again and changed into the Regulated Markets Act, incorporating the Markets in Financial Instruments Directive (MiFID).

Besides the primary listing, an Alternative Companies List (ACL) was introduced in 1999 with the intention of providing an alternative to new companies that do not qualify for an official listing. To date, one company has listed its equity under
this list. A few bonds have also been listed under the ACL. The ACL is also regulated by the MFSA.

During 2001, the Exchange obtained Associate Membership of the Federation of European Securities Exchanges. The MSE is also a direct member of the European Clearing and Settlement System known as TARGET2, and is a signatory to the EU Code of Conduct on Clearing and Settlement. Other notable memberships are held with the:

- World Federation of Exchanges
- International Organization of Securities Commission
- European Capital Markets Institute
- European Corporate Government Institute
- International Securities Services Association

The MSE remains the only regulated market currently licensed to operate in Malta.

A CIS may apply for a listing on the MSE if a CIS license has already been provided, or has been applied for. Although European UCITS schemes do not require a license to operate in Malta, they are still admissible for listing.

Professional Investor Funds (PIFs), a special type of CIS, may concurrently apply for a license and a listing. In this case, the promoter would not be required to resubmit any documentation for both application processes. In addition, if the PIF advises the MFSA during the CIS application process that a listing process will be subsequently initiated, approval of the CIS application documents will be automatically extended for listing admissibility.
2. Legal and regulatory framework
Legal background

The Investment Services Act, 1994 (ISA) as amended by Act XVII of 2002, is the principal regulatory framework governing investment services and CISs. The ISA also provides the legal obligations concerning a variety of issues such as licensing and regulation of persons and companies setting up investment services undertakings and CISs.

The ISA stipulates that a license is required whenever an investment services business is to be undertaken in or from Malta. Very broadly, investment services relate to specific activities carried out on certain instruments defined in the ISA. These instruments may include a wide range of investments and financial products, such as shares, bonds and other securities.

The ISA also enforces any Investment Service Rules issued by the MFSA upon investment companies and CISs. These rules may be issued only by the MFSA and can be changed from time to time to reflect the best practices of the sector. The following rules are currently enforced by the MFSA as at time of writing:

- Investment Service Rules for retail CISs
- Investment Service Rules for PIFs
- Investment Service Rules for investment service providers
- Investment Service Rules for recognized persons

The latest Investment Service Rules were issued on 1 November 2007. These regulate all Maltese non-UCITS and UCITS schemes, and all other CIS and investment service license holders.

Besides the ISA and Investment Service Rules, Maltese law also includes a number of secondary laws and legal notices that are relevant to the investment services business.

European directives implemented through local legislation

Local laws transpose a number of EU directives relating to financial services, among which are the MiFID and the UCITS III Directives (which includes Directive 2001/108, the “Product Directive” and Directive 2001/107, the “Management Directive”).

UCITS III eliminate, to the greatest possible extent, the barriers to the EU passport that existed under the UCITS I regime. Additionally, funds established as UCITS schemes may invest in a wider range of financial instruments, including money market funds, derivatives funds, index-tracking funds and funds of funds.

Among others, the ISA also implements EU Directive 2000/12/EC that seeks to facilitate the business of credit institutions by removing the most obstructive differences between the local regulations of individual Member States.
Fit and proper status

Applicants wishing to obtain a license to undertake licensable activities specified in the ISA must possess and show a “fit and proper” status.

The fit and proper test is one of the most fundamental principles that affects the license application, and depends on circumstances specific to each application. Furthermore, applicants must be able to satisfy the condition on an ongoing basis.

The responsibility to show a fit and proper status always rests on the applicant during both the application process and following issue of a license. The reach of fit and proper status also extends to directors, officers, trustees, general partners and service providers, depending on the legal form of the scheme.

The three main concepts that are required to meet a fit and proper status are:

1. Integrity: that the CIS, its officers and service providers act honestly.
2. Competence: persons in charge of the CIS must show that they possess the required skills, credentials, expertise and experience to carry out the job.
3. Solvency: applicants must show that adequate financial controls, financial resources and management of liquidity and capital are duly applied.
Potential future legislative developments

Local developments

On 5 May 2008, the MFSA issued a consultation document proposing amendments to the Companies Act (Investment Companies with Variable Share Capital) Regulations, 2006 – LN 241 of 2006. The proposed provisions allow PIFs targeting qualifying or extraordinary investors established as SICAVs to effect drawdowns on investors’ committed funds in return for the issue of shares at a discount, provided that:

- Discounts exclusively apply to outstanding commitments arising under written agreements

UCITS IV

A number of efficiency bottlenecks have been identified in the current UCITS framework, particularly relating to long and burdensome notification procedures, contents of the simplified prospectus, and potential opportunities for European fund promoters to benefit from economies of scale through fund mergers.

In July 2008 the European Commission issued a number of proposed revisions to try and address these issues and improve the competitiveness of European funds. Broadly, these proposals aim to introduce the following changes:

- Lowering of administrative costs and barriers to cross-border distribution by reducing the notification procedure to a simple, electronic, regulator-to-regulator communication
- Creation of an EU framework for mergers and pooling of funds’ assets in order to rationalize fund size, and provide opportunities for fund promoters to benefit from economies of scale
- Replacing the simplified prospectus with Key Investor Information (KII) in the form of a short document conveying key facts to retail investors
- Enable master-feeder structures where a UCITS may be allowed to fully invest its assets in another fund
- Simplify the regulatory environment by replacing 10 existing Directives with a single text

If the proposed amendments to the UCITS Directive are adopted by the EU Council of Ministers and the European Parliament in the second quarter of 2009, they will come into force in 2011.

The Memorandum and Articles allow the granting of discounts
- The prospectus or other offering documents disclose the nature and conditions applicable to the discounts
- The value of shares issued at a discount are not reduced to below the NAV at the time the member benefitting from the discount first subscribed for shares

It is noted that these provisions were not yet passed through local laws as at August 2008.
# Brief overview of regulatory framework

## Legislation governing both investment services and CISs

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Brief overview</th>
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<tbody>
<tr>
<td>Investment Services Act</td>
<td>Represents the comprehensive framework for the licensing and regulation of persons and companies wishing to set up investment undertakings and CISs.</td>
</tr>
<tr>
<td>• Investment Services Act (License and Other Fees) Regulations - LN 328 of 2007</td>
<td>Regulates the license and fee conditions for investment firms and CISs. Also applies to European investment firms providing services in terms of European Directives 2004/39/EC and 2000/12/EC.</td>
</tr>
<tr>
<td>• Investment Services Act (Exemption) Regulations - LN 329 of 2007</td>
<td>Sets out the conditions where a person or CIS may be exempt from needing an investment service or CIS license as applicable. In essence, this regulation implements Article 2 of the European directives, which include Directive 2004/39/EC on markets in financial instruments and Directive 2000/12/EC.</td>
</tr>
<tr>
<td>• Investment Services Act (Control of Assets) Regulations – LN 240 of 1998 as amended by LN 496 of 2004, and 364 and 400 of 2005</td>
<td>Provides the rules on third-party assets being controlled by investment firms, qualified custodians and other subject persons identified in the regulations. Third parties retain the rights on such assets. These regulations also cover the functions, duties and liabilities of subject persons in respect of these assets. Custodial arrangements for PIFs targeting qualifying investors are excluded from these regulations, as these follow guidelines issued by the MFSA from time to time.</td>
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<tr>
<td>Companies Act</td>
<td>Provides the statutory basis for the registration of different corporate entities and commercial partnerships in Malta, as well as investment vehicles such as the SICAVs and INVCOs. The act also incorporates modern company law principles and standards laid down by the company law harmonization directives of the EU, covering features such as corporate responsibility and how directors and officers are expected to perform and conduct themselves with reasonable due diligence and competence.</td>
</tr>
<tr>
<td>• Companies Act (Continuation of Companies) Regulations – LN 344 of 2002</td>
<td>Regulates how foreign entities, including banking and credit institutions, CISs and investment companies among others, may continue their business in Malta by effecting a change in domicile.</td>
</tr>
<tr>
<td>Civil Code</td>
<td>The Laws of Malta contemplate a number of ad hoc laws and legal provisions relating to funds. However, the Civil Code contains general dispositions relating to the law of contract and tort that may also be relevant to funds. The Civil Code was enacted in 1868 and is based on French and Italian law.</td>
</tr>
<tr>
<td>Malta Financial Services Authority Act</td>
<td>Establishes the MFSA as the regulatory authority responsible for financial services, including CISs and investment services.</td>
</tr>
<tr>
<td>Financial Markets Act</td>
<td>Regulates investment exchanges and provides for the orderly trading in securities. This legislation also established the Listing Authority and provides the publication of listing rules setting out the requirements and conditions that must be satisfied by a company seeking to have its financial instruments authorized as admissible to the official or recognized list.</td>
</tr>
<tr>
<td>• Financial Markets Act (Transparency) Regulations – LN 336 of 2007</td>
<td>Implements part of the MiFID and enforces the publishing and access of certain information by regulated markets, to ensure adequate transparency is maintained.</td>
</tr>
<tr>
<td>• Financial Markets Act (Membership and Access) Regulations – LN 331 of 2007</td>
<td>Implements part of the MiFID and regulates how license holders and European investment firms may obtain membership in regulated markets. Access is also granted through branching or subsidiaries.</td>
</tr>
<tr>
<td>Trusts and Trustees Act</td>
<td>Allows trusts to be established through a unilateral declaration, oral declaration or by an instrument in writing (including a will, operation of the law or by judicial decision). There are no restrictions as to the nationality, residence or domicile of the settler or beneficiary (parties may also be corporate entities). Trust property may also constitute immovable property in Malta. Foreign law trusts can also be recognized locally.</td>
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<td>Legislation</td>
<td>Brief overview</td>
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<tr>
<td>Special Funds (Regulation) Act</td>
<td>Provides for the regulation of retirement schemes, retirement funds and the related service providers. This law mainly caters for funded retirement arrangements between employers and their employees. However, other schemes are also addressed and retirement schemes may be tailored for use outside an employment relationship.</td>
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<tr>
<td>Prevention of Money Laundering Act</td>
<td>Defines the activities and persons that fall under this Act, and provides the legislative framework regulating money-laundering activities.</td>
</tr>
<tr>
<td>Prevention of Money Laundering and Funding of Terrorism Regulations - LN 180 of 2008</td>
<td>Transposes Directive 2005/60/EC and Directive 2006/70/EC into the Prevention of Money Laundering and Funding of Terrorism Regulations, and addresses the definition of politically exposed persons, technical criteria for simplified customer due diligence, and identification procedures among others.</td>
</tr>
<tr>
<td>Professional Secrecy Act</td>
<td>Regulates the protection of confidential information allowing appropriate exceptions, which include express statutory authorizations.</td>
</tr>
<tr>
<td>Consumer Affairs Act</td>
<td>Provides the regulations for consumer protection (including fair contract terms), establishes their rights in certain commercial affairs and provides the mechanisms where disputes can be addressed in case of an infringement of such rights.</td>
</tr>
<tr>
<td>Financial Collateral Arrangements Regulations – LN 177 of 2004</td>
<td>Implement the provisions of Directive 2002/47/EC on financial collateral arrangements, and deal with a host of matters such as definition of financial collaterals, requirements, rights of use and enforcement rules, among others.</td>
</tr>
<tr>
<td>Financial Collateral Arrangements (Amendment) Regulations – LN 388 of 2004</td>
<td>Adds definitions for publically guaranteed undertakings and registered instruments. New regulations are put into place with respect to the validity of financial collaterals, a substantial widening of the entities falling under the definition of a collateral taker and provider (including entities identified through European Directives 2000/12/EC, 93/22/EC, 92/49/EEC, 92/96/EEC and 85/611/EEC), and rules dealing with the realization of financial collaterals.</td>
</tr>
<tr>
<td>Financial Collateral Arrangements (Amendment) (No.2) Regulations – LN 417 of 2004</td>
<td>Expands the definition of a multilateral development bank as per LN 177 of 2004 by including the Multilateral Investment Guarantee Agency.</td>
</tr>
<tr>
<td>Financial Collateral Arrangements Regulations – LN 53 of 2005</td>
<td>Adds definitions for publically guaranteed undertakings and registered instruments. New regulations are put into place with respect to the validity of financial collaterals, a substantial widening of the entities falling under the definition of a collateral taker and provider (including entities identified through European Directives 2000/12/EC, 93/22/EC, 92/49/EEC, 92/96/EEC and 85/611/EEC), and rules dealing with the realization of financial collaterals.</td>
</tr>
<tr>
<td>Regulated Markets (Authorized Requirements) Regulations – LN 333 of 07</td>
<td>Implements part of the MiFID and set out the authorization requirements that must be satisfied by applicants in order to qualify as a regulated market. Regulated markets must also satisfy certain authorization requirements on an ongoing basis to remain a regulated market.</td>
</tr>
<tr>
<td>European Rights for Regulated Markets Regulations – LN 330 of 2007</td>
<td>Transpose parts of the MiFID and empower Maltese and European regulated markets with European rights. The regulation also provides details of what constitutes a contravention of these rights.</td>
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**Specific to investment services**

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<th>Legislation</th>
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<tr>
<td>Investment Services (Tied Agents) Regulations – LN 327 of 2007</td>
<td>Regulate the operations of Tied Agents by enforcing Article 23 of the European Directives 2004/39/EC on markets in financial instruments and 2000/12/EC.</td>
</tr>
<tr>
<td>Investment Services Act (Capital Adequacy) Regulations – LN 87 of 2008</td>
<td>Regulate the capital adequacy of investment firms and credit institutions by implementing Articles 36 and 38 of the Capital Adequacy Directive.</td>
</tr>
<tr>
<td>Distance Selling (Retail Financial Services) Regulations – LN 36 of 2005</td>
<td>Cover distance contract service provision schemes organized by financial services suppliers providing financial services in or from Malta, and accordingly do not apply to services provided on a strictly one-off or occasional basis or to services falling outside a commercial structure dedicated to the conclusion of distance contracts. Implement European Directives 2002/65/EC (concerning the distance marketing of consumer financial services) and 98/27/EC (on injunctions for the protection of consumer interests, as applicable to the distance marketing of consumer financial services).</td>
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Specific to CISs

<table>
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<tr>
<th>Legislation</th>
<th>Brief overview</th>
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<tr>
<td>Investment Services Act</td>
<td>Any CIS with 15 participants or less is not subject to a license under the ISA and will only require recognition by the MFSA. This applies only if it can be shown that:</td>
</tr>
</tbody>
</table>
| ▶ Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations – LN 353 of 2002 as amended by LN 190 of 2003 | ▶ All participants are close friends or relatives  
▶ The CIS is private in nature and purpose  
▶ The CIS does not qualify as a PIF |
| ▶ Investment Services Act (Investment Advertisements and Prospectus Exemption) Regulations – LN 355 of 2002                                    | Partly implement the relevant provisions of European Directive 2003/71/EC. Briefly, these regulations provide a list of cases where a prospectus and investment advertisement is not subject to approval from the MFSA prior to issue. |
| ▶ Investment Services Act - Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations – LN 207 of 2004 as amended by LN 309 of 2004 | Transpose the EU UCITS Directive 85/611/EEC and regulate Maltese and European UCITS in Malta, their management companies and custodians. These regulations also establish regulations concerning local marketing of UCITS, the rights and obligations of their custodian and management companies and passporting rights in accordance with EU directives. |
| ▶ Investment Services Act (Prospectus of Collective Investment Schemes) Regulations – LN 392 of 2005                                      | Regulate the preparation of a prospectus in a CIS and the requirements thereof. Also prohibit Maltese and European CIS from offering units without first publishing a prospectus. In turn, the prospectus must be pre-approved by the MFSA and freely distributed. |
| ▶ Investment Services Act (Performance Fees) Regulations – LN 239 of 2006                                                  | Provides the rules for when performance fees may be adopted by CISs, the situations when the performance fees are payable and the disclosure requirements in a prospectus about such fees. These regulations also set out the internal control requirements that a CIS must operate in relation to the calculation of performance fees. |
| Companies Act (Investment Companies with Variable Share Capital) Regulations – LN 241 of 2006                                | Establish certain operational arrangements for SICAV structures, and allow such entities to be incorporated as multi-class or multi-fund companies. Different obligations apply to such structures including the segregation of assets and liabilities. |
3. Investment fund products
The definition of a CIS in the ISA is very broad and embraces corporate schemes such as open-ended and close-ended investment companies, investment partnerships and other noncorporate investment vehicles.

A CIS generally collects funds from the public, pools them together and invests such funds in assets, subject to those investment objectives being published in the scheme’s prospectus. The public can acquire units or shares in the CIS and their value subsequently reflects the value per unit of the underlying assets of the scheme, subject to the performance of the scheme’s investment decisions.

The ISA prohibits any operation of a CIS in or from Malta, or using Malta as a base unless a license is first obtained. Consequently, the rules relating to the licensing process are of great significance to parties interested in investing in Malta.

A CIS may be established as one of the following:

- A unit trust
- An open (SICAV) or close-ended (INVCO) investment company
- A mutual fund
- A limited liability partnership

A CIS may qualify as a UCITS scheme. UCITS schemes may be set up as unit trusts, or open-ended investment companies. Local laws transposing the UCITS III directives apply the administrative requirements relating to UCITS whereas non-UCITS schemes are governed by other discretionary local laws and guidelines.

The main reason for establishing a fund as a UCITS is to benefit from the EU passport rights. A non-UCITS license can be applied for by funds intended solely for the local market and which, therefore, do not require such a passport. A UCITS license is also required as a secondary license for overseas based non-UCITS funds before these can be placed on the local market.

Certain CISs operating in or from Malta may also apply for recognition by the MFSA as a private CIS in terms of the ISA, provided certain criteria are fulfilled.
Professional investor funds

Maltese legislation does not directly refer to hedge funds. However, local legislation contemplates a PIF that is a particular type of CIS that can be used for setups commonly referred to as “hedge funds”. PIFs are designed to attract high net worth investors with limited regulation and oversight. Typical retail CISs established under local regulations are not suitable for the operation of a hedge fund.

As indicated, PIFs are CISs specifically tailored for professional and high net worth investors. Such investors need to abide by certain thresholds relating to minimum investment and minimum net worth restrictions. Investors must also be able to show a certain level of experience, resources and expertise in order to participate in PIFs.

PIFs typically enjoy the fast processing of licensing procedures, and the MFSA does not apply burdensome obligations to these types of funds. PIFs and retail CISs have different establishment, management and marketing rules. The authority’s principle objective is to impose less onerous obligations regarding information and documentation, especially where service providers are appointed to carry out licensable activities. If the PIF carries out investment services licensable activities, such as acting as its own manager, these activities will be regulated. The MFSA only accepts regulatory responsibility for that part of the PIFs activity that constitutes a licensable activity in Malta.

Generally, PIFs are established as open or close-ended investment companies, but limited partnerships or unit trusts can also be used. A master-feeder structure can also be set up using a combination of these legal forms.

PIFs are regulated through the ISA, which provides for three different types of PIFs, each with its own characteristics and obligations. These are:

- PIFs promoted to experienced investors
- PIFs promoted to qualifying investors
- PIFs promoted to extraordinary investors

Depending on the type of PIF, respective investors will have to show the experience and knowledge to be in a position to make their own investment decisions and understand the risks involved. Other restrictions will also apply (for example, qualifying investors must have a minimum NAV of €750,000).

Extraordinary investor funds mostly target private equity and family offices, and are usually subject to a light regulatory regime compared with other PIFs. However, these PIFs have more onerous eligibility criteria (such as a net asset threshold of €7.5 million for investors) and a higher minimum investment amount (€750,000). In the case of an umbrella fund comprising a number of subfunds, the relevant thresholds are applicable on a scheme basis. A fast-track evaluation procedure also applies to funds which have appointed a third-party manager, and service providers based and regulated in a recognized jurisdiction.

PIFs are designed to attract high net worth investors with limited regulation and oversight.
Specialist schemes

Special license conditions may apply to specialist schemes such as:

- Venture capital or development funds
- Money market funds
- Property funds
- Futures and options funds

Although these specialist schemes are not yet very common in Malta, property funds are slowly gathering more attention. Property funds are generally set up as a CIS whose main investment policy is to invest directly or indirectly in immovable property, and which seek to make capital gains from the disposal of the immovable property. Property funds may also have as an objective the holding of immovable property that produces income (such as hotels, shopping malls and office space). The following types of property funds could potentially be set up in Malta:

- Equity property funds: own and operate income-producing immovable property
- Mortgage property funds: lend money to real estate owners and operators, and extend credits indirectly through the acquisition of loans or mortgage-backed securities
- Hybrid property funds: perform functions of both property funds above

Funds whose main objective is to invest in immovable property and which are set up as close-ended funds must note that:

- PIFs targeting experienced investors are limited to a maximum of 100% of NAV
- PIFs targeting qualifying/extraordinary investors have no limitations

These conditions offer a high degree of flexibility to funds. Other policies apply to open-ended schemes, and funds engaging in the following business scenarios:

- Funds which mainly invest in immovable property and target investors resident or nonresident in Malta
- Funds with limited exposure of direct or indirect investment in immovable property and who target Malta residents, nonresidents or both
- Funds which mainly invest in property management or property financing companies
- Foreign-based property funds which mainly invest in property and are promoted to Maltese investors
- Foreign-based funds with limited exposure to property which are promoted to Maltese investors

Foreign-based funds with a level of exposure to property cannot be licensed as PIFs in Malta if they are authorized as retail funds by their home regulators.
Investment funds in Malta

Forms of establishment available in Malta

Investment funds may typically take on one of the following forms:

**Unit trusts**

A trust is deemed to exist whenever a person (the trustee) holds as owner, or has vested in him property under an obligation to deal with that property for the benefit of other persons called the beneficiaries, or for a charitable purpose that is not for the benefit only of the trustee, or for both such benefit and purpose. This relationship is enforced through a contractual obligation.

The principal Maltese law on trusts is the Trusts and Trustees Act which opened the trust concept to residents and nonresidents. The Trusts and Trustees Act and the Civil Code (as recently amended) recognizes constructive trusts, discretionary trusts, fixed interests trusts and purpose trusts.

Unit trusts require licensing under the ISA as a CIS. Trusts established in foreign jurisdictions may be recognized in Malta and it is therefore possible to set up an investment fund as a foreign law trust.

**Private/public limited companies**

The most common form of business entity in Malta is the limited liability company. These may be either public or private companies, and are governed by the Companies Act. Upon submission of the Memorandum and Articles, and if all legal requirements are satisfied, a company shall be registered and thereby come into existence. Articles of association, prescribing the internal regulations of the company, could also be drafted.

A private company has restrictions on the extent to which it can transfer its shares, and the number of members or shareholders cannot exceed 50. The Memorandum of Association of a private company prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Although limited liability companies must generally have a minimum of two members, a single member company may be formed as a private limited liability company. This could also qualify as an exempt company.

Conversely, a public company may offer shares or debentures to the public. However, it may not issue any form of application for its shares or debentures unless the company is registered, and the issue is accompanied by a prospectus.

Companies may also be established as an INVCO, or a SICAV. Private companies may be formed as SICAVs whereas public companies may be either INVCOs or SICAVs. More information on investment companies is provided on the next page.

The most common form of business entity in Malta is the limited liability company. These may be either public or private companies, and are governed by the Companies Act.
SICAV structures allow the introduction of additional investors without having to wait for the liquidation of an existing holding. In addition, the value of a unit in an open-ended scheme reflects the NAV of the scheme. In close-ended schemes, the value of a unit is market dependent.

SICAVs may also operate as umbrella funds, being composed of a number of subfunds each with their own strategy, and may invest in transferable securities. In turn, the assets and liabilities of each subfund are treated separately from the total assets and liabilities of a SICAV established as an umbrella fund.

Close-ended funds are contemplated as investment companies under the Companies Act. An INVCO is one such type of close-ended structure. There are specific rules on distribution and capitalization of profits. INVCOs are also subject to particular obligations dealing with the level of investment in different financial instruments, income distribution and listing requirements.

Similarly to SICAVs, INVCOs may operate as umbrella funds and may invest in transferable securities.

Limited partnerships are regulated through the Companies Act while partnership deeds regulate the affairs of these structures. The partnership deed must also clearly describe the nature of the business to be carried out by the partnership. Partnerships must have a registered office in Malta where they must maintain the personal information of all limited partners.

Limited partnerships

Mutual funds, also known as common contractual funds, are not deemed a separate legal entity since they are incorporated through a contractual obligation. Mutual funds can be registered and licensed as single or umbrella funds, and are usually set up as limited companies or partnerships. Both local and foreign custodians and fund managers may be appointed and mutual funds can opt for listing on the MSE. Mutual funds can also take advantage of EU passporting rules.

Mutual funds
Redomiciliation of foreign entities in Malta

Maltese regulations also allow body corporates to redomicile their business in Malta if:

- The entity is formed and registered in an approved jurisdiction
- The entity is similar in nature to a company under local laws
- The laws of the country of incorporation allow redomiciliation
- The constitutive documents of the entity (such as the statute, charter, or Memorandum and Articles) allow redomiciliation
- The entity is not in the process of dissolution or winding up, has not appointed a liquidator or similar official, has not suspended or restricted the rights of creditors, and is not undergoing proceeds for breaches of the law

If a foreign entity so qualifies, it may request a continuation of business in Malta to the Registrar of Companies, which must also include:

1. A document equivalent to a local extraordinary resolution under Maltese law, written or translated into English, authorizing the continuation of business in Malta
2. A revised constitutive document including all the requirements necessary for the registration of a company in Malta in accordance with the Companies Act
3. A document equivalent to a certificate of good standing, written or translated into English
4. A declaration signed by at least two directors, or by other persons vested with administration or representation of the entity confirming:
   a. The name of the entity and the name under which it is being continued
   b. The jurisdiction under which it is incorporated
   c. The date of incorporation
   d. The decision to continue business in Malta

5. That the relevant authorities in the foreign jurisdiction have been duly notified of the decision to redomicile in accordance with the laws in force. Evidence of this notification must be provided
6. That the foreign entity currently has no proceeds for legal contraventions against it

5. A declaration signed by at least two directors, or by other persons vested with administration or representation of the entity confirming the solvency of the entity, and that they are not aware of any circumstances that may be materially detrimental to the solvency position of the entity within the next 12 months. Any person making such a declaration without having reasonable grounds on which to form an opinion could be liable to a penalty
6. A list of directors and the company secretary, or of the persons vested with administration or representation if there are no directors and company secretary

The request will have to be made together with all fees necessary to incorporate a company under Maltese law. The Registrar may also request additional evidence to ascertain the laws of the foreign jurisdiction have been fully complied with, or that the consent of all stakeholders has been obtained.

In addition, evidence of consent given by foreign relevant authorities that business may be continued in Malta must be provided if foreign entities are licensed in their country to carry out activities that would also require licensing in Malta in accordance with the following laws:

1. Banking Act
2. Financial Institutions Act
3. Financial Markets Act
4. Insurance Business Act
5. Insurance Brokers and other Intermediaries Act
6. Investment Services Act
7. Malta Financial Services Authority Act
It is imperative to note that, even though a foreign entity may already hold a license abroad, a license in Malta will also need to be obtained before carrying out any licensable activities locally.

Public companies must also submit:

- The most recent prospectus, or equivalent, if instruments have been offered to the public
- Evidence of consent given by relevant authorities of a foreign recognized stock exchange that business may be continued in Malta, provided the company is listed
- Evidence of the current membership of the company

Provided all documentation complies with the requirements set out in the law, the Registrar will issue a Provisional Certificate of Continuation whereby the company will be considered to be incorporated in Malta, and will provisionally have all rights and obligations that apply to fully registered companies.

A provisionally certified company has six months to submit documentary evidence that it has ceased to be a company registered in the country in which it was originally formed. Failure to do this could result in the company ceasing to be registered in Malta, although the Registrar has the discretion to extend the period by a further three months if the cause for delay is justifiable. Once this evidence is submitted, the company will be provided a Certificate of Continuation.
4. Retail collective investment schemes
Various types of CISs can be registered in Malta targeting both local and foreign investors. Although the MFSA regulates CISs in both a prudent and flexible manner, retail funds are subjected to a high degree of regulation since they are targeted to the general public, and the MFSA endeavors to protect the interests of consumers and Malta’s reputation.

Strict criteria are applied during processing of applications for new retail CISs and the foremost principle is the ability of the applicants to prove a fit and proper status as described in Chapter 2.

As indicated, the principal goals of the application process are:

- To give substantial regard to the protection of investors and the general public
- To protect Malta’s reputation
- To promote choice and competition as well as the applicant’s own reputation and suitability

The application process of a retail CIS

The application process for a Malta based UCITS or non-UCITS scheme, or an overseas non-UCITS scheme is made up of three steps as follows (documentation requirements set out in Annex 1):

1. Preparatory phase:
   - Promoters meet MFSA officials and discuss the proposal put forward. As such, it is essential that promoters are prepared with a detailed proposal of the activities before engaging in discussions with the MFSA
   - Ordinarily, these meetings are held before any formal applications for a license are made in order to allow sufficient time for guidance and clarifications to take place
   - Following these preliminary meetings, the promoter must submit a draft application form together with all the appropriate supporting evidence that will be subject to review by the MFSA. Documentation requirements are considered in Annex 1
   - The outcome of this review is a feedback process between the MFSA and the promoters, who may be required to submit additional evidence, make corrections and give further proof of the fit and proper test, among others. Ordinarily, the MFSA will submit initial comments within three weeks of receipt of the draft application
   - During this phase, the MFSA will consider the specifics of the proposal and decide on which SLCs will be applicable

2. Pre-licensing phase:
   - Following the resolution of review points noted in the draft application, an “in principle” approval for license will be issued by the MFSA
   - The applicant will then need to finalize any outstanding issues, and submit a signed final application form together with supporting documents
   - Once all issues are resolved, the MFSA will proceed to issue a license

3. Post-licensing/pre-commencement of business phase: The MFSA will determine whether the applicant needs to satisfy any post-licensing matters before formal commencement of business can take off

Foreign based UCITS schemes need not obtain a license in Malta. However, prior to selling units in Malta, the scheme needs to observe the relevant passporting and notification procedures described in Chapter 9.
Non-UCITS schemes in Malta

- Non-UCITS schemes are either open-ended or close-ended and can be set up in any form identified in Chapter 3.
- Units provided from such schemes can be made available both in Malta and in any other Member State if the scheme conforms to the legal obligations of the target State.
- Close-ended schemes that make an offer of securities to the public must prepare a prospectus in compliance with the requirements of the Prospectus Directive 2001/34/EC and may benefit from passporting rules.
- Licensed schemes may also apply for a listing on the MSE.

The table below refers to the requirements of the various functionaries.

<table>
<thead>
<tr>
<th>Functionary</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment manager</td>
<td>Required unless the scheme is self-managed.</td>
</tr>
<tr>
<td>Custodian</td>
<td>Must be based in Malta and in possession of an Investment Services License in terms of the ISA.</td>
</tr>
<tr>
<td>Administrator</td>
<td>Must be based in Malta.</td>
</tr>
</tbody>
</table>

Non-UCITS schemes based abroad

- Can be open-ended or close-ended.
- Although these schemes would be formed and regulated in another regime, a CIS license would still be required prior to any local marketing or promotion.
- A scheme and its principal service providers must be based and regulated in a recognized jurisdiction.
- Business in Malta is not considered to have taken place, and a local CIS license will not be required in the following cases:
  - Units are sold exclusively on a one-to-one basis to persons in Malta by Investment Service License holders or European investment firms passporting into Malta (provided no marketing or promotion is made).
  - A Maltese investor requests and is provided with information on an overseas non-UCITS scheme.
  - The scheme is not marketed in Malta in its own right but is available for linking to unit-linked policies which are themselves marketed in Malta.

- The scheme must have a local point of contact that can be referred to by investors or the MFSA to address compliance issues. This can be achieved either by:
  - Having a licensed local representative.
  - Appointing an EEA investment firm that establishes a local branch and acts as a local representative.
  - Opening an office in Malta (such an office could not provide investment advice since this is permitted only by license holders or by European investment firms passporting into Malta).

Licensed schemes may apply for a listing on the MSE.

In assessing the license conditions for such schemes, the MFSA will consider the extent of supervision exercised by their home state regulators. Partly because of this, license conditions are very specific to each scheme.
Maltese UCITS schemes are open-ended formations that can take one of the following forms: SICAV, limited partnership, unit trust or a common contractual fund in terms of the Civil Code.

- Schemes may offer units to the general public both in Malta and in any other EEA State if the notification procedures of the UCITS regulations are observed.
- UCITS schemes must draw up both a full and simplified prospectus.
- Licensed schemes may also apply for a listing on the MSE.

The table below refers to the requirements of the various functionaries.

<table>
<thead>
<tr>
<th>Functionary</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment manager</td>
<td>A Maltese UCITS management company needs to be appointed unless the scheme is self-managed. Self-managed funds must be formed as SICAVs.</td>
</tr>
<tr>
<td>Custodian</td>
<td>Must be based in Malta and in possession of an Investment Services License in terms of the ISA.</td>
</tr>
<tr>
<td>Administrator</td>
<td>Preferably based in Malta, but foreign-based administrators are accepted in exceptional circumstances. Foreign-based administrators must be regulated in a recognized jurisdiction.</td>
</tr>
</tbody>
</table>
UCITS schemes based in the EU

Depending on the legal structure, a European UCITS scheme is defined as one where:

- The management company’s registered office and head office are situated in an EU Member State or an EEA State outside Malta, provided the scheme is formed as a unit trust or common contractual fund
- The registered office and head office are situated in an EU Member State or an EEA State outside Malta, provided the scheme is formed as a SICAV or INVCO

The main characteristics of these schemes are:

- Must be fully compliant with the EU UCITS directives and be authorized by a competent authority of that EU Member State or EEA State
- Business in Malta is not considered to have taken place and UCITS notification procedures will not need to be performed in the following circumstances:
  - Units are sold exclusively on a one to one basis to persons in Malta by Investment Service License holders or European investment firms passporting into Malta
  - A Maltese investor requests and is provided with information on an overseas non-UCITS scheme
  - The scheme is not marketed in Malta in its own right but is available for linking to unit-linked policies which are themselves marketed in Malta
- European UCITS schemes are considered to be carrying on an activity in Malta if they directly or indirectly market or promote their units in Malta. However, such schemes may opt to exercise their passport rights and thus be exempt from requiring a license
- The scheme must provide adequate facilities in Malta where payments to unit holders, repurchasing or redemption of units and provision of statutory information can be made. This can be achieved either through:
  - The appointment of an Investment Services License holder
  - A local branch of a European investment firm passporting into Malta
  - A local branch of a UCITS management company passporting into Malta
  - Other methods as may be approved by the MFSA on a case-by-case basis
- The scheme may apply for a listing on the MSE
Schemes classified as private CISs would not require a license to operate. To qualify as a private CIS, a scheme must satisfy all of the following conditions:

- The number of participants do not exceed 15
- Participants are either close friends or relatives of the promoters
- The scheme is private in nature and purpose
- The scheme does not qualify as a PIF

The main characteristics of these schemes are:

- Companies may participate in a private CIS as long as the above conditions are not violated after taking into account the number and characteristics of beneficial owners. Such companies may only act as investors
- While a license is not required, schemes must still pass the fit and proper tests (refer to Chapter 2) and show the ability to comply with all relevant rules and regulations
- The MFSA will limit its due diligence procedures in connection with the integrity of persons concerned, and will not assess the competence of persons responsible for the management of such schemes
- A private CIS must still produce audited financial statements within six months after year-end, including an auditor’s report stating that the private CIS satisfied the requirements of a private CIS during the financial year
- The scheme will not be subjected to investment or borrowing restrictions or conditions save those specified in the Investment Service Rules
- Any changes in directors or participants, constitutional documents and location of premises must be duly notified to the MFSA

The application process is made up of two stages (documentation requirements are set out in Annex 1):

1. In the preparatory phase, the scheme will hold preliminary meetings with the MFSA and seek guidance as necessary. Following these discussions, applicants present a draft application document together with supporting material to the MFSA for review, which may request follow-ups, corrections or additional evidence. The required application documents are set out in Annex 1 which must be accompanied by a payment of the application fee.
2. In the pre-recognition phase, the applicant finalizes the application documentation in accordance with the agreements of the first phase and full recognition will be granted.
License conditions and other restrictions

Main conditions applicable to Maltese non-UCITS schemes

- The prospectus must clearly define the investment objectives
- Unit holders must be provided with sufficient information to be able to assess the risks to which their investment is exposed
- Any material changes to investment policies, objectives or restrictions must be communicated to investors in advance. In addition, any changes in the objectives of the scheme must be approved by unit holders
- The scheme or its manager must address defaults in investment restrictions within six months from launch of the scheme, and when a value of €2.5 million has been reached
- All necessary steps must be taken to regain full compliance within six months of the date when an unforeseen default position, outside of the control of the scheme, is first detected. Such deviations are not considered a breach of investment restrictions
- Failure to rectify the situation within the stipulated period of six months is considered a breach and the manager will have to follow the relevant notification requirements
- The custodian must monitor the manager’s endeavors in respecting the investment restrictions
- Other general license conditions are set out in Annex 2

A number of investment restrictions in financial instruments based on the concepts of risk-spreading apply to Maltese non-UCITS schemes as tabulated below:

<table>
<thead>
<tr>
<th>Investment in instrument/entity</th>
<th>Restriction</th>
</tr>
</thead>
</table>
| Securities                      | - Up to 10% of assets in securities not traded on a market, issued by the same body, or issued by the same issuer (any class)  
- Up to 100% in securities issued by any EU Member State or public international body of which one or more states are members  
- In the case of unpaid/partly paid shares, amount due cannot exceed 5% of the value of the scheme. Any amounts in excess must be covered by cash  
- Up to 20% of the voting rights in the issuer |
| Deposits with credit institutions | - Up to 10% with any one body. This may be increased to 30% if held with an institution licensed in Malta, another EEA State or with an institution approved by the MFSA |
| Other UCITS schemes or CISs      | - Up to 20% in any one scheme |
| Financial derivative instruments (FDI) | - FDIs cannot be used for advantage and investment purposes. Holding FDIs is only permitted for efficient portfolio management  
- Maximum potential loss associated with a counterparty in an OTC derivative transaction is limited to 5% of value of the scheme. This may be increased to 10% if the counterparty is a credit institution  
- Collateral may be used to reduce counterparty risks. No more than 20% of the collateral may be invested with one institution. Invested cash collateral may not be placed with, or invested in, securities issued by the counterparty or related entity  
- Netting of OTC derivative positions with the same counterparty is only allowed if a netting agreement exists between the scheme and the counterparty  
- Counterparty cannot be the fund manager or custodian of the scheme  
- Counterparty must be registered or based in Malta, any member of the OECD, the EU or EEA, and must have a credit rating of at least A with Standard & Poor’s or A2 with Moody’s, or equivalent |
| Uncovered sales                  | - The scheme may not carry out uncovered sales of securities or other financial instruments |
| General                          | - Total combined investment in securities, deposits and counterparty exposures from OTC derivatives with a single body cannot exceed 35% of the scheme’s assets, irrespective of the individual limits on each category  
- Side letters are not permitted |
| Borrowing limits                 | - Borrowing may not exceed 10% of assets for investment companies and limited partnerships  
- Borrowing may not exceed 10% of value of the scheme for unit trusts and common contractual funds  
- All borrowings must be temporary, and total exposure cannot exceed 110% of the assets of the scheme |
Main conditions applicable to Maltese UCITS schemes

The local regulations provide a list of instruments that Malta-based UCITS schemes can deal in. The regulations also provide very detailed specifications and criteria that must be observed by schemes. Broadly, investments can be made in any or all of the following:

- Transferable securities and money market instruments listed on a regulated market that falls under article 4(1) of the MiFID
- Transferable securities and money market instruments listed on a regulated market in a Member State which operates regularly and is open to the public
- Transferable securities and money market instruments that are either listed on a stock exchange in a non-Member State, or are dealt on a regulated market that operates regularly and is open to the public. The MFSA needs to approve the selected regulated market unless it is provided for in the full prospectus or constitutional documents
- Recently issued transferable securities, provided that an application is made for them to be listed in a regulated market and that this listing is obtained within a year of issue
- Units of other UCITS schemes, and any CISs similarly classified irrespective of whether they are in a Member State or not. The latter will be deemed acceptable only if the following criteria are satisfied:
  - The CIS is regulated in a jurisdiction and level of supervision that the MFSA considers appropriate
  - Unit holders enjoy the same level of protection as those in a UCITS scheme
  - Investors can assess the assets, liabilities, income and operations of the business through half-yearly and annual reports published by the CIS
  - Not more than 10% of the assets of the scheme are invested in aggregate in units of other UCITS or non-UCITS schemes. This limitation must be provided in the full prospectus or instruments of incorporation
- Deposits with credit institutions registered in an EU Member State or in any other area approved by the MFSA. These deposits must be repayable on demand and must have a maturity period of not more than 12 months
- FDIs or equivalent cash settled instruments dealt in on a regulated market or OTC derivatives. A number of conditions apply to these types of instruments:
  - The underlying instrument consists of any permissible instrument, financial indices, interest rates and foreign exchange rates or currencies in which the scheme may invest according to its investment objectives
  - The counterparties to OTC derivatives are institutions subject to prudential supervision, and belonging to the categories approved by the MFSA
  - OTC derivatives must also be subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the scheme’s initiative
- Money market instruments not dealt in on a regulated market but which are issued by entities that are themselves regulated, provided that the instruments are:
  - Issued or guaranteed by an authority or central bank of a Member State, the European Central Bank (ECB), the EU or the European Investment Bank, a non-Member State or, in the case of a federal state, by one of the members making up the federation, or by a public international body to which one or more Member States belong
  - Issued by an undertaking, any securities of which are dealt on regulated markets
  - Issued or guaranteed by an entity subject to supervision in accordance with criteria defined by Community law or that is approved by the MFSA

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- Transferable securities and money market instruments listed on a regulated market that falls under article 4(1) of the MiFID
- Transferable securities and money market instruments listed on a regulated market in a Member State which operates regularly and is open to the public
- Transferable securities and money market instruments that are either listed on a stock exchange in a non-Member State, or are dealt on a regulated market that operates regularly and is open to the public. The MFSA needs to approve the selected regulated market unless it is provided for in the full prospectus or constitutional documents
- Recently issued transferable securities, provided that an application is made for them to be listed in a regulated market and that this listing is obtained within a year of issue
- Units of other UCITS schemes, and any CISs similarly classified irrespective of whether they are in a Member State or not. The latter will be deemed acceptable only if the following criteria are satisfied:
  - The CIS is regulated in a jurisdiction and level of supervision that the MFSA considers appropriate
  - Unit holders enjoy the same level of protection as those in a UCITS scheme
  - Investors can assess the assets, liabilities, income and operations of the business through half-yearly and annual reports published by the CIS
  - Not more than 10% of the assets of the scheme are invested in aggregate in units of other UCITS or non-UCITS schemes. This limitation must be provided in the full prospectus or instruments of incorporation
- Deposits with credit institutions registered in an EU Member State or in any other area approved by the MFSA. These deposits must be repayable on demand and must have a maturity period of not more than 12 months
- FDIs or equivalent cash settled instruments dealt in on a regulated market or OTC derivatives. A number of conditions apply to these types of instruments:
  - The underlying instrument consists of any permissible instrument, financial indices, interest rates and foreign exchange rates or currencies in which the scheme may invest according to its investment objectives
  - The counterparties to OTC derivatives are institutions subject to prudential supervision, and belonging to the categories approved by the MFSA
  - OTC derivatives must also be subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the scheme’s initiative
- Money market instruments not dealt in on a regulated market but which are issued by entities that are themselves regulated, provided that the instruments are:
  - Issued or guaranteed by an authority or central bank of a Member State, the European Central Bank (ECB), the EU or the European Investment Bank, a non-Member State or, in the case of a federal state, by one of the members making up the federation, or by a public international body to which one or more Member States belong
  - Issued by an undertaking, any securities of which are dealt on regulated markets
  - Issued or guaranteed by an entity subject to supervision in accordance with criteria defined by Community law or that is approved by the MFSA

The local regulations provide a list of instruments that Malta-based UCITS schemes can deal in. The regulations also provide very detailed specifications and criteria that must be observed by schemes. Broadly, investments can be made in any or all of the following:

- Transferable securities and money market instruments listed on a regulated market that falls under article 4(1) of the MiFID
- Transferable securities and money market instruments listed on a regulated market in a Member State which operates regularly and is open to the public
- Transferable securities and money market instruments that are either listed on a stock exchange in a non-Member State, or are dealt on a regulated market that operates regularly and is open to the public. The MFSA needs to approve the selected regulated market unless it is provided for in the full prospectus or constitutional documents
- Recently issued transferable securities, provided that an application is made for them to be listed in a regulated market and that this listing is obtained within a year of issue
- Units of other UCITS schemes, and any CISs similarly classified irrespective of whether they are in a Member State or not. The latter will be deemed acceptable only if the following criteria are satisfied:
  - The CIS is regulated in a jurisdiction and level of supervision that the MFSA considers appropriate
  - Unit holders enjoy the same level of protection as those in a UCITS scheme
  - Investors can assess the assets, liabilities, income and operations of the business through half-yearly and annual reports published by the CIS
  - Not more than 10% of the assets of the scheme are invested in aggregate in units of other UCITS or non-UCITS schemes. This limitation must be provided in the full prospectus or instruments of incorporation
- Deposits with credit institutions registered in an EU Member State or in any other area approved by the MFSA. These deposits must be repayable on demand and must have a maturity period of not more than 12 months
- FDIs or equivalent cash settled instruments dealt in on a regulated market or OTC derivatives. A number of conditions apply to these types of instruments:
  - The underlying instrument consists of any permissible instrument, financial indices, interest rates and foreign exchange rates or currencies in which the scheme may invest according to its investment objectives
  - The counterparties to OTC derivatives are institutions subject to prudential supervision, and belonging to the categories approved by the MFSA
  - OTC derivatives must also be subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the scheme’s initiative
- Money market instruments not dealt in on a regulated market but which are issued by entities that are themselves regulated, provided that the instruments are:
  - Issued or guaranteed by an authority or central bank of a Member State, the European Central Bank (ECB), the EU or the European Investment Bank, a non-Member State or, in the case of a federal state, by one of the members making up the federation, or by a public international body to which one or more Member States belong
  - Issued by an undertaking, any securities of which are dealt on regulated markets
  - Issued or guaranteed by an entity subject to supervision in accordance with criteria defined by Community law or that is approved by the MFSA
Other issuers may also be considered by the MFSA provided they are a company with a share capital of at least €10 million, an entity that forms part of and finances a group that includes listed companies, or is an entity which is dedicated to the financing of securitization vehicles which benefit from a banking liquidity line.

- Movable or immovable property directly required for the operations of the business (applicable to investment companies or limited partnerships).

Schemes are not allowed to acquire precious metals or certificates representing them, but may hold ancillary liquid assets irrespective of the investment objectives and policies.

Other general license conditions are set out in Annex 2.

Investment level restrictions may also apply to these allowable financial instruments as shown in the table below:

<table>
<thead>
<tr>
<th>Investment in instrument/entity</th>
<th>Restriction</th>
</tr>
</thead>
</table>
| Transferable securities and money market instruments | ▶ Up to 10% of assets in transferable securities and money market instruments not listed above. The MFSA may also allow schemes to invest up to 100% in such instruments provided certain principles of risk-spreading are satisfied.  
▶ Up to 5% in instruments issued by the same body. Derogations may be obtained to raise the limit to 10%, 25%, 35% and 40% subject to certain conditions.  
▶ Limits on investment in instruments issued by the same body may also be raised to 20% if the investment policy of the scheme is to replicate the composition of a certain stock or debt securities index recognized by the MFSA. Furthermore, this may be raised to 35% if so justified by exceptional market conditions and are restricted to one issuer. |

| Deposits with credit institutions | ▶ Up to 20% of assets with any one body |

| Financial derivative instruments (FDI) | ▶ Maximum potential loss associated with a counterparty in an OTC derivative transaction is limited to 5% of value of the scheme. This may be increased to 10% if the counterparty is a credit institution.  
▶ Collateral may be used to reduce counterparty risks, and is subject to specific rules. Generally, no more than 20% of the collateral may be invested with one institution that is not a government. Invested cash collateral may not be placed with, or invested in, securities issued by the counterparty or related entity.  
▶ Netting of the mark-to-market value of OTC derivative positions with the same counterparty is allowed only if a netting agreement exists between the scheme and the counterparty.  
▶ Global exposure relating to FDI cannot exceed 100% of NAV such that the scheme’s overall risk exposure cannot exceed 200% of NAV. Global/total exposure calculation methods include the commitment approach or the advanced risk management approach. Non-sophisticated UCITS may adopt either method. Sophisticated UCITS, on the other hand, are required to apply the advanced risk management approach.  
▶ Counterparty cannot be the fund manager or custodian of the scheme.  
▶ Counterparty must be registered or based in Malta, any member of the OECD, the EU, or EEA, and must have a credit rating of at least A with Standard & Poor’s or A2 with Moody’s, or equivalent.  
▶ The scheme is subject to certain rules regarding the level of cover that must be provided, the method used to calculate it and the instruments that are allowed as cover. |
Where a default in investment restrictions takes place, schemes must note that:

- All necessary steps must be taken to regain full compliance within six months of the date when an unforeseen default, outside of the control of the scheme, is first detected. Such deviations are not considered a breach of investment restrictions.
- Any breaches in the license conditions or contents of the offering, marketing or constitutional documents must be notified to the MFSA.
- Failure to rectify the situation within the stipulated time frame of six months is considered a breach and the manager will have to follow the relevant notification requirements.
- The custodian must monitor the manager’s endeavors in respecting the investment restrictions.

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**Investment funds in Malta**

**Retail collective investment schemes**
Distribution requirements

Every retail CIS must have an annual income allocation date that falls within two months following the relevant financial year-end. In this respect, the scheme is required to do the following:

- Calculate the amount available for income allocation for the period relating to the preceding financial year
- Inform the custodian of the calculated amount

The following sections outline the conditions on how allocations are to be made to income, gains or losses and accumulation to units.
**Income allocations and distributions**

Schemes are required to adhere to the following process when making allocations to the income account:

- Take the aggregate of the income received or receivable during the period
- Include any income equalization amounts received by the custodian on units created during the period, including any resulting from the final valuation
- Include the best estimate of any relief from tax on expenses payable out of income during the period
- Deduct the remuneration due to the manager and custodian
- Deduct all expenses paid or payable
- Deduct the tax provision computed by the manager or investment company after consultation with the auditor
- Deduct the income attributable to units canceled during the period, including any income equalization paid by the custodian on cancelation
- Deduct or ignore any potential income where there is insufficient information to determine how that income accrues and should not be accounted for on an accruals basis
- Deduct or ignore any potential income which is not likely to be received until 12 months after the income allocation date
- Adjust for reallocations of income and capital expenses
- At the end of each annual accounting period, the custodian must transfer any positive balances in the income account to a distribution account
- The scheme may transfer all or part of the balance in the distribution account. Any remaining balances are to be carried forward
- The custodian must send a statement to each unit holder containing the income calculation, the amount of income to which the holder is entitled to, and details of any tax deducted

The value in the income computed in accordance with this process will then be distributed by the custodian to income unit holders in proportion to the number of units held net of any interim distributions and rounding adjustments. Payments can be made either by check or through a warrant made payable to order.

It must be noted that the same rules apply when interim distributions are to be made.

Income allocations must also include a capital sum representing the best estimate of the amount of income included in the creation price.

**Allocations to the capital account**

- Take the aggregate of the realized and unrealized capital property during the period
- Adjust for reallocations of income and capital expenses

**Allocations to accumulation units**

- The custodian of schemes that have both accumulation units and income units must allocate the income between the two classes
- Adjust for reallocations of income and capital expenses
- Allocations to accumulation units become part of the capital property by either increasing the value of the scheme that is represented by allocation units, or by increasing the number of undivided shares in the scheme
- Any increases in the number of undivided shares must be made in such a way that the creation price of accumulation units is not affected
5. Professional investor funds
The application process of a PIF

As has been outlined in Chapter 3, PIFs target investors who meet minimum investment thresholds and who possess the required skills and expertise. Since the nature of these funds is nonretail, PIFs are not subject to some of the rigid investment or borrowing restrictions that would be applicable to retail CISs.

The purpose of this chapter is to describe the salient requirements that applicants must observe during the application process, and even post-licensing.

Application for the preliminary indication of acceptability

A PIF may want to appoint service providers who are not established in a recognized jurisdiction. In these cases, an application for a preliminary indication of acceptability from the MFSA is recommended. Otherwise, the PIF can immediately pursue the application procedure for a full license.

A preliminary indication of acceptability is considered on the basis of the proposed structure of the PIF and service providers, subject to:

- Details on the regulatory status of the proposed service providers
- Details regarding the regulatory framework of their home jurisdiction

Based on this information, the MFSA will make a decision and communicate their position within seven working days.

Positive acceptances do not preclude the need to make an application for a CIS license and are not indicative of any possible outcome from license applications.
Application process for a PIF license

The license application process for a PIF is relatively similar to that for a retail CIS (Chapter 4), and likewise, is made up of three distinct phases:

1. Preparatory phase:
   - PIF promoters prepare a detailed proposal of their activities and discuss the terms at meetings with the MFSA.
   - The MFSA will respond with guidance and clarifications as necessary.
   - PIF promoters submit a draft application form together with all the appropriate supporting evidence as detailed in Annex 3.
   - The MFSA will review the documents and may request additional evidence, corrections, or proof of the fit and proper test, among other things. Promoters can expect to receive initial comments within seven working days (in the case of PIFs promoted to experienced or qualifying investors) or three working days (in the case of PIFs targeting extraordinary investors) from receipt of the draft application.
   - Depending on the proposed PIF, the MFSA will decide on which SLCs will be imposed on an ongoing basis. SLCs may be applied, dropped, amended or supplemented depending on the case.

2. Pre-licensing phase:
   - When all review points noted in the draft application are resolved, the MFSA will issue an “in principle” approval for license. Following this, PIF promoters must:
     - Finalize any outstanding issues.
     - Submit a signed final application form together with all supporting documents.
   - Once all issues are resolved, the MFSA will issue a license.

3. Post-licensing/pre-commencement of business phase:
   - The MFSA will determine whether the applicant needs to satisfy any post-licensing matters before formal commencement of business can take off.
   - Once granted a license, PIFs may send requests for variations in the SLCs to the MFSA for consideration.
   - Documentation requirements are set out in Annex 3.
Eligibility of investors

Investors must demonstrate that they are in possession of the required expertise, experience and knowledge to make investment decisions and assess their risks.

The table below shows the conditions that need to be satisfied by investors to be able to invest in specific PIFs. These conditions are not all inclusive, but at least one condition must be satisfied:

<table>
<thead>
<tr>
<th>Eligibility of investors</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experienced</td>
<td>Qualifying</td>
</tr>
<tr>
<td>• At least one year’s experience in a professional position in the financial services sector or having been active in such types of investments</td>
<td></td>
</tr>
<tr>
<td>• Reasonable experience in the acquisition or disposal of funds or instruments with similar risk profiles to that of the proposed PIF</td>
<td></td>
</tr>
<tr>
<td>• Having carried out investment transactions of a significant size at a certain frequency</td>
<td></td>
</tr>
<tr>
<td>• Any other appropriate justification</td>
<td>• Person (or the whole group if entity is a corporate subsidiary) must have net assets in excess of €750,000. If the PIF is established as a trust, this condition applies to the net value of the trust's assets. Individuals must meet this threshold either on their own, or jointly with their spouse</td>
</tr>
<tr>
<td></td>
<td>• The PIF must have a majority of directors, a general partner or be an individual (depending on the legal structure) with appropriate experience in investment decisions on funds with a similar risk profile, and in instruments similar to the fund in question</td>
</tr>
<tr>
<td></td>
<td>• A senior employee or director of service providers to the PIF</td>
</tr>
<tr>
<td></td>
<td>• A relation or close friend of the promoters limited to 10 persons per PIF</td>
</tr>
<tr>
<td></td>
<td>• An entity with at least €3.75 million under discretionary management investing on its own account</td>
</tr>
<tr>
<td></td>
<td>• The investor qualifies as a PIF promoted to qualifying or extraordinary investors</td>
</tr>
<tr>
<td></td>
<td>• A body corporate or partnership wholly owned by persons or entities satisfying any of these criteria that is used as an investment vehicle by such persons or entities</td>
</tr>
<tr>
<td></td>
<td>• Person (or the whole group if entity is a corporate subsidiary) must have net assets in excess of €7.5 million. If the PIF is established as a trust, this condition applies to the net value of the trust’s assets. Individuals must meet this threshold either on their own, or jointly with their spouse</td>
</tr>
<tr>
<td></td>
<td>• A senior employee or director of service providers to the PIF</td>
</tr>
<tr>
<td></td>
<td>• The investor qualifies as a PIF promoted to extraordinary investors</td>
</tr>
<tr>
<td></td>
<td>• A body corporate or partnership wholly owned by persons or entities satisfying any of these criteria that is used as an investment vehicle by such persons or entities</td>
</tr>
</tbody>
</table>

A number of rules apply in relation to eligibility:

• The above conditions must be satisfied by investors on an individual basis (even in the case of joint holders)
• By way of exception, joint holders who are spouses might also be eligible as “experienced” or “qualifying” if one of the spouses is nonqualifying. In this case, the nonqualifying spouse needs to:
  - Submit a written consent to making the investment
  - Confirm the intention to invest in a joint experienced/qualifying investor fund even though the requirements of an experienced/qualifying investor are not met
• There are no exceptions for extraordinary investors
• Potential investors (or their directors, general partners or trustee as applicable) have to complete an Experienced/Qualifying/Extraordinary Investor Declaration Form before investing in the PIF. This form serves two purposes:
  1. It is the investor’s confirmation that all risk warnings are properly understood
  2. It provides the reasons why the investor should be considered “experienced”, “qualifying” or “extraordinary”
The PIF manager, sales agent or entity selling the units of the fund must ensure that the investor is eligible. In this regard, PIFs need to countersign the Experienced/Qualifying /Extraordinary Investor Declaration Form (the PIF or its administrator cannot process applications for the issue of units unless the declaration form is duly completed).

PIFs can rely on the investor’s declaration as proof of eligibility unless information to the contrary exists.

If a third party does not believe the investor has the right skills, a statement to this effect needs to be made by the third party on the form as a warning to the investor who in turn, will need to acknowledge the warning in writing.

License conditions and other restrictions

- A PIF or its manager must comply with the investment objectives, policies and restrictions described in the offering or marketing document. Whenever material changes to investment policies, objectives or restrictions are made:
  - Investors must be duly notified in advance
  - Notice period should leave sufficient time for any redemption requests to be made and fully processed before effecting the changes
  - Redemption fees cannot be charged in these circumstances
- Certain restrictions are also imposed on PIFs through the Investment Service Rules (including underlying funds of feeder funds)
- Every investor must satisfy the minimum entry level, which also remains the same in the case of joint investors. Total investment value is not permitted to go below this limit, unless the reduction takes place as a result of depletion in NAV.
- In the case of umbrella funds, investment thresholds apply to the whole scheme rather than on each subfund.
- Provided minimum investment restrictions are observed, the PIF can accept additional investments of any amount.
- Where a default in investment restrictions takes place, schemes must note that:
  - All necessary steps are taken to regain full compliance within six months of the date when an unforeseen deviation, outside of the control of the scheme, is first detected. Such deviations are not considered a breach of investment restrictions.
  - Any breaches in the license conditions or contents of the offering, marketing or constitutional documents must be notified to the MFSA.
  - Failure to rectify the situation within the stipulated time frame of six months is considered a breach and the PIF will have to follow the relevant notification requirements.
  - PIFs are expected to take all necessary precautions to ensure compliance with these restrictions.
- PIFs may have side letters with investors.

Main conditions applicable to all types of PIFs

- The Declaration Form and supporting evidence must be lodged within a registered office in Malta, and made available to the MFSA upon request.
- The PIF and any party appointed in relation to it must first be deemed fit and proper by the MFSA in accordance with Chapter 2.
## Salient features of different PIFs

<table>
<thead>
<tr>
<th>Condition</th>
<th>Experienced</th>
<th>Qualifying</th>
<th>Extraordinary</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Service providers</strong></td>
<td>Must be based in Malta or in a recognized jurisdiction</td>
<td>Must be based in Malta or in a recognized jurisdiction</td>
<td>Must be based in Malta or in a recognized jurisdiction</td>
</tr>
<tr>
<td><strong>Fund manager</strong></td>
<td>Optional. Self-managed PIFs allowed. Manager may also act as administrator</td>
<td>Optional. Self-managed PIFs allowed. Manager may also act as administrator</td>
<td>Optional. Self-managed PIFs allowed. Manager may also act as administrator</td>
</tr>
<tr>
<td><strong>Fund administrator</strong></td>
<td>Optional</td>
<td>Optional</td>
<td>Optional</td>
</tr>
<tr>
<td><strong>Custodian/prime broker</strong></td>
<td>Required. Must be independent from fund manager</td>
<td>Recommended. Must be independent from fund manager</td>
<td>Recommended. Must be independent from fund manager</td>
</tr>
<tr>
<td><strong>Investment advisor</strong></td>
<td>Optional</td>
<td>Optional</td>
<td>Optional</td>
</tr>
<tr>
<td><strong>Compliance officer</strong></td>
<td>Required. May also act as money laundering reporting officer (MLRO)</td>
<td>Required. May also act as MLRO</td>
<td>Required. May also act as MLRO</td>
</tr>
<tr>
<td><strong>MLRO</strong></td>
<td>Required</td>
<td>Required</td>
<td>Required</td>
</tr>
<tr>
<td><strong>Local representative</strong></td>
<td>Required if all officials and service providers are established abroad</td>
<td>Required if all officials and service providers are established abroad</td>
<td>Required if all officials and service providers are established abroad</td>
</tr>
<tr>
<td><strong>Auditor</strong></td>
<td>Required</td>
<td>Required</td>
<td>Required</td>
</tr>
<tr>
<td><strong>Minimum assets</strong></td>
<td>None</td>
<td>€750,000 (or other conditions)</td>
<td>€7.5 million (or other conditions)</td>
</tr>
<tr>
<td><strong>Listing</strong></td>
<td>Optional</td>
<td>Optional</td>
<td>Optional</td>
</tr>
<tr>
<td><strong>Borrowing limits</strong></td>
<td>100% of NAV in respect of borrowings used for investment purposes and leverage through derivatives. Unlimited borrowing for temporary liquidity</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td><strong>Diversification</strong></td>
<td>Fund of hedge funds must invest in at least five hedge funds</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td><strong>Minimum entry level</strong></td>
<td>€15,000</td>
<td>€75,000</td>
<td>€750,000</td>
</tr>
<tr>
<td><strong>Annual report</strong></td>
<td>Must be submitted with a custodian's report</td>
<td>Must be submitted. No custodian's report required</td>
<td>Must be submitted. No custodian's report required</td>
</tr>
<tr>
<td><strong>Setup time</strong></td>
<td>Seven days if all requirements are satisfied</td>
<td>Seven days if all requirements are satisfied</td>
<td>Three days if all requirements are satisfied</td>
</tr>
</tbody>
</table>
6. Service providers
Overview of licensable activities and service providers

The laws of Malta generally require that any person who wants to carry out investment services in Malta needs to have a license in terms of the ISA before commencing business. Such licensable services include:

- The reception and transmission of orders in relation to one or more instruments
- The execution of orders on behalf of other persons
- Dealing on own account
- Management of investments
- Trustee, Custodian or Nominee services
- Investment advice
- Underwriting of instruments and placing of instruments on a firm commitment basis
- Placing of instruments without a firm commitment basis
- Operation of a multilateral trading facility

A number of the above licensable activities cover various functions that are typically carried out by the appointed service providers (or functionaries) of a CIS. In effect, therefore, any person wishing to act as a fund manager, investment advisor, or custodian/prime broker will typically also need an investment services license.

The overarching principle is that all service providers must be able to show high degrees of competence, integrity and solvency, besides having all the operational and financial requirements to conduct business properly. The types of licenses in Malta include the following:

- Category 1a: holder may send and receive orders for instruments, provide investment advice, or place instruments without a firm commitment basis for both professional clients and retail clients. However, a client’s money or assets may not be held or controlled. This category does not include managers of CISs
- Category 1b: holder may send and receive orders for instruments, provide investment advice, or place instruments without a firm commitment basis for professional clients only. However, a client’s money or assets may not be held or controlled. This category does not include managers of CISs
- Category 2: holders may provide any investment service and hold or control a client’s assets or money. However, holder may not operate a multilateral trading facility or deal for their own account or underwrite or place instruments on a firm commitment basis
- Category 3: holders may provide any investment service and hold or control a client’s assets or money
- Category 4: holders may act as trustees or custodians of a CIS

Some of these categories are cumulative. However, particularly for Category 4 licenses, it may be necessary for entities to apply for more than one type of license in order to be able to deliver a wider range of services.

In the case of retail schemes based in Malta, the MFSA usually expects functionaries to be based in Malta, and some service providers are mandatory within the scheme. Overseas service providers may also be accepted by the MFSA if they are regulated in a recognized jurisdiction. A recognized jurisdiction is defined as:

- An EU or EEA member
- Signatories to a multilateral MoU or bilateral MoU with the MFSA covering the relevant sector of financial services

Service providers from other countries may also be approved on a case-by-case basis after an assessment is made whether the said jurisdiction is of a comparable level of regulation and reputation.
The regulations for service providers in PIFs differ slightly:

- PIFs are generally not obliged to have service providers. An exception to this applies for PIFs targeting experienced investors, where a custodian is required.
- Similar to the conditions for retail CISs as above, any appointed service providers must usually be established in a recognized jurisdiction, with other jurisdictions being considered on similar lines.
- Service providers who are subsidiaries of entities established in recognized jurisdictions are also considered by the MFSA.
- If the PIF intends to appoint service providers who are not in a recognized jurisdiction, it is recommended that an application for the preliminary indication of acceptability is first made before undertaking an application for a PIF license.

**Licensable activities**

**Fund manager**

A CIS may take on the services of a fund manager who would be responsible for the discretionary investment choices of its assets.

In order to act as a fund manager for a local UCITS scheme, the proposed manager must:

- Have an established place of business in Malta.
- Hold an Investment Services License in terms of the ISA.
- Qualify as a Maltese management company in terms of the UCITS regulations.

Foreign-based managers are also considered on a case-by-case basis by the MFSA. In the case of Maltese non-UCITS schemes, the proposed manager must:

- Be established in Malta.
- Hold an Investment Services License in terms of the ISA.
- Be authorized to provide fund management services.

Again, foreign fund managers are also considered subject to an assessment.

The requirements for accepting fund managers take into account whether they have adequate financial resources and liquidity at hand to be able to carry out their duties effectively, and whether they possess the necessary skills and experience to act as fund managers. Terms and agreements inherent in an appointment or replacement of a fund manager must be agreed beforehand with the MFSA, which in addition, has the right to demand the replacement of an existing fund manager.

Subject to MFSA approval, fund managers may appoint submanagers with either limited or full discretion in respect of the management of the scheme. In these circumstances, the fund manager is required to exercise due diligence and care in the choice of submanager. Final responsibility still rests with the fund manager.

Whenever the manager of a Maltese UCITS scheme outsources part of its functions, a number of conditions apply:

- The mandate may not prevent the effectiveness of supervision over the manager, and in particular, shall not prevent the manager from acting in the best interest of investors.
If investment management functions are outsourced, the mandate may only be given to entities that possess the proper license and authority from the MFSA. Investment management functions cannot be delegated to the custodian or any other entity where a conflict of interest might exist. The manager must ensure that proper controls exist to enable it to monitor the activities of the outsourced service provider. The manager may, at any time and with immediate effect, provide further instructions or reverse the delegation given to an outsourced service provider if this is in the interest of investors. The full prospectus must list all those functions that the manager is allowed to delegate. The manager is not permitted to delegate activities to such an extent that the manager effectively becomes a “brass plate” entity.

A PIF may also appoint a manager, in which case the proposed manager must:

- Be established in Malta
- Hold an Investment Services License in terms of the ISA
- Be authorized to provide fund management services

Foreign managers may also be accepted on a case-by-case basis if established in a recognized jurisdiction. A number of conditions apply to managers in PIFs:

- A PIF may opt not to have a manager, in which case the supplementary conditions applicable to self-managed funds will apply
- The manager of a PIF may also carry out the functions of the administrator if the latter is not appointed
- The PIF must have written approval of the manager from the MFSA before making an appointment or replacement
- Where the appointment or replacement is being made on behalf of a PIF targeting extraordinary investors, the PIF will need to make a notification to the MFSA at least 10 working days in advance. Here, the directors, general partners or trustee confirm and give evidence that the proposed manager has the authorization to provide fund management services.
The main functions of a custodian are to safekeep the assets of the scheme, and to ensure that the fund manager is acting within the investment and borrowing powers granted through the prospectus or offering/marketing document, and in accordance with the SLCs and the constitutional document.

The following rules apply to retail CISs:

- Malta-based UCITS and non-UCITS must have a custodian
- The custodian must be established in Malta and must be in possession of an Investment Services License
- Custodian must show fit and proper status as laid out in Chapter 2 to ensure that proper financial resources and controls, and the right mix of skills, experience, systems and expertise are present. Normally, credit institutions or other entities considered fit for purpose by the MFSA are appointed in this function
- The custodian must be separate and independent from the fund manager and is duty bound to act exclusively in the interests of investors. Any facts, relationships, arrangements or circumstances that may threaten this independence must be directly reported to the MFSA
- Terms and agreements inherent in an appointment or replacement of a custodian must be agreed beforehand with the MFSA, which in addition, has the right to demand the replacement of an existing custodian

Variations exist in the custodian appointment process for PIFs:

- PIFs targeting qualifying investors are obliged to have a custodian
- If an appointment is made, the custodian will have to be independent from the manager, and does not need to be established locally (any local custodians will need to hold a valid license in terms of the ISA)
- Custodians coming from foreign jurisdictions will be assessed by the MFSA in accordance with the introductory part of this Chapter
- The PIF must have written approval of the custodian from the MFSA before making an appointment or replacement. Where the appointment or replacement is being made on behalf of a PIF targeting extraordinary investors, the PIF will need to make a notification to the MFSA at least 10 working days in advance. In the notification, such PIFs are required to provide a confirmation by the directors, general partners or trustee that the proposed custodian has the authorization to provide fund services, and must produce evidence of this
- If the PIF opts not to assign a custodian, responsibility for safekeeping will automatically fall on the directors, general partners, trustee and officers as the case may be, and the applicant will need to clearly describe the arrangements in place to ensure the safekeeping of assets
There is no obligation on Maltese UCITS and non-UCITS schemes to appoint an advisor, nor does the advisor need to be established in Malta if an appointment is made.

The main role of the investment advisor is to give financial advice to the scheme or its manager in connection with the investment and reinvestment of assets in the scheme. As such, the investment advisor has no discretion on the assets of the scheme.

The following rules apply to retail CISs:

- There is no obligation on Maltese UCITS and non-UCITS schemes to appoint an advisor, nor does the advisor need to be established in Malta if an appointment is made.
- Fund managers can appoint investment advisors themselves, in which case, the advisor would be subject to the MFSA’s prior approval.
- Where the proposed advisor is based in Malta, the advisor would need to have an Investment Services License and be duly authorized to provide investment advice to the CIS.
- Terms and agreements inherent in an appointment or replacement of an advisor must be agreed beforehand with the MFSA, which in addition, has the right to demand the replacement of an existing advisor.

These rules apply to advisors in PIF structures:

- PIFs are not obliged to have a third-party advisor (and if appointed, does not need to be established in Malta).
- If the manager (rather than the PIF) appoints an advisor, there will be no eligibility criteria or a requirement to obtain MFSA’s prior approval on the matter. However, if an advisor who is established in Malta is appointed by the PIF, the proposed advisor must have a license and authorization to provide investment advice in terms of the law.
- The PIF must have written approval of the advisor from the MFSA before making an appointment or replacement.
- Where the appointment or replacement is being made on behalf of a PIF targeting extraordinary investors, the PIF will need to make a notification to the MFSA at least 10 working days in advance. In the notification, such PIFs are required to provide a confirmation by the directors, general partners or trustee that the proposed investment advisor has the authorization to provide such advisory services, and produce evidence of this.
Application process for an Investment Service License

The application process for an Investment Service License is made up of three steps as follows:

1. Preparatory phase:
   - Promoters meet MFSA officials and discuss the proposal put forward. As such, it is essential that promoters are prepared with a detailed proposal of the activities before engaging in discussions with the MFSA.
   - Ordinarily, these meetings are held before any formal applications for a license are made in order to allow sufficient time for guidance and clarifications to take place.
   - Following these preliminary meetings, the promoter must submit a draft application form together with all the appropriate supporting evidence that will be subject to review by the MFSA. Documentation requirements are considered in Annex 1.
   - The outcome of this review is a feedback process between the MFSA and the promoters, who may be required to submit additional evidence, make corrections and give further proof of the fit and proper test, among others. Ordinarily, the MFSA will submit initial comments within three weeks of receipt of the draft application.
   - During this phase, the MFSA will consider the specifics of the proposal and decide on which SLCs will be applicable.
   - SLCs may be applied, dropped, amended or supplemented depending on the case. Directors, general partners, or the manager in the case of unit trusts/common contractual funds (as applicable) will, at all times, be responsible for compliance with SLCs.

2. Pre-licensing phase:
   - Following the resolution of review points noted in the draft application, an “in principle” approval for license will be issued by the MFSA.
   - The applicant will then need to finalize any outstanding issues, and submit a signed final application form together with supporting documents.
   - Once all issues are resolved, the MFSA will proceed to issue a license.

3. Post-licensing/pre-commencement of business phase:
   - The MFSA will determine whether the applicant needs to satisfy any post-licensing matters before formal commencement of business can take off.

Recognized persons and involved parties

**Fund administrator**

Where a proposed fund administrator intends to provide administration services in or from Malta to a License Holder in Malta (or equivalent authorized person or scheme overseas), the proposed administrator will require a valid recognition certificate from the MFSA.

Fund administration services generally include, among others:

- Preparation of NAV calculation
- Reconciliations
- Pricing the investment portfolio
- Payment of bills
- Transfer agency
- Preparation of financial statements
- Fund accounting
- Performance reporting
- Compliance reporting
- Preparation of contract notes
In the case of Maltese UCITS and non-UCITS schemes, fund administration services can be carried out either by a third party or by the fund manager (if no administrator is appointed).

The MFSA will only issue a recognition certificate to applicants who are able to show a fit and proper status in terms of Chapter 2 (also applies to the applicant’s directors and officers), and the ability to comply with legal and regulatory obligations.

The application for a recognition certificate is made up of the following three stages:

1. Preparatory phase:
The applicant will hold preliminary meetings with the MFSA where guidance can be obtained as necessary, and the applicant’s proposal can be discussed in detail. Following these discussions, applicants present a draft application document together with supporting material to the MFSA for review, which may request follow-ups, corrections or additional evidence. The required application documents must be accompanied by a payment of the application fee.

2. Pre-recognition phase:
Once review points noted in the draft application are resolved and due diligence enquiries are satisfied, an “in principle” approval for recognition will be issued by the MFSA. The applicant will then need to finalize any outstanding issues, and submit a signed final application form together with supporting documents, where a full recognition will be issued.

3. Post-Recognition/pre-commencement of business phase:
The MFSA will determine whether the applicant needs to satisfy any post-recognition matters before formal commencement of business can take off.

Terms and agreements inherent in an appointment or replacement of a fund administrator must be agreed beforehand with the MFSA, who also have the right to demand the replacement of an existing fund administrator.

PIFs may appoint an administrator provided that:

- Administrators established in Malta must hold a Fund Administration Certificate
- Foreign managers may be accepted on the criteria set out for service providers in the opening part of this Chapter
- PIFs may elect that the manager carries out the administrative function and thereby opt not to have a separate administrator
- The PIF must obtain a written approval of the administrator from the MFSA before making an appointment or replacement.

Where the appointment or replacement is being made on behalf of a PIF targeting extraordinary investors, the PIF will need to make a notification to the MFSA at least 10 working days in advance. In the notification, such PIFs are required to provide a confirmation by the directors, general partners or trustee that the proposed administrator has the authorization to provide fund administration services, and must produce evidence of this.
Compliance officer

Even though the directors, general partners or managers are always responsible for a CIS’s compliance with license conditions, local regulations require all license applicants to identify a compliance officer to assist the CIS in ensuring there are no irregularities and divergences from such conditions.

The role of a compliance officer carries significant responsibility also due to the extent of the regulatory implications should any problems arise. The MFSA expects all persons taking up this role to view their position very seriously and to ensure they are clear about the extent of their responsibilities and where they are personally liable.

Compliance officers are expected to be able to demonstrate:

- High ethical standards
- Independence of judgment
- Knowledge of investment license conditions, and local laws and regulations

The compliance officer must also prepare a Compliance Report in accordance with the criteria set out in Chapter 7.

Before appointing or replacing a compliance officer, the CIS must observe the following requirements:

- The scheme must conduct appropriate due diligence checks on the proposed person and obtain written confirmation from the MFSA authorizing it to appoint or replace the proposed person
- The request by the CIS must be sent at least 21 days before the proposed appointment or replacement date
- The request must be also accompanied by a personal questionnaire to be completed by the person being proposed to act as compliance officer
- The CIS is required to advise the MFSA when a resignation or removal of the compliance officer occurs, in which case, the compliance officer must indicate whether the departure had any regulatory implications

The compliance officer must also have the required procedures, staff and systems in place to be able to detect breaches by license holders.
In accordance with local anti-money laundering rules, the directors, general partners or fund manager of a CIS are ultimately responsible for ensuring that all steps are taken to detect and prevent transactions that could lead to the act of money laundering. The law also requires scheme officials to appoint an MLRO who may also act as the compliance officer.

MLROs must ensure that:

- All staff are familiar with rules on the prevention of money laundering
- Periodic training is provided on money laundering rules and practices
- Any suspicious transactions are reported to the Financial Intelligence Analysis Unit and the MFSA irrespective of whether the transaction has been carried out
- All know-your-customer procedures and identification requirements have to be closely followed and authenticated for all customers

Before appointing or replacing an MLRO, the scheme must observe the following requirements:

- Conduct appropriate due diligence checks on the proposed person and obtain written confirmation from the MFSA authorizing it to appoint or replace the proposed person
- The request by the scheme must be sent at least 21 days before the proposed appointment or replacement date. This must be also accompanied by a personal questionnaire to be completed by the person being proposed to act as the MLRO
- The scheme is required to advise the MFSA when a resignation or removal of the MLRO occurs, in which case, the MLRO must indicate whether the departure had any regulatory implications

Certain situations may exist where a PIF has all the service providers, and directors, general partners or trustee, based abroad. If this case applies to a PIF, the scheme will have to appoint a local representative to be a point of liaison with the MFSA, receive instructions from and provide information to the MFSA, and to act as the MLRO and compliance officer (if so desired). The PIF is duty bound to provide access to the information required by the local representative to be able to carry out their functions. Written approval of the local representative must be obtained from the MFSA before effecting an appointment or replacement.

A CIS must be audited by an independent auditor, holding a practicing certificate granted by the Malta Accountancy Board, in accordance with International Standards on Auditing issued by the International Federation of Accountants. A CIS is subject to the following obligations:

- The scheme has to provide all necessary information and explanations that are required by the auditor(s) to fulfill their duties
- The appointed auditor must, at all times, follow ethical and legal obligations in terms of maintaining independence and acting freely of any conflicts of interest
- The extent of the auditor’s responsibilities must be agreed upon in writing by means of a signed letter of engagement signed by both the scheme and the acting auditor
- In addition to the audit report, the auditor must also provide the scheme with a management letter drawn up in accordance with International Standards on Auditing
- The scheme is required to advise the MFSA if, at any time, the scheme is informed that the auditors intend to submit a qualified opinion
7. Reporting, disclosure and filing requirements
The Companies Act requires company directors to prepare financial statements for each financial period which give a true and fair view of the financial position of the company as at the end of the financial period, and of the profit or loss for that period in accordance with the requirements of IFRS.

Directors are responsible for keeping proper accounting records and ensuring that the financial statements have been properly prepared in accordance with legal obligations. This also makes directors responsible for safeguarding the assets of the entity and for taking reasonable steps for the prevention and detection of fraud and other irregularities.

Disclosure and filing obligations of companies include:

- Annual return to be filed with the registry, which includes details of:
  - Shareholders
  - Directors
  - Company secretary
  - Share capital
- Annual audited financial statements to be filed by not later than 10 months plus 42 days from the accounting year-end date of the company
- Income tax return to be filed by not later than one year following the accounting year-end. This period is extended if income tax returns are filed electronically

In all reporting aspects, SICAVs are required to follow the provisions applicable to companies. However, the Fifth Schedule of the Companies Act provides other disclosure requirements that specifically apply to the financial information and directors’ reports of SICAV structures. The Companies Act also exempts SICAVs from the obligation to complete certain sections of the annual return.

Similar requirements are also imposed through the Investment Service Rules on retail CIS, and consequently apply to other structures that are not SICAVs.

Retail CISs in general are required to submit the following documentation:

- Half-yearly report (if applicable)
- Annual report (including audited financial statements)
- Regulatory statistical return

Annual reports must also include an auditor’s opinion stating that all disclosures required by the MFSA and SLCs are included. Additionally, the scheme must provide free copies of the half-yearly and annual reports to unit holders upon request. Reports must be made available at public locations, or through other means specified in the prospectus.

CISs listed on the MSE must also adhere to increased ongoing reporting obligations in accordance with the MSE admissibility requirements. These obligations vary depending on whether the scheme is open or closed-ended, and whether it is authorized for primary or secondary listing.
Investment funds in Malta
Reporting, disclosure and filing requirements

General half-yearly and annual report requirements

In line with the Investment Service Rules, the minimum disclosure requirements of both the half-yearly and annual reports include:

- A balance sheet showing:
  - Securities
  - Debt instruments
  - Bank balances
  - Other assets
  - Total assets
  - Liabilities
  - NAV
  - Details of accounting and valuation policies
- Number of units in circulation
- The NAV per unit or share, and mid-market price at the beginning and end of the period
- An analysis of the portfolio by economic, geographic, currency, or other appropriate measure. The analysis must show the value of each investment category as a percentage of net assets and of total scheme assets, and must distinguish at least between:
  - Transferable securities admitted to listing on a recognized investment exchange
  - Transferable securities dealt in on any other regulated market
  - Recently issued transferable securities
  - Other transferable securities, debt instruments, FDIs and investments as applicable
- The notional exposure relating to each position in FDI calculated using the commitment approach
- A statement of the change in composition of the portfolio
- A comparative table covering the last three accounting periods, including the total NAV of the company and the net asset value per unit or share
- Names and addresses of all functionaries

In addition, the directors’ report of a SICAV must provide sufficient information to allow investors to make an informed judgment of the financial performance of the company and its activities. CISs established as umbrella funds must also provide consolidated financial statements.

Additional requirements to the half-yearly report

- If more than 10% of assets are held with credit institutions, details of the amounts held and the names of the institutions. Otherwise, the scheme must submit the relevant details to the MFSA
- After-tax results whenever an interim dividend is paid or proposed

Additional requirements to the annual report

- A statement of the developments concerning the assets of the company during the accounting period, including:
  - Income from investments
  - Other income
  - Management charges
  - Depositary’s charges
  - Other charges and taxes
  - Net income
  - Distributions and income reinvested
  - Changes in capital account
  - Appreciation or depreciation in value of investments
  - Other changes affecting the value of assets and liabilities of the company
- Details by category of transaction of the resulting amount of commitments
- A custodian’s report stating:
  - That the scheme has been managed in accordance with the mandates of the constitutional documents, SLCs and the MFSA
  - Reasons for noncompliance, and the steps taken to rectify the situation
- Details of significant changes to full prospectus during the period
- A summary of each breach or regulatory sanction imposed, or a statement that there were none
- Audit report of the financial statements in the annual report
Retail CISs are required to submit a monthly statistical return to the MFSA which includes the following information:

- Name of the scheme
- Month-ended
- Year
- Whether return is submitted by the scheme, its manager or administrator
- Base currency
- Total NAV in base currency
- Total NAV in euro (if different than base currency)
- NAV per unit at month-end
- Percentage change in NAV per unit compared with previous month
- Date when NAV was last calculated
- Number of units in circulation
- Net proceeds from issue of units during the month
- Payments made for the repurchase of units during the month
- Net amount generated by issues/repurchases during the month

Similarly, PIFs must submit a quarterly return with the information below:

- Name of PIF
- Quarter-ended
- Year
- Whether return is submitted by the PIF or its manager
- Base currency
- Total NAV in base currency
- Total NAV in euro (if different than base currency)
- Date when NAV was last calculated

The compliance officer of a CIS must prepare a compliance report every six months that will have to be presented to the top officials (directors, general partners, trustee or fund manager, as applicable). This report must contain:

- Details relating to any breaches to investment and borrowing restrictions
- Complaints from unit holders and how these have been handled
- An exposition of valuation errors over 0.5% of NAV and how these have been handled
- Other material compliance issues relating to the period covered by the report
- A confirmation by the MLRO that all prevention of money-laundering requirements have been adhered to

The compliance report must be made available to the MFSA when compliance visits are carried out.
The implementation of any changes to the constitutional document of a scheme will require the approval of the MFSA. The local regulations set out the minimal information requirements that must be included in this document.

In the case of investment companies and limited partnerships, the constitutional document must:

- Indicate that the assets of the scheme will be entrusted to a custodian
- Specify the conditions under which a manager or custodian may be replaced, including the right of the MFSA to require such replacement. There shall be provisions to ensure the protection of unit holders in such circumstances
- Specify the procedure for the creation and cancellation of units
- Define the asset valuation method of the scheme
- Provide that units shall be issued or sold (redeemed or repurchased) at a price arrived at by dividing the NAV of the scheme by the number of units outstanding. Such price may be increased (decreased) by duties and charges
- Provide that units shall not be issued unless the equivalent of the net issue price is paid into the assets of the scheme within the time limits prescribed in the constitutional documents. This provision does not preclude the issue of bonus units
- Determine the frequency of the calculation of the issue and repurchase prices. Preferably, this is carried out each business day and at least twice each month. The prices shall be made available with similar frequency. The scheme shall repurchase units according to the terms of its constitutional documents
- Provide that the scheme, manager, or custodian shall issue registered certificates representing the portions of the scheme, or alternatively written confirmation of entry in the register of units or fractions of units
- Provide that rights attaching to fractions of units shall be exercisable in proportion to the fractions of a unit held except for voting rights which shall only be exercisable in whole units
- Prescribe the basis upon which the manager, administrator, investment advisor and the custodian may charge remuneration and expenditure to the scheme
- Lay down provisions relating to the allocation and distribution of income

Alternatively, the constitutional document of mutual funds and unit trusts must:

- Provide that the trustee will ensure that the sale, issue, repurchase, redemption and cancellation of units effected by or on behalf of the scheme are carried out in accordance with the MFSA's requirements, the constitutional documents and the most recent prospectus
- Provide that the trustee will calculate the value of units according to the constitutional documents
- Provide that the trustee shall carry out the instructions of the manager unless they conflict with the SLCs or the constitutional documents
- Provide that the trustee shall ensure that in transactions involving the scheme’s assets, consideration is remitted to it within time limits which are acceptable market practice in the context of a particular transaction
- Provide that the trustee shall ensure that the scheme’s income is applied in accordance with the constitutional documents
- Provide that the trustee shall, each annual accounting period, enquire into the conduct of the manager and report to the holders of units on whether:
  - The manager acted within borrowing and investment limitations
  - The manager followed the SLCs and constitutional documents’ requirements
• Provide that the trustee will be liable to the manager, the scheme and the holders of units for any loss suffered by them as a result of its failure to perform its obligations or its improper performance of them. Unit holders can enforce this liability through the manager
• Provide that the liability of the trustee shall not change where some or all of the assets in its safekeeping have been entrusted to third parties
• Preclude the trustee from entering into contracts for the sale of assets not belonging to the scheme
• Provide that the trustee shall notify the MFSA of any breach of the SLCs or of any breach of the provisions of the constitutional documents as soon as it becomes aware of the breach
• Prescribe the remuneration and the expenditure which the manager is empowered to charge to the unit trust and the method of calculation of such remuneration
• Provide that a general meeting of the holders of units shall be held at least annually
8. Marketing and promotion
Promotion of a scheme

UCITS schemes wishing to market units within the EU may do so by utilizing passporting rights as described in Chapter 9. Other types of retail schemes may only be promoted abroad if the scheme fully complies with the rules of the target country. In this respect, specific requirements are imposed locally:

- Any investment advertisement must have the prior approval of the compliance officer before being issued, and must refer to any prospectus (and supplements) in issue.
- The scheme must publicize the sale, repurchase and redemption of its units at least twice a month. Unless investors’ interests are prejudiced, and if prior approval has been sought from the MFSA, the scheme can reduce its publicity frequency to once a month.

In the case of PIFs, schemes may only promote their units to the class of investors to which they relate, namely, experienced, qualifying or extraordinary investors. The following conditions generally apply:

- Any promotional material must state that the units cannot be taken up by individuals not satisfying the relevant investor criteria.
- The PIF is not permitted to accept subscriptions from any other type of investor except those targeted by the PIF.
- Promotional material will need to be pre-approved by the scheme’s compliance officer, and has to indicate the existence of an offering or marketing document, and where this can be obtained.
- Promotion abroad can only be made if the rules of the foreign jurisdiction are fully complied with.
The full prospectus must be offered to prospective investors free of charge, through either from the scheme’s offices or the financial intermediary selling the scheme’s units

The prospectus

- Retail schemes must prepare a prospectus (open-ended schemes can also opt to prepare a simplified prospectus) that will need to be approved by the MFSA before being published.
- The aim of the prospectus is to assist prospective investors in obtaining all the necessary information before committing any investment decisions, and must also include all investment policies of the scheme.
- The prospectus must contain details relating to the assets, liabilities, financial position, profit and loss and unit holder rights of the scheme.
- The full prospectus must be offered to prospective investors free of charge, and would have to be available either from the scheme’s offices or through the financial intermediary selling the scheme’s units. If a simplified prospectus is also prepared, the scheme must provide this free of charge to prospective investors and make the full prospectus available upon request. Any amendments to the prospectus must be agreed with the MFSA before being published.
- Investment companies or limited partnerships must file a signed full/simplified prospectus with the company registry. The full/simplified prospectus of unit trusts or common contractual funds must be filed in the Securities Unit within the MFSA.
- Close-ended schemes are required to make the prospectus available to the public as early as possible and within a reasonable time frame before an initial public offer (IPO). If the scheme has not yet been admitted to trade in a regulated market, the scheme must make a prospectus available at least six working days in advance of an IPO. Any material mistakes, inaccuracies or need for additional information that are detected before the final closing of the public offer, and which affect investor decisions, must be published within seven working days through a supplement approved by the MFSA.
- Investors who had already subscribed for units before a supplement was issued, may withdraw within two working days following the publication of the supplement.

Detailed information regarding the contents of prospectuses is provided in Annex 6.
PIFs promoted as experienced and qualifying investors must prepare an offering document while PIFs targeting extraordinary investors can choose to prepare either an offering document or a brief marketing document. The following conditions generally apply:

- These documents must be provided to prospective investors free of charge and are intended to hold all the necessary information for investors to be able to make reasonable investment decisions.
- Documents must be approved by the PIF and notified to the MFSA. Any amendments would have to be agreed with the MFSA before publication.
- A PIF targeting extraordinary investors may need to make amendments relating to matters that would normally require approval from the MFSA (such as the creation of new classes). In these cases:
  - The scheme must submit such matters for approval before making amendments to the offering or marketing document.
  - The scheme must submit the proposed amendments and their approval by the scheme, to the MFSA within five working days from publication date.
- PIFs set up as either investment companies or limited partnerships must file a signed offering or marketing document with the company registry. The offering or marketing document of unit trusts or common contractual funds must be filed in the Securities Unit within the MFSA.
- The contents of marketing and offering documents are laid out in Annex 5.
9. Passporting into and out of Malta
As a result of the transposition of EU directives into Maltese legislation, European UCITS schemes wishing to market their units in Malta can make use of passporting rules and waive any requirements to obtain a CIS license in terms of the ISA. In order to do this, however, the scheme must comply with certain notification procedures provided in local regulations prior to engaging in marketing activities. Once this notification procedure is completed to the satisfaction of the MFSA, the scheme may market its subfunds in Malta and the passport of the European UCITS scheme will be respected.

Maltese UCITS schemes wishing to market themselves outside Malta will have to obtain an attestation from the MFSA confirming that it qualifies as such a scheme under local regulations. Another attestation will only be required whenever the scheme is subject to material changes such as the creation of a new subfund or a change in management.

UCITS passporting regulations also apply to schemes’ managers and their custodians. In addition, passporting rights are exercisable by Maltese and European investment firms, and by persons operating multilateral trading facilities established in a Member State, EEA State or Malta.

The Investment Service Rules issued by the MFSA provide a number of scenarios that may fall under the definition of marketing. However, these rules also point out that the term “marketing” can also be broader. European UCITS schemes are encouraged to dialog with the MFSA if in doubt over whether a particular action can be defined as marketing. Certain exemptions from following notification procedures apply to European UCITS schemes.

### Passporting into Malta

**European investment firms**

Even though European investment firms exercising passport rights do not require an Investment Services License to operate in Malta, such schemes need to follow the establishment conditions provided in Maltese law before marketing units in Malta. European firms wishing to establish a branch in Malta are subject to the following rules:

- The scheme must provide its home regulatory authority with:
  - A statement of their intent to establish a branch in Malta
  - A program of operations setting out the services to be offered
  - The organizational structure of the branch together with whether tied agents shall be used
  - The registered office in Malta where documents may be obtained
  - Contact information of the persons managing the branch
- The scheme’s home state authorities will then provide this information to the MFSA together with details of the accredited compensation scheme of which the scheme is a member
- The scheme’s branch may not commence business in Malta unless:
  - The MFSA has approved the go-ahead, or
- Two months have elapsed from the date of transmission of information from the European regulatory authority to the MFSA
- The MFSA may require the branch to provide periodical reports on its activities in Malta for statistical purposes
- The branch is also required to comply with all the relevant obligations laid out in the local laws and certain specific SLCs

European investment firms may also choose to provide services in Malta without establishing a branch. In these cases, the scheme is subject to rules closely similar to the above with a few exceptions:

- The scheme must provide its home regulatory authority with:
  - A statement of its intent to provide services in Malta
  - A program of operations setting out the services to be offered, and whether tied agents will be used
- The scheme’s home state authorities will then provide this information to the MFSA
- The scheme’s branch may not commence business in Malta unless:
  - The MFSA has approved the go-ahead, or
- If tied agents are used, the MFSA may request the scheme’s home state authority to disclose the identity of the tied agents and publish the information
European UCITS schemes

European UCITS schemes wishing to market units in Malta need to undertake a number of procedures as indicated below:

- The MFSA must be provided with:
  - A written confirmation of the scheme’s intention to market units locally
  - A confirmation by its home state regulators that the fund conforms to the conditions of EU directives
  - Fund rules or instruments of incorporation
  - The full and simplified prospectus
  - The latest annual/interim reports, where appropriate
  - Details of the arrangements made of the marketing of its units in Malta

- Two months after the submission of this information, the European UCITS scheme will be permitted to commence business in Malta unless the MFSA determines that there is a violation of regulatory requirements.

- European UCITS marketing units in Malta will have to observe local legal requirements where certain provisions are not covered by EU directives, and in terms of advertising practices.

In the case of European firms set up as umbrella funds, the notification procedures will only apply when the scheme wishes to market subfunds in Malta. However, all subfunds intended to be marketed locally may be referred to in the same notification procedure.

European management companies

European management firms wishing to establish a branch in Malta are subject to the following rules:

- The firm must provide its home regulatory authority with a notice containing the requisite details of their home state in accordance with EU directives
- The firm must also receive a consent notice from their supervisory authority showing their approval of the firm’s intentions
- The firm’s branch may not commence business in Malta unless:
  - The MFSA has approved the go-ahead, or
  - Two months have elapsed from the date of transmission of the consent notice to the MFSA
- The MFSA may require the branch to provide periodical reports on its activities in Malta for statistical purposes

European investment firms may also choose to provide services in Malta without establishing a branch. In these cases, European firms are subject to the same notification requirements enforced when a branch is to be established.
Passporting out of Malta

Maltese UCITS schemes wishing to market units in another Member State or EEA State need to undertake a number of procedures as indicated below:

- A written confirmation must be sent to the MFSA showing the scheme's intention to market units abroad
- The foreign authority of the target jurisdiction must simultaneously provide, in writing, the following:
  - An attestation by the MFSA that the fund conforms to the conditions of EU directives
  - Fund rules or instruments of incorporation
  - The full and simplified prospectus
  - The latest annual/interim reports, where appropriate
  - Details of the arrangements made of the marketing of its units in the target state

- Two months after the submission of this information, the Maltese UCITS scheme will be permitted to commence business in the target state unless the foreign jurisdiction determines that there is a violation of regulatory requirements
- Maltese UCITS marketing units abroad will have to observe the legal requirements of the target state where certain provisions are not covered by EU directives, and in terms of advertising practices
- Schemes must take adequate measures to ensure that local facilities are available for making payments to unit holders, repurchasing and redeeming units, and providing all other required information

Where a Maltese scheme wishes to provide services in the EU or any EEA State without establishing a branch, the MFSA will need to be provided with:

- A list of services it wishes to provide, indicating whether tied agents shall be used
- The Member State or EEA State in which it intends to operate

Maltese UCITS schemes wishing to market units in another Member State or EEA State need to undertake a number of procedures as indicated below:

- A written confirmation must be sent to the MFSA showing the scheme's intention to market units abroad
- The foreign authority of the target jurisdiction must simultaneously provide, in writing, the following:
  - An attestation by the MFSA that the fund conforms to the conditions of EU directives
  - Fund rules or instruments of incorporation
  - The full and simplified prospectus
  - The latest annual/interim reports, where appropriate
  - Details of the arrangements made of the marketing of its units in the target state

- Upon request, the MFSA will then furnish the foreign regulator with the documents obtained from the scheme
- The scheme's branch may not commence business abroad unless:
  - The foreign regulator has approved the go-ahead, or
  - Two months have elapsed from the date of transmission of information from the MFSA to the European regulatory authority

In accordance with local laws and EU directives, Maltese UCITS schemes may also utilize their passporting rights to provide services in other EU Member States.

As with European investment firms, local schemes wishing to establish a branch in another EU jurisdiction need to observe a number of notification procedures:

- The MFSA must be provided with
  - A written statement with the scheme's intention to establish a branch in EU or EEA territory, specifying which territory
  - A program of operations setting out the services to be offered
  - The address of the proposed branch from where documents may be obtained
  - The proposed organizational structure and persons responsible for the management of the branch
  - Other clarifications that may be required by the MFSA

- Upon request, the MFSA will then furnish the foreign regulator with the documents obtained from the scheme
- The scheme's branch may not commence business abroad unless:
  - The foreign regulator has approved the go-ahead, or
  - Two months have elapsed from the date of transmission of information from the MFSA to the European regulatory authority
Maltese management companies

Maltese managers wishing to establish a branch in another EU jurisdiction need to observe a number of notification procedures:

- The MFSA must be provided with:
  - A written statement with the firm’s intention to establish a branch in an EU or EEA territory, specifying which territory
  - A program of operations setting out the services to be offered
  - The address of the proposed branch from which documents may be obtained
  - The proposed organizational structure and persons responsible for the management of the branch
  - Other clarifications that may be required by the MFSA
- The MFSA will then furnish the foreign regulator with a consent notice within three months of receiving all documentation from the firm
- If the MFSA decides to refuse the issue of a consent notice, the firm shall be notified accordingly within a maximum of two months. This refusal may be appealed in tribunal
- The manager’s branch may not commence business abroad unless:
  - The foreign regulator has approved the go-ahead, or
  - Two months have elapsed from the date of transmission of information from the MFSA to the European regulatory authority

Where a Maltese management company wishes to provide services in the EU or any EEA State without establishing a branch, the MFSA will need to be provided with:

- A list of services it wishes to provide.
- A program of operations
- The Member State or EEA State in which it intends to operate
- The MFSA shall, within one month, provide the foreign jurisdiction with a copy of the notice received. At this point, the management company may commence business subject to the conditions imposed by the target state.
Maltese investment firms

European UCITS schemes passporting into Malta must keep all documents and information up to date. The MFSA must also be informed whenever documents which were submitted during the notification process change. This requirement would also cover changes to fund rules or instruments of incorporation, and prospectus details. Schemes must also ensure that:

- The latest published annual report/half-yearly report are submitted to the MFSA
- Marketing arrangements comply with those specified in the Investment Service Rules
- Payment of an annual supervisory fee is made

Schemes branching into Malta are required to ensure that there are no contraventions of their obligations in terms of local laws and regulations. Whenever the MFSA notes a contravention, an escalation process becomes applicable:

- The MFSA will inform the scheme in writing whenever a contravention in local laws is noted. Any contravention of European directives, or provisions where the MFSA does not have supervisory powers, may be referred to the relevant European regulatory authority.
- When the European investment firm fails to correct irregularities, the MFSA will escalate its procedures to ensure the irregularity ends, and communicate findings with European regulators.
- If, despite these measures, the scheme continues to breach regulations, the local and foreign regulators will escalate further their measures to ensure investor safety. This may also result in a prohibition from making further transactions in Malta. Penalties may also be applied in case of persistent breaches.
10. Taxation
Economic growth in Malta is fully supported by a flexible and sophisticated local tax regime. Malta is the only EU Member State to operate a full imputation system, which means that tax paid by the company will essentially remain a prepaid tax on behalf of the shareholders’ tax liability.

Under the Maltese refundable tax credit system, tax is paid by a company registered in Malta on its profits, but when such company distributes its profits to its shareholders, irrespective of residence, the shareholders are entitled to receive a refund of a substantial part of the tax paid by the distributing company.

Malta also enjoys an extensive range of double taxation treaties with the countries presented in Annex 8. The local tax regime also contemplates benefits in cases where no bilateral agreements exist.

The taxation of CISs is regulated in:
- The Income Tax Act (ITA)
- The Income Tax Management Act
- The Collective Investment Scheme (Investment Income) Regulations

The Department of Inland Revenue has also published guidelines relating to the taxation of CISs.

Since the enactment of income tax measures for CISs in 2001, additional subsidiary regulations have also been issued including LN 55 of 2001 and LN 111 of 2002. Regulatory law establishes a “substance test” for CISs, indicating that a license is granted to the CIS provided that a head office and registered office in Malta is established.

The tax treatment of CISs depends on the classification of the fund for fiscal purposes. Maltese law distinguishes between prescribed and nonprescribed funds. This classification is important to establish whether and how tax is to be charged on investment income, capital gains and dividend distributions. The table below highlights the main properties of each class:

<table>
<thead>
<tr>
<th>Prescribed</th>
<th>Nonprescribed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formed under laws of Malta</td>
<td>Any fund which does not qualify as a prescribed fund (including overseas funds or Malta-registered funds with more than 15% of assets situated outside Malta)</td>
</tr>
<tr>
<td>Over 85% of the fund’s assets are situated in Malta</td>
<td>An overseas UCITS scheme registered in accordance with foreign law</td>
</tr>
</tbody>
</table>
The classification may subsequently be changed if there is an alteration in the proportion of assets situated in Malta. A fund with assets both within and outside Malta will need to monitor the value of assets on a daily basis in order to ensure the proper classification. It must be noted that the change in classification is up to the discretion of the Commissioner of Inland Revenues, and funds need to retain the existing classification until a fresh classification is made. The following sections will deal with the salient provisions which apply to taxation at fund and investor level for prescribed and nonprescribed funds.

The timing of the classification is of great relevance for tax purposes. When a fund is reclassified from a nonprescribed to a prescribed fund, subsequent disposals will suffer withholding tax. However, the securities will be deemed to relate to a nonprescribed fund. This treatment will continue to apply until all securities relating to the previously classified nonprescribed fund are disposed of. When this occurs, rules applicable to prescribed funds will come into force. Alternatively, when a prescribed fund is reclassified as a nonprescribed fund, the tax liability will be computed as if the fund were always a nonprescribed fund, and no relief will be given for gains originating before the reclassification.

Since the charging of withholding tax depends on whether the fund is prescribed or nonprescribed, CISs must inform payers (such as banks) of their status as authorized by the Commissioner of Inland Revenue. Any reclassifications must be duly notified as well. If this notification is not made, payers generally assume that withholding taxes are to be charged. Additionally, it must be noted that CISs may not opt to receive investment income which is not charged the appropriate withholding tax.

As discussed in the following sections, withholding taxes may apply depending on the type of fund. Where taxes are charged, recipients have the right to choose not to have a deduction of withholding tax. However, this would not be available if:

- The investment income consists of capital gains
- The payer is an authorized financial intermediary (AFI). An AFI must be registered with the Commissioner of Inland Revenue, and must hold a Category 2 or 3 license
- The recipient is a CIS

Nonprescribed funds benefit from an important exemption which applies to the income and gains of the fund, other than income from immovable property situated in Malta and Maltese investment income.
## Taxation at fund level

The ITA defines investment income as:

- Interest paid by a bank licensed in Malta on bank deposits. This is only considered as investment income if it is allocated to a prescribed fund and to the extent that this income is not paid by another CIS.
- Interest, premiums or discounts paid by the government of Malta, a corporation or authority established by law, or a company or other legal entity in respect of a public issue.
- Capital gains on the disposal of shares in a CIS which is not a prescribed fund or capital gains on the surrender or maturity of unit-linked insurance policies.
- Dividends distributed by a nonresident CIS out of profits allocated to a nonprescribed fund through the services of an AFI. This is only considered as investment income if it is allocated to a prescribed fund and to the extent that this income is not paid by another CIS.

This definition provides the basis of how tax on income is to be treated by a CIS.

| Prescribed funds | The tax rate applicable to a prescribed fund depends on its income streams. A rate of 10% applies on investment income, while bank interest is taxed at 15%. When the recipient of the income is a CIS, investment income does not include payments made by another CIS or when it is not allocated to a prescribed fund. Additionally, any income from immovable property in Malta paid to prescribed funds is chargeable at the normal rate of 35%. |
| Nonprescribed funds | Nonprescribed funds benefit from an important exemption which applies to the income and gains of the fund, other than income from immovable property situated in Malta and Maltese investment income. Given that nonprescribed funds are, by definition, funds that do not principally hold immovable property in Malta and investment income derived in Malta, the income of nonprescribed funds is, as a matter of practice, wholly or mainly exempt from tax in Malta. In the case of foreign-based nonprescribed UCITS schemes, no tax applies to foreign source income and gains. However, income and gains derived in Malta are exempt at fund level as long as the income relates to interest, dividends, premiums, discounts, royalties and capital gains from the transfer of securities. |
| Value added tax | The activities of a CIS are considered exempt without credit for VAT purposes. Consequently, as long as the CIS only provides services classified as exempt without credit, the scheme will not be allowed to charge or claim VAT and does not need to register for VAT purposes. |
| Surrender or maturity of unit-linked products | The tax treatment of gains accruing on the surrender or maturity of units that are linked to securities in a CIS is equivalent to the tax treatment imposed on holders who directly own the securities. As such, the surrender or maturity of unit-linked products is subject to tax only to the extent that the products are determined by reference to the value of securities in a nonprescribed fund. |
Taxation at investor level

Withholding tax on capital gains

As a general rule, the incidence of tax will depend on the type of transfer, whether the fund is prescribed or nonprescribed, and the tax residence of the investor.

Since the withholding tax on prescribed funds is charged at fund level, any capital gains made by investors from the redemption, cancellation or liquidation of securities in a listed fund are not subject to further tax in the hands of the investor.

In the case of nonprescribed funds, since most of the income is exempt from tax, distributions are taxed at the rate of 15% only when made to resident individuals. Other distributions are not taxed in Malta.

The chargeability of tax on capital gains would apply as follows:

- A withholding tax of 15% applies when securities in a Malta-based nonprescribed fund are redeemed, canceled or liquidated. Withholding tax may be deducted at source.
- A withholding tax of 15% applies when securities in a foreign-based nonprescribed fund are redeemed, canceled or liquidated provided the recipient has utilized the services of a local AFI. In the absence of this, no withholding tax is deductible.

However, no withholding tax applies when:

- The form of disposal of securities in a foreign nonprescribed fund is not a redemption, cancellation or liquidation.
- The gain is made by non-residents or by other CISs, provided the recipient is the beneficial owner of the securities being disposed of, and is not owned or controlled, directly or indirectly, by a Maltese resident.
- The gain is made on the disposal of securities in a prescribed fund which is listed on a stock exchange recognized under Maltese law. Nonresident recipients are also exempt if the CIS is not listed on a stock exchange.

Switching between securities in subfunds within the same scheme is not considered to give rise to capital gains and no tax is charged under these circumstances. However, once the final disposal of securities takes place, the gain or loss arising during the switch may be aggregated to the final gain or loss and subject to tax accordingly.

The obligation to withhold taxes rests on the scheme when securities are held in Malta-based funds. In the case of foreign-based schemes, the obligation to withhold taxes falls on the AFI utilized by the recipient.
Withholding tax on dividends

A fund may act as a distributor fund, an accumulator fund or a combination of both. When dividends are paid by Malta-based distributor funds, irrespective of whether these relate to prescribed or nonprescribed funds, the incidence of tax depends on the tax account from which dividends are paid. Profits which are not subject to tax at fund level must be allocated to an untaxed account. For example, the investment income paid in nonprescribed funds is not subject to withholding taxes, and must therefore be allocated accordingly to the untaxed account. Whenever dividends are paid to Malta resident individuals from the untaxed account, a withholding tax of 15% must be charged at investor level. Conversely, those dividends that are made from previously taxed profits which are allocated to the Maltese-taxed account are not subject to any further tax in the hands of the investor. Nonresidents are also exempt from tax.

In the case of foreign-based distributor schemes, dividends are treated as investment income. As such, resident recipients will only be required to pay a 15% withholding tax if any of the following applies:

- The recipient is not a CIS
- The recipient has used the services of an AFI

Summary of main tax incidence rules

<table>
<thead>
<tr>
<th></th>
<th>Prescribed</th>
<th>Nonprescribed</th>
</tr>
</thead>
</table>
| Fund                    | ✯ 15% on bank interest  
✯ 10% on certain investment income  
✯ 35% on income from immovable property in Malta  
✯ 0% on all other forms of income | ✯ Exempt from tax on income or gains other than income from immovable property situated in Malta |
| Nonresident investors   | ✯ No further tax if withheld at source. However, may opt not to have any deductions at source | ✯ 0% on distribution                                                           |
| Resident investors      | ✯ No further tax if withheld at source. Otherwise, tax deducted in accordance with personal tax circumstances | ✯ 15% on distribution                                                          |
11. Our services in asset management
Our services

About Ernst & Young

Ernst & Young Malta provides a range of professional services including Assurance and Advisory Business Services, Transaction Advisory Services, Tax Advisory and Compliance Services, Global Finance, Accounting Services, and Transaction Security and Risk Services. For several years, the Maltese firm has been investing heavily in staff development, office modernization and information technology. The professionalism of our team and the Ernst & Young style infrastructure combine to offer our ever-increasing portfolio of clients a seamless service focused mainly on the provision of value. Our clients come from a range of economic sectors, including government entities and utilities, financial and banking services, industrial products, real estate, hospitality, construction, retail products, technology and transportation.

Our services

Our teams for client projects are composed of professionals with deep industry knowledge. This organization allows us to improve the use of our skills in order to deliver superior value, creating recommendations for our clients. Consequently, we provide clients with key insights based on our diverse backgrounds, experiences and relevant industry analysis.

All this results in quality advice, driven by excellence, delivered to our clients. Whenever needed, projects requiring cross-border service and intervention may be performed in conjunction with our offices in other countries.

The global Ernst & Young organization maintains a wealth of information in knowledge bases which we are able to use on any engagement to bring insights from our network’s global experience. These knowledge bases provide key guidance on project-related leading practices and approaches in leading countries. We are also able to draw on experiences of a vast range of industry advisors through our global Ernst & Young network which can assist with any project.

Clients should also benefit from our strict methodological requirements and deep industry knowledge. Our vast range of clients also serves as a testimonial to our quality service.
We can assist you with a wide range of services including:

- **Assurance**: our global audit methodology is designed to exceed client expectations by aligning our audit process more closely with management’s needs and focuses on business risks, processes and internal controls. Our approach aims to give management and other users of the financial statements greater confidence that the company’s processes are designed and operating effectively.

- **Transaction Advisory Services**: We can assist with a range of services to help you set up business in Malta, such as:
  - Support you in liaising with MFSA and other regulatory authorities
  - Designing sales practices, investment processes and other control frameworks to support the conduct of business rules
  - Providing insights into the workings of the regulatory system and current regulatory developments
  - Providing advice on new business authorization and cross-border issues
  - Assessing and benchmarking anti-money laundering arrangements against existing and future state regulatory and industry rules and guidance
  - Providing research on the current fund business in Malta, the products present in the market and the distribution channels currently in use
  - Assisting you in assessing the feasibility and profitability of any defined products
  - Helping you in the drafting of clear definitions of products, objectives and terms
  - Assisting in the drafting of prospectus, offering, marketing and constitutional documents
  - Assisting you in the validation of responses from suppliers of various goods and services you may need
  - Providing experienced technical support for the analysis and evaluation of controls within application products used to support various financial products
  - Providing specific business advice on ecommerce, erisk management and IT security
Taxation: our Tax Services help businesses increase value by identifying and assist in the implementation of strategies for corporate, international, indirect and local taxes. More specifically, we provide advice on matters such as:
- Corporate tax advice and reporting
- International tax
- Local and indirect taxes
- Tax transformation services
- Recommendations
- Tax technology advice
- Valuation and tax depreciation services

Strategy: we can assist fund promoters and fund service providers in:
- The conception, design and registration of investment funds
- The selection of a custodian bank and other service providers, as necessary
- The definition of a market positioning strategy related to the concept and strategy of external distribution channels
- The definition of a market positioning strategy with respect to third-party fund administration
- Outlining a business plan and modeling for asset managers in setting up new funds in terms of cost/benefit analysis, opportunity analysis, and regulatory and fiscal counseling
- Definition of a market penetration strategy
- Merger-scenario analysis
- Carrying out customer satisfaction studies for custodians, asset managers and fund administrators
- The implementation of online transactional tools
- Structural and reengineering analysis
- Assessing business risks impacting performance and financial results, including risks related to business processes, technology, regulatory compliance, government contracting, fraud, and treasury and trading activities

IT and Technology services: the investment funds industry is experiencing major changes with respect to ebusiness, particularly in relation to transfer agents and fund administration. Increasingly business-to-business internet platforms link promoters, custodians, fund administrators and distributors across Europe and the world. We help clients focus on the business transformation required by ebusiness and offer integrated customer advice, i.e., strategy, customer interaction and business models

Additionally, we also address specific client needs such as fund prospectus review and advice on creating a fund.
Annexes
Annex 1: Application documents of retail CISs

The tables below list the documents that must be provided by the various structures during application. All applications should be accompanied by the respective application fees set out in Annex 7.

**Application requirements for new schemes**

<table>
<thead>
<tr>
<th>Type of entity</th>
<th>Documents required</th>
</tr>
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</table>
| SICAV/INVCO          | > Application form  
> Draft prospectus and simplified prospectus of the scheme (if required)  
> Draft memorandum and articles  
> Draft agreements in respect of fund management, administration, custody and advisory (as applicable)  
> Draft board of directors resolutions in respect of:  
  • Directors intent to apply for a CIS license  
  • Identification of signatory of application documents  
  • Identification of person responsible for the compliance obligations of the scheme  
  • Identification of person responsible for the AML obligations of the scheme  
  • Approval and acceptance of responsibility for the content of the prospectus (full and simplified as applicable)  
> Marketing plan  
> Information on the directors of the scheme, as follows:  
  • In the case of individuals, personal questionnaires of the proposed directors must be provided  
  • In the case of corporates regulated in a recognized jurisdiction, the application must be accompanied by details of the regulatory status of the proposed corporate director(s) and the names of the individuals who will be representing the corporate directors on the board |
| Limited partnership  | > Application form  
> Draft prospectus and simplified prospectus of the scheme (if required)  
> Draft partnership deed  
> Draft agreements in respect of fund management, administration, custody and advisory (as applicable)  
> Draft resolutions of the general partners in respect of:  
  • Confirmation of their intent to apply for a CIS license  
  • Identification of signatory of application documents  
  • Identification of person responsible for the compliance obligations of the scheme  
  • Identification of person responsible for the AML obligations of the scheme  
  • Approval and acceptance of responsibility for the content of the prospectus (full and simplified as applicable)  
> Marketing plan |
## Limited partnership - continued

- Information on the general partners of the scheme, as follows:
  - In the case of individuals, personal questionnaires of the proposed general partners must be provided.
  - In the case of corporates regulated in a recognized jurisdiction, the application must be accompanied by details of the regulatory status of the proposed corporate general partner(s), and the names of the individuals who will be representing the corporate general partners.
  - In the case of corporates not regulated in a recognized jurisdiction, the application must be accompanied by a personal questionnaire of the directors of the proposed corporate general partners, a personal questionnaire of the qualifying beneficial owners of the proposed corporate general partners, the names of the individuals who will be representing the corporate general partners, and audited financial statements of the corporate general partners for the last three years.

## Unit trust/common contractual fund

- Application form
- Draft prospectus and simplified prospectus of the scheme (if required)
- Draft copy of the trust deed/fund rules
- Draft agreements in respect of fund management, administration, custody and advisory (as applicable)
- Resolutions by the manager in respect of:
  - The Manager’s intent to apply for a CIS license
  - Identification of signatory of application documents
  - Identification of person responsible for the compliance obligations of the scheme
  - Identification of person responsible for the AML obligations of the scheme
  - Approval and acceptance of responsibility for the content of the prospectus (full and simplified as applicable)
- Marketing plan
- Details of the regulatory status of the proposed trustee

## Self-managed schemes - additional requirements

- Personal questionnaire and detailed CV of the members of the investment committee or portfolio manager
- Terms of reference of the investment committee
- Confirmation from the portfolio managers (if applicable) that:
  - Operations will be carried out in line with the investment objectives and policies stated in the prospectus and the investment guidelines issued by the investment committee
  - Any transactions effected on behalf of the scheme will be reported to the investment committee
  - All information required by the investment committee from time to time will be made available
- Confirmation from the portfolio managers or investment committee that there are appropriate resources available to ensure access to market information needed in making investment management decisions
- A risk management policy (only required by Maltese UCITS)
<table>
<thead>
<tr>
<th>Type of entity</th>
<th>Documents required</th>
</tr>
</thead>
</table>
| All            | • A request to apply for recognition by means of a formal letter  
|                | • A copy of the scheme’s memorandum and articles, deed of partnership or equivalent document dependent on the intended legal structure  
|                | • Full details of the investment objectives and scheme policies  
|                | • A personal questionnaire completed by each director and participant in the scheme  
|                | • The Malta-registered address and contact details  
|                | • Names of all participants in the scheme, accompanied by a confirmation signed by all participants (and endorsed by the directors) stating that participants are indeed relatives or close friends of the applicant  
|                | • An undertaking from the participants or directors that the scheme qualifies as a private CIS and that all eligible criteria will be adhered to on an ongoing basis |
| All            | • Application form  
|                | • Latest approved version of the full prospectus  
|                | • Instrument of incorporation or constitutional documents  
|                | • Agreements in respect of fund management, administration, custody and advisory (as applicable)  
|                | • Resolutions by the directors, general partners or managers in respect of:  
|                |   • Intent to apply for a CIS license  
|                |   • Identification of signatory of application documents  
|                |   • Identification of a liaison with the MFSA  
|                | • Marketing plan  
|                | • Draft information sheet for Maltese investors  
|                | • An outline of the regulatory status of the scheme and any ongoing regulatory requirements to which it is subject |
### Application requirements for establishing additional subfunds

<table>
<thead>
<tr>
<th>Type of entity</th>
<th>Documents required</th>
</tr>
</thead>
</table>
| Maltese UCITS and non-UCITS schemes constituted as umbrella funds | - A formal notification to the MFSA indicating the intent to apply for a license in respect of a subfund  
- Confirmation by the directors, general partners or managers stating their intent to apply for a subfund  
- Draft prospectus and simplified prospectus (if required)  
- A draft copy of the approval by the scheme’s directors, general partners, or the manager (as applicable) of the revised prospectus and simplified prospectus (as applicable) |
| Overseas based non-UCITS schemes constituted as umbrella funds | - A formal notification to the MFSA indicating the intent to apply for a license in respect of a subfund  
- Confirmation by the directors, general partners or managers stating their intent to apply for a subfund  
- Confirmation by the directors, general partners or managers stating their intent to market shares or units for a subfund in Malta  
- Latest approved version of the revised full prospectus (if required) |

### Application documents for an increase in the number of share or unit classes

<table>
<thead>
<tr>
<th>Type of entity</th>
<th>Documents required</th>
</tr>
</thead>
</table>
| Maltese UCITS and non-UCITS schemes constituted as umbrella funds or multi class funds | - A formal notification to the MFSA indicating the intent to issue additional share or unit classes  
- Confirmation by the directors, general partners or managers stating their intent to issue additional share or unit classes  
- Draft prospectus and simplified prospectus (if required)  
- A draft copy of the approval by the scheme’s directors, general partners, or the manager (as applicable) of the revised prospectus and simplified prospectus (as applicable) |
| Overseas-based non-UCITS schemes constituted as umbrella funds or multi class funds | - A formal notification to the MFSA indicating the intent to issue additional share or unit classes  
- Confirmation by the directors, general partners or managers stating their intent to market additional share or unit classes in Malta  
- An updated full prospectus (as applicable) |
Annex 2: General license conditions of retail CISs

Maltese non-UCITS schemes

Applicable to Maltese non-UCITS schemes

- The scheme must obtain prior MFSA approval in respect of the following documents, before amendments can be made:
  - Constitutional documents
  - Scheme rules
  - Documents affecting the rights of participants
  - Latest annual and interim reports
  - Full or simplified prospectus, or similar document
  - Business plans submitted to the MFSA
  - Marketing plans submitted to the MFSA
  - Management agreements and any other documents detailing the relationship between the scheme and the persons responsible for its management
  - Agreements between the scheme or manager, and the administrator
  - Agreements between the scheme or manager, and the registrar
  - Agreements between the scheme or manager, and the custodian
  - Agreements between the scheme or manager, and the investment advisor
- The scheme is required to comply with any relevant provisions of the External Transactions Act, 1972
- The scheme is liable for losses or prejudice suffered by investors as a consequence of fraud, willful default or negligence of the scheme
- Any instructions given by the custodian to the PIF intended to ensure compliance with policies of the constitutional document, licensing conditions and prospectus must be followed
- The MFSA may order a suspension of unit repurchases, redemptions, sale or issue. If the scheme orders these suspensions, the MFSA has to be advised within the working day
- Whenever the issue and sale price of units is increased or the redemption or repurchase price is decreased, the scheme must inform the MFSA and its custodian. The scheme will also have to publish a revised prospectus at least 90 days before the price variations become effective. Furthermore, these variations can only be applied prospectively to new units
- Schemes are required to submit annual and half-yearly reports together with monthly returns to the MFSA, who in turn may require additional submissions from time to time. Annual reports must be audited and contain a full audit report. Monthly returns need to be submitted within two weeks of month-end, while half-yearly and annual reports should be submitted to the MFSA within two and four months, respectively, following period end. The reports must be published and provided to the investors
- Accounting records, and all other information to demonstrate compliance, must be kept by the scheme for at least 10 years. In the first two years, the scheme must be able to present these records within two working days from the request, and within five working days thereafter
The name of the regulator and regulated entity must always be used in correspondence, promotional material and other documents. The suggested wording to adopt is: “Licensed as a Collective Investment Scheme by the Malta Financial Services Authority”

The scheme needs to comply with all the anti-money laundering rules applicable in Malta, and has to cooperate with the MFSA whenever an inspection or enquiry is made.

Any unresolved disputes between the scheme and its unit holders must be settled by arbitration. The arbitrator will be appointed by the MFSA.

MFSA cannot be held responsible for damages arising from an act of omission or commission, unless it can be shown that these were not done in good faith.

The scheme is obliged to inform the MFSA of any material information relating to management or operations as early as possible. This would include disclosing any evidence on instances of fraud or dishonesty by officials, and actual or intended legal proceedings against the scheme.

The financial year of the scheme must be agreed together with the MFSA.

The scheme must inform the MFSA if its value falls below €2.5 million.

If the scheme wishes to change any SLCs, it must make a request to the MFSA together with a statement giving the reasons for the request.

All application and supervisory fees must be promptly paid as required in accordance with Annex 7.

The scheme cannot give out loans or be a guarantor on behalf of third parties.

Any breach of license conditions or provisions set out in the constitutional document must be reported to the MFSA as soon as they occur.

The MFSA must be advised in the event of a scheme’s winding up. The winding-up approach needs to be preapproved by the MFSA, who may request a delay in the winding-up process or a change in the winding-up procedures. In such an event, the scheme is required to do all in its power to comply with the MFSA’s request.

The issue of bearer units, and the terms of that issue, shall be agreed in advance with the MFSA.

Where units in a scheme are not freely transferable, such units may not be transferred without the prior permission of the MFSA.

In the case of closed-ended schemes, any changes in the issued share capital will have to be approved by the MFSA.

Schemes not listed on a regulated market must obtain an approval from the MFSA before taking any steps to obtain a listing.

Typically, general partners must fall in to one of the following specifications to be able to act on behalf of a scheme:

- A company licensed under the ISA to provide fund management services.
- A company falling within the exemptions applicable to overseas fund managers.
- An entity of appropriate standing and reputation as approved by the MFSA.
- Any individual who is deemed to be fit and proper in accordance with Chapter 2.

If there is no fund manager acting as a general partner in accordance with the first two categories, the scheme will need to appoint a third-party manager.

Before admitting a general partner, schemes must apply the following procedures:

- Obtain the proper authorization from the MFSA. This request must be made at least 21 working days before the appointment and has to include a personal questionnaire of the proposed general partner.
Additional conditions for limited partnership structures - continued

- If the general partner is a body corporate, the personal questionnaire must be completed by the directors and qualifying shareholders of the entity.
- Personal questionnaires would not be required for body corporate in recognized jurisdictions. However, details of the regulatory status would need to be provided.
- Whenever there is a departure of a general partner, the scheme must advise the MFSA at least 14 working days in advance. The exiting general partner will have to confirm that the departure is not related to any regulatory implications. Alternatively, details of such implications will need to be communicated accordingly.
- The identity of the beneficial owners of the general partners will need to be disclosed to investors if so requested by them.

Additional conditions for investment company structures

- Certain conditions apply for the appointment or replacement of directors of a scheme:
  - Schemes established as an investment company must have at least one director who is independent from the manager and custodian of the scheme.
  - All directors must be fit and proper to act in the proposed role. Additionally, directors must be authorized by the MFSA before being appointed by the scheme. Requests for appointments must be made at least 21 working days in advance and have to include a personal questionnaire of the proposed director. In cases where the director is a body corporate, the request must include details of the regulatory status of the proposed director.
  - A scheme may not appoint a corporate director which is not regulated in a recognized jurisdiction.
  - Whenever there is a departure of a director, the scheme must advise the MFSA at least 14 working days in advance. The exiting director will have to confirm that the departure is not related to any regulatory implications. Alternatively, details of such implications will need to be communicated accordingly.
  - Copies of all minutes of directors’ meetings must be kept in Malta at the registered office of the scheme.
- As a matter of course, the scheme is expected to act according to the best practices of governance, honesty, fairness and integrity as well as comply with laws and anti-money laundering practices. Schemes are encouraged to avoid any form of conflicts of interest. Where this would not be possible, the scheme is expected to follow these procedures at board meetings:
  - Establish policies to ensure investors are treated fairly.
  - The person having the conflict of interest must immediately advise other members of the board as soon as the relating issue with which the conflict exists arises.
  - Unless otherwise agreed to by the other board members, the person having the conflict of interest must withdraw from any discussions or voting pertaining to the matter of interest.
  - Meetings should be accurately recorded.
Additional conditions for self-managed schemes

- Self-managed schemes are required to have a minimum paid-up share capital of €125,000 while the NAV is expected to exceed this amount on an ongoing basis. The MFSA should be notified whenever the NAV falls below this threshold.
- The scheme must be operated in or from Malta.
- The scheme’s directors are, at all times, responsible for the management of the scheme’s assets and at least one director must be resident in Malta.
- Unless otherwise agreed with the MFSA, an in-house investment committee will have to be appointed by the scheme. If an investment committee is not appointed, the directors will be responsible for complying with all the provisions relating to investment committees described below. In either case, the functions of the committee are:
  - To monitor and review the scheme’s investment policy
  - To establish and review investment guidelines
  - To issue rules for stock selection
  - To set up the portfolio structure and asset allocation
  - To make recommendations to the board of directors.
- Investment committees appointed within self-managed schemes are subject to further conditions:
  - The investment committee must include at least three members that may also include members of the board.
  - Investment committee meetings must be held at least on a quarterly basis, and need to take place in Malta. Presence in Malta is established if the minimum number of members required for a quorum are physically in Malta during meetings.
  - Meetings must be accurately recorded and made available to the MFSA upon request.
  - The terms of reference of the investment committee, and any amendments to it, are subject to approval by the authority.
  - The investment committee may also appoint portfolio managers who will be entrusted to affect day-to-day investment transactions falling within the investment guidelines prescribed by the committee and prospectus. Portfolio managers may either be at least two scheme officials, or a third-party manager approved by the MFSA.
  - The appointment or replacement of an investment committee or portfolio manager must be requested to the MFSA at least 21 working days in advance. The scheme will need to obtain a written consent from the MFSA who will also require evidence that any person being appointed are fit and proper for the function.
**Additional conditions for self-managed schemes - continued**

- The application for an investment committee or portfolio manager must include a personal questionnaire and CV of the proposed person. Whenever there is a departure of an investment committee member or portfolio manager, the scheme is required to advise the MFSA at least 14 working days in advance. The exiting person will have to confirm that the departure is not related to any regulatory implications. Alternatively, details of such implications will need to be communicated accordingly.
- Schemes must act in the best interest of unit holders in accordance with best practices of governance, honesty, fairness and integrity as well as comply with laws and anti-money laundering practices. Schemes are encouraged to avoid any form of conflicts of interest. Where this would not be possible, the scheme is expected to take all the necessary steps to ensure unit holders’ interests are protected.

**Additional conditions for umbrella funds**

- The scheme and each subfund must be individually approved by the MFSA following the submission of an application form and supporting documentation. In addition, all subfunds must be compliant with all the laws and regulations that apply to CISs.
- The full prospectus must give details of the charges (if any), procedures and basis of valuation applicable to the exchange of units between subfunds. Any increases in such charges must be notified to the MFSA and the custodian, and published in a revised full prospectus at least 90 days before becoming effective.
- The basis of apportioning charges, expenses, liabilities and receipts between subfunds must be described in the full prospectus. Additionally, this apportionment must be fairly applied to the interests of unit holders. The full prospectus must state that although each subfund will bear its own liabilities, the scheme as a whole remains liable to third parties for all its liabilities.
- Any supplements to the scheme’s prospectus issued for a subfund must clearly state that the scheme is formed as an umbrella fund, and must name the other subfunds.
- Subfunds may not invest in other subfunds within the same scheme.
- A meeting of unit holders in any subfund may approve a modification of constitutional documents or other policy statements only if this modification exclusively relates to their subfund.

**Additional conditions for feeder funds or fund of funds**

- Underlying schemes must be licensed by the MFSA or sanctioned by it as originating from a proper jurisdiction and level of regulation. Alternatively, the MFSA may license a scheme if it is satisfied with the adequacy of management and custodial arrangements, constitution and investment objectives of the underlying schemes.
- The underlying schemes must follow the policies and objectives given in the prospectus, and shall already have been marketed to the public in one or more territories overseas.
- If the scheme invests in the units of an underlying scheme that is managed or advised by the scheme’s manager or advisor, or an associate thereof, the scheme must not have more than one set of charges on acquisition or disposal, and more than one set of management or advisory charges.
- A fund of funds may invest up to 30% of its assets in one underlying scheme.
- The full prospectus needs to include all details of the fees, charges, taxes, commissions and other costs to be borne directly or indirectly by the scheme and by each underlying scheme.
Additional conditions for feeder funds or fund of funds – continued

- Price quotation and sale and repurchase arrangements for units in the scheme must ensure that:
  - A purchaser is able to purchase units at a price based on the most recent underlying scheme prices
  - The issuing of the units and the remitting of the purchase proceeds to the underlying schemes are achieved as soon as is practicable
  - The cancellation of units and the remitting of the proceeds to the seller are achieved as soon as is practicable
  - A seller is able to sell units at a price based on the most recent underlying scheme prices
- The scheme must be valued with the same frequency as the underlying scheme
- The scheme cannot invest in a feeder fund or a fund of funds without the prior approval of the MFSA

Maltese UCITS schemes

Applicable to Maltese UCITS schemes

- The scheme must have a head office and registered office in Malta
- The scheme must obtain prior MFSA approval in respect of the following documents before amendments can be made:
  - Constitutional documents
  - Scheme rules
  - Documents affecting the rights of participants
  - Latest annual and interim reports
  - Full or simplified prospectus, or similar document
  - Business plans submitted to the MFSA
  - Marketing plans submitted to the MFSA
  - Management agreements and any other documents detailing the relationship between the scheme and the persons responsible for its management
  - Agreements between the scheme or manager, and the administrator
  - Agreements between the scheme or manager, and the registrar
  - Agreements between the scheme or manager, and the custodian
  - Agreements between the scheme or manager, and the investment advisor
- The scheme is required to comply with any relevant provisions of the External Transactions Act, 1972
- The scheme is liable for losses or prejudice suffered by investors as a consequence of fraud, willful default or negligence of the scheme
- Any instructions given by the custodian to the PIF intended to ensure compliance with policies of the constitutional document, licensing conditions and prospectus must be followed
- The MFSA may order a suspension of unit repurchases, redemptions, sale or issue. If the scheme orders these suspensions, the MFSA has to be advised within the working day
- Whenever the issue and sale price of units is increased or the redemption or repurchase price is decreased, the scheme must inform the MFSA and its custodian. The scheme will also have to publish a revised prospectus at least 90 days before the price variations become effective. Furthermore, these variations can only be applied prospectively to new units
Conditions applicable to Maltese UCITS schemes - continued

- Schemes must submit annual and half-yearly reports together with monthly returns to the MFSA, which in turn may require additional submissions from time to time. Annual reports must be audited and contain a full audit report. Monthly returns need to be submitted within two weeks of month-end, while half-yearly and annual reports should be submitted to the MFSA within two and four months, respectively, following period end. The reports must be published and provided to the investors.
- UCITS schemes must submit a report on their derivatives position. This must be provided as at year-end and include details of underlying risks, the relevant quantitative limits and estimation methods.
- Accounting records, and all other information to demonstrate compliance, must be kept by the scheme for at least 10 years. In the first two years, the scheme must be able to present these records within two working days from the request, and within five working days thereafter.
- The name of the regulator and regulated entity must always be used in correspondence, promotional material and other documents. The suggested wording to adopt is: “Licensed as a Collective Investment Scheme, qualifying as a Maltese UCITS, by the Malta Financial Services Authority.”
- The scheme needs to comply with all the anti-money laundering rules applicable in Malta and other overseas regulations to which it is subject, and has to cooperate with the MFSA whenever an inspection or enquiry is made.
- Any unresolved disputes between the scheme and its unit holders must be settled by arbitration. The arbitrator will be appointed by the MFSA.
- MFSA cannot be held responsible for damages arising from an act of omission or commission, unless it can be shown that these were not done in good faith.
- The scheme is obliged to inform the MFSA of any material information relating to management or operations as early as possible. This would include disclosing any evidence on instances of fraud or dishonesty by officials, and actual or intended legal proceedings against the scheme.
- The financial year of the scheme must be agreed together with the MFSA.
- The scheme must inform the MFSA if its value falls below €2.5 million.
- Changes to SLCs must be requested to the MFSA together with a statement giving the reasons for the request.
- All application and supervisory fees must be promptly paid as required in accordance with Annex 7.
- The scheme cannot give out loans or be a guarantor on behalf of third parties.
- Any breach of license conditions or provisions set out in the constitutional document must be reported to the MFSA as soon as they occur.
- The MFSA must be advised in the event of a scheme’s winding up. The winding-up approach needs to be preapproved by the MFSA, which may request a delay in the winding-up process or a change in the winding-up procedures. In such an event, the scheme is required to do all in its power to comply with the MFSA’s request.
- The issue of bearer units, and the terms of that issue, shall be agreed in advance with the MFSA.
- Schemes not listed on a regulated market must obtain an approval from the MFSA before taking any steps to obtain a listing.
- Maltese UCITS are not allowed to transform themselves into a CIS which is not subject to the same conditions and restrictions applicable to UCITS schemes.
Additional conditions for limited partnership structures

- Typically, general partners must fall in to one of the following specifications to be able to act on behalf of a scheme:
  - A company licensed under the ISA to provide fund management services
  - A company falling within the exemptions applicable to overseas fund managers
  - An entity of appropriate standing and reputation as approved by the MFSA
  - Any individual who is deemed to be fit and proper in accordance with Chapter 2
- If there is no fund manager acting as a general partner in accordance with the first two categories, the scheme will need to appoint a third-party manager
- Before admitting a general partner, schemes must apply the following procedures:
  - Obtain the proper authorization from the MFSA. This request must be made at least 21 working days before the appointment and has to include a personal questionnaire of the proposed general partner
  - If the general partner is a body corporate, the personal questionnaire must be completed by the directors and qualifying shareholders of the entity
  - Personal questionnaires would not be required for body corporates in recognized jurisdictions. However, details of the regulatory status would need to be provided
- Whenever there is a departure of a general partner, the scheme is required to advise the MFSA at least 14 working days in advance. The exiting general partner will have to confirm that the departure is not related to any regulatory implications. Alternatively, details of such implications will need to be communicated accordingly
- The identity of the beneficial owners of the general partners will need to be disclosed to investors if so requested by them

Additional conditions for investment company structures

- Certain conditions apply for the appointment or replacement of directors of a scheme:
  - Schemes established as an investment company must have at least one director who is independent from the manager and custodian of the scheme
  - All directors must be fit and proper to act in the proposed role. Additionally, directors must authorized by the MFSA before being appointed by the scheme. Requests for appointments must be made at least 21 working days in advance and have to include a personal questionnaire of the proposed director. In cases where the director is a body corporate, the request must include details of the regulatory status of the proposed director
  - A scheme may not appoint a corporate director which is not regulated in a recognized jurisdiction
  - Whenever there is a departure of a director, the scheme must advise the MFSA at least 14 working days in advance. The exiting director will have to confirm that the departure is not related to any regulatory implications. Alternatively, details of such implications will need to be communicated accordingly
  - Copies of all minutes of directors’ meetings must be kept in Malta at the registered office of the scheme
- As a matter of course, the scheme is expected to act according to the best practices of governance, honesty, fairness and integrity as well as comply with laws and anti-money laundering practices. Schemes are encouraged to avoid any form of conflicts of interest. Where this would not be possible, the scheme is expected to follow these procedures at board meetings:
  - Establish policies to ensure investors are treated fairly
  - The person having the conflict of interest must immediately advise other members of the board as soon as the relating issue with which the conflict exists arises
Unless otherwise agreed to by the other board members, the person having the conflict of interest must withdraw from any discussions or voting pertaining to the matter of interest.

Meetings should be accurately recorded.

Self-managed schemes are required to have a minimum paid-up share capital of €300,000 while the NAV is expected to exceed this amount on an ongoing basis. The MFSA should be notified whenever the NAV falls below this threshold.

The scheme must be operated in or from Malta.

The scheme’s directors are, at all times, responsible for the management of the scheme’s assets and at least one director must be resident in Malta.

The scheme can only manage assets of its portfolio, and is not allowed under any circumstance to receive any mandate to manage assets on behalf of third parties.

Unless otherwise agreed with the MFSA, an in-house investment committee will have to be appointed by the scheme. If an investment committee is not appointed, the directors will be responsible to comply with all the provisions relating to investment committees described below. In either case, the functions of the committee are:

- To monitor and review the scheme’s investment policy
- To establish and review investment guidelines
- To issue rules for stock selection
- To set up the portfolio structure and asset allocation
- To make recommendations to the board of directors

Investment committees appointed within self-managed schemes are subject to further conditions:

- The investment committee must include at least three members that may also include members of the board.
- Investment committee meetings must be held at least on a quarterly basis, and need to take place in Malta. Presence in Malta is established if the minimum number of members required for a quorum are physically in Malta during meeting.
- Meetings must be accurately recorded and made available to the MFSA upon request.
- Terms of reference of the investment committee, and any amendments to it, must be approved by the MFSA.
- The investment committee may also appoint portfolio managers who will be entrusted to effect day-to-day investment transactions falling within the investment guidelines prescribed by the committee and prospectus. Portfolio managers may either be at least two scheme officials, or a third-party manager approved by the MFSA.
- The appointment or replacement of an investment committee or portfolio manager must be requested to the MFSA at least 21 working days in advance. The scheme will need to obtain a written consent from the MFSA who will also require evidence that any person being appointed are fit and proper for the function.
- The application for an investment committee or portfolio manager must include a personal questionnaire and CV of the proposed person. Whenever there is a departure of an investment committee member or portfolio manager, the scheme is required to advise the MFSA at least 14 working days in advance. The exiting person will have to confirm that the departure is not related to any regulatory implications. Alternatively, details of such implications will need to be communicated accordingly.
Additional conditions for self-managed schemes - continued

- Schemes must act in the best interest of unit holders in accordance with best practices of governance, honesty, fairness and integrity, as well as comply with laws and anti-money laundering practices. Schemes are encouraged to avoid any form of conflicts of interest. Where this would not be possible, the scheme is expected to take all the necessary steps to ensure unit holders’ interests are protected.

Additional conditions for umbrella funds

- The scheme and each subfund must be individually approved by the MFSA following the submission of an application form and supporting documentation. In addition, all subfunds must be compliant with all the laws and regulations that apply to UCITS schemes.
- Subfunds may not invest in other subfunds within the same scheme.
- A meeting of unit holders in any subfund may approve a modification of constitutional documents or other policy statements only if this modification exclusively relates to their subfund.

Additional conditions for feeder funds or fund of funds

- The underlying schemes must follow the policies and objectives given in the prospectus and must deal in investments allowable for Maltese UCITS schemes.
- Price quotation and sale and repurchase arrangements for units in the scheme must ensure that:
  - A purchaser is able to purchase units at a price based on the most recent underlying scheme prices.
  - The issuing of the units and the remitting of the purchase proceeds to the underlying schemes is achieved as soon as is practicable.
  - The cancellation of units and the remitting of the proceeds to the seller is achieved as soon as is practicable.
  - A seller is able to sell units at a price based on the most recent underlying scheme prices.
- The scheme must be valued with the same frequency as the underlying scheme.
- The scheme cannot invest in a feeder fund or a fund of funds.
Annex 3: Application documents of PIFs

The tables below list the documents that must be provided by the various structures during application. All applications must be accompanied by the respective application fees set out in Annex 7.

<table>
<thead>
<tr>
<th>Type of entity</th>
<th>Documents required</th>
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<tbody>
<tr>
<td>SICAV/INVCO</td>
<td>▶ Application form&lt;br&gt;▶ Draft offering or marketing document&lt;br&gt;▶ Draft memorandum and articles&lt;br&gt;▶ Draft board of directors’ resolutions in respect of:&lt;br&gt;  ▪ Directors’ intent to apply for a PIF license&lt;br&gt;  ▪ Identification of signatory of application documents&lt;br&gt;  ▪ Identification of person to act as liaison with the MFSA&lt;br&gt;  ▪ Identification of person responsible for the compliance obligations of the PIF&lt;br&gt;  ▪ Identification of person responsible for the AML obligations of the PIF&lt;br&gt;  ▪ Approval and acceptance of responsibility for the content of the offering or marketing document&lt;br&gt;▶ Information on the directors of the PIF, as follows:&lt;br&gt;  ▪ In the case of individuals, personal questionnaires of the proposed directors must be provided&lt;br&gt;  ▪ In the case of corporates regulated in a recognized jurisdiction, the application must be accompanied by details of the regulatory status of the proposed corporate director(s), and the names of the individuals who will be representing the corporate directors on the board&lt;br&gt;▶ Information on the founding shareholders having more than 10% of the voting shares, as follows:&lt;br&gt;  ▪ In the case of individuals, personal questionnaires of the proposed founding shareholders must be provided&lt;br&gt;  ▪ In the case of corporates regulated in a recognized jurisdiction, the application must be accompanied by details of the regulatory status of the proposed corporate founding shareholders&lt;br&gt;  ▪ In the case of corporates not regulated in a recognized jurisdiction, the application must be accompanied by a personal questionnaire of the directors of the proposed founding shareholders, a personal questionnaire of the beneficial owners and audited financial statements of the last three years</td>
</tr>
<tr>
<td>Limited partnership</td>
<td>▶ Application form&lt;br&gt;▶ Draft offering or marketing document&lt;br&gt;▶ Draft partnership deed&lt;br&gt;▶ Draft resolutions of the general partners in respect of:&lt;br&gt;  ▪ Confirmation of their intent to apply for a PIF license&lt;br&gt;  ▪ Identification of signatory of application documents&lt;br&gt;  ▪ Identification of person to act as liaison with the MFSA&lt;br&gt;  ▪ Identification of person responsible for the compliance obligations of the PIF&lt;br&gt;  ▪ Identification of person responsible for the AML obligations of the PIF&lt;br&gt;  ▪ Approval and acceptance of responsibility for the content of the offering or marketing document</td>
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<tr>
<td>Type of entity</td>
<td>Documents required</td>
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| Limited partnership - continued | - Information on the general partners of the PIF, as follows:  
  - In the case of individuals, personal questionnaires of the proposed general partners must be provided  
  - In the case of corporates regulated in a recognized jurisdiction, the application must be accompanied by details of the regulatory status of the proposed corporate general partner(s), and the names of the individuals who will be representing the corporate general partners  
  - In the case of corporates not regulated in a recognized jurisdiction, the application must be accompanied by a personal questionnaire of the directors of the proposed corporate general partners, a personal questionnaire of the qualifying beneficial owners of the proposed corporate general partners, the names of the individuals who will be representing the corporate general partners, and audited financial statements of the corporate general partners for the last three years |
| Unit trust/common contractual fund | - Application form  
  - Draft offering or marketing document  
  - Draft copy of the trust deed/fund rules  
  - Resolutions by the manager in respect of:  
    - The manager’s intent to apply for a PIF license  
    - Identification of signatory of application documents  
    - Identification of person to act as liaison with the MFSA  
    - Identification of person responsible for the compliance obligations of the PIF  
    - Identification of person responsible for the AML obligations of the PIF  
    - Approval and acceptance of responsibility for the content of the offering or marketing document  
  - Details of the regulatory status of the proposed trustee |
| Self-managed PIF - additional requirements | - Personal questionnaire and detailed CV of the members of the investment committee or portfolio manager  
  - Terms of reference of the investment committee  
  - Confirmation from the portfolio managers (if applicable) that:  
    - Operations will be carried out in line with the investment objectives and policies stated in the offering or marketing document and the investment guidelines issued by the investment committee  
    - Any transactions effected on behalf of the PIF will be reported to the investment committee  
    - All information required by the investment committee from time to time will be made available  
  - Confirmation from the portfolio managers or investment committee that there are appropriate resources available to ensure access to market information needed in making investment management decisions |
| PIFs targeting extraordinary investors - additional requirements | - Information on the directors, general partners, or founder shareholders of the PIF, as follows:  
  - In the case of individuals, a bank reference is required from the individual’s bankers. The individual must have been a customer of the bank for the last five years or more. The bank reference must also comment on whether bank accounts have been satisfactorily maintained |
### Application requirements for establishing additional subfunds

<table>
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<tr>
<th>Type of entity</th>
<th>Documents required</th>
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<tbody>
<tr>
<td>All PIFs</td>
<td>• A formal notification to the MFSA indicating the intent to apply for a license in</td>
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<td>respect of a subfund</td>
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<td>• Confirmation by the directors, general partners or manager stating their intent to</td>
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<td>apply for a subfund</td>
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<td></td>
<td>• Final draft of the offering or marketing document</td>
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<td></td>
<td>• A draft copy of the approval by the PIF’s directors, general partners, or the</td>
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<tr>
<td></td>
<td>manager (as applicable) of the revised offering or marketing document, or</td>
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<td>offering supplement</td>
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### Application requirements for increasing the number of share or unit classes

<table>
<thead>
<tr>
<th>Type of entity</th>
<th>Documents required</th>
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<tbody>
<tr>
<td>All PIFs</td>
<td>• A formal notification to the MFSA indicating the intent to issue additional share</td>
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<td>or unit classes</td>
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<td>• Confirmation by the directors, general partners or managers stating their intent to</td>
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<td>issue additional share or unit classes</td>
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<tr>
<td></td>
<td>• Final draft of the offering or marketing document</td>
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<td></td>
<td>• A draft copy of the approval by the PIF’s directors, general partners, or the</td>
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<td>manager (as applicable) of the offering or marketing document</td>
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</table>
Annex 4: General license conditions of PIFs

Conditions applicable to PIFs

All PIFs (unless otherwise indicated) granted a license will also be subject to certain SLCs that must be adhered to at all times:

- Submission of quarterly statistical information must be made by the PIF, manager or administrator to the MFSA. This must be made within two weeks following the end of the relevant quarter.
- Submission of copies of the annual audited accounts and half-yearly reports (if applicable) by the PIF, manager or administrator to the MFSA. Half-yearly and annual reports would need to be published and provided to the investors. Submission to the MFSA is required within two and four months, respectively, following period end.
- In the case of PIFs targeting experienced investors, annual reports must be accompanied by a report from the PIF’s custodian. Through this report, the custodian would need to provide an opinion on whether the PIF was managed in accordance with the limitations imposed on the investment and borrowing powers of the scheme through the constitutional document and offering document.
- The scheme must ensure that all supervisory fees are duly paid.
- Where necessary, the scheme may be subject to inspections and enquiries by the MFSA. In this case, the PIF is required to cooperate with the procedure and provide the necessary information. As a general condition, the PIF and its service providers must comply with the local or foreign regulations to which they are subject, and all rules relating to the prevention of money laundering.
- If the PIF becomes aware of any material information regarding its operations or management, the scheme is required to advise the MFSA immediately. Although the local regulations are broad on this matter, this would also cover evidence of fraud by an official, and any actual or intended material legal proceedings against the scheme.
- The name of the regulator and regulated entity must always be used in correspondence, promotional material and other documents. The suggested wording to adopt is: “Licensed by the MFSA as a professional investor fund available to [experienced/qualifying/extraordinary] investors.”
- The issue and redemption prices of units do not have to be made public. However, the PIF must provide this information to unit holders upon request.
- Any suspension of dealings must be reported to the MFSA together with a reason for the suspension.
- The PIF must maintain proper accounting records and other records required for the scheme to ensure compliance with the relevant rules and regulations. Accounting records must be maintained for a period of 10 years. In the first two years, the scheme must be able to produce any requested documents within two working days. Subsequently, the scheme would be required to supply documents within five working days.
- The MFSA must be given a two-week notice period in the event of a scheme’s winding up. The winding-up approach needs to be preapproved by the MFSA, which may request a delay in the winding-up process or a change in the winding-up procedures. In such an event, the PIF is required to do all in its power to comply with the MFSA’s request.
- Changes in the financial year-end of the PIF must be notified to the MFSA and properly disclosed in the offering document.
- PIFs targeting experienced or qualified investors may also invest through trading companies and special purpose vehicles (SPV), in which case they would be subject to additional conditions described below.
Conditions applicable to PIFs - continued

- Side letters are permitted in Malta subject to being circulated and approved by the PIF’s directors, general partners or manager as the case may be. Such side letters need to be retained in a registered office in Malta and made available to the MFSA upon demand.

Additional conditions for limited partnership structures

- Typically, general partners must fall in to one of the following specifications to be able to act on behalf of a PIF:
  - A company licensed under the ISA to provide fund management services
  - A company falling within the exemptions applicable to overseas fund managers
  - An entity of appropriate standing and reputation as approved by the MFSA
  - Any individual who is deemed to be fit and proper in accordance with Chapter 2
- If there is no fund manager acting as a general partner in accordance with the first two categories, the PIF will need to appoint a third-party manager
- Before admitting a general partner, PIFs must apply the following procedures:
  - Obtain the proper authorization from the MFSA. This request must include a personal questionnaire of the proposed general partner
  - If the general partner is a body corporate, the personal questionnaire must be completed by the directors and qualifying shareholders of the entity
  - Personal questionnaires would not be required for body corporates in recognized jurisdictions. However, details of the regulatory status would need to be provided
- Whenever there is a departure of a general partner, the PIF is required to advise the MFSA at least 14 working days in advance. The exiting general partner will have to confirm that the departure is not related to any regulatory implications. Alternatively, details of such implications will need to be communicated accordingly
- The identity of the beneficial owners of the general partners will need to be disclosed to investors if so requested by them.

Additional conditions for investment company structures

- Certain conditions apply for the appointment or replacement of directors of a PIF:
  - PIFs established as an investment company must have at least one director who is independent from the manager and custodian of the scheme
  - All directors must be fit and proper to act in the proposed role. Additionally, directors must authorized by the MFSA before being appointed by the PIF. Requests for appointments must include a personal questionnaire of the proposed director. In cases where the director is a body corporate, the request must include details of the regulatory status of the proposed director
  - A scheme may not appoint a corporate director which is not regulated in a recognized jurisdiction
  - Whenever there is a departure of a director, the PIF must advise the MFSA at least 14 working days in advance. The exiting director will have to confirm that the departure is not related to any regulatory implications. Alternatively, details of such implications will need to be communicated accordingly.

Investment funds in Malta
Annex 4: General license conditions of PIFs
Copies of all minutes of directors’ meetings must be kept in Malta at the registered office of the PIF.

Since regulations in Malta allow companies to issue different share classes, it is possible to have shares with voting rights issued to the scheme’s promoters, and non-voting shares issued to investors. Before making such an arrangement, however, the PIF will need the authorization from the MFSA. Prior approval must also be obtained if the PIF intends to alter the rights of voting shares, redeem them or make a new issue. The identity of the beneficial owners of the voting shares will need to be disclosed to investors if so requested by them.

As a matter of course, the PIF is expected to act according to the best practices of governance, honesty, fairness and integrity as well as comply with laws and anti-money laundering practices. Schemes are encouraged to avoid any form of conflicts of interest. Where this would not be possible, the scheme is expected to follow these procedures at board meetings:

- Establish policies to ensure investors are treated fairly
- The person having the conflict of interest must immediately advise other members of the board as soon as the relating issue with which the conflict exists arises
- Unless otherwise agreed to by the other board members, the person having the conflict of interest must withdraw from any discussions or voting pertaining to the matter of interest
- Meetings should be accurately recorded

If SPVs are used by the scheme:

- Such entities must be established in Malta, or in another jurisdiction that is not in a Financial Action Task Force (FATF) blacklisted country
- The directors or general partners must always maintain the majority directorship of the SPV
- All investments carried out through the SPV must conform to the PIF’s investment objectives, policies and restrictions

Self-managed PIFs are required to have a minimum paid-up share capital of €125,000 while the NAV is expected to exceed this amount on an ongoing basis. The MFSA should be notified whenever the NAV falls below this threshold.

An in-house investment committee may be appointed by self-managed schemes. In this case, the functions of the committee are:

- To monitor and review the scheme’s investment policy
- To establish and review investment guidelines
- To issue rules for stock selection
- To set up the portfolio structure and asset allocation
- To make recommendations to the board of directors

Investment committees appointed within self-managed PIFs are subject to further conditions:

- The investment committee must include at least three members that may also include members of the board
- Investment committee meetings must be held at least on a quarterly basis, and need to take place in Malta. Presence in Malta is established if the minimum number of members required for a quorum are physically in Malta during meetings.
- Meetings must be accurately recorded and made available to the MFSA upon request.
- The terms of reference of the investment committee, and any amendments to it, are subject to approval by the authority.
- The Investment Committee may also appoint portfolio managers who will be entrusted to effect day-to-day investment transactions falling within the investment guidelines prescribed by the committee and offering/marketing document.
- The appointment or replacement of an investment committee or portfolio manager must be preceded with a written consent from the MFSA which will also require evidence that the proposed person is fit and proper for the function.
- The application for an investment committee or portfolio manager must include a personal questionnaire and CV of the proposed person. Whenever there is a departure of an investment committee member or portfolio manager, the PIF is required to advise the MFSA at least 14 working days in advance. The exiting person will have to confirm that the departure is not related to any regulatory implications. Alternatively, details of such implications will need to be communicated accordingly.
- Where PIFs opt not to appoint an investment committee, it will fall upon the board of directors to carry out the functions that would otherwise have been the duties of the committee. At least one director must be resident in Malta.
- PIFs may permit officials to deal for their own account. In these cases, the scheme must ensure that:
  - Dealings are carried out at arm's length and with regard to all statutory obligations (including insider trading) and policies to avoid market abuse.
  - Internal controls must be in place to preclude officials from making personal transactions that might otherwise impair their objectivity and effectiveness in managing the PIF’s assets.
  - The compliance officer must be advised of any unusual transactions or investment patterns.
- As a matter of course, the PIF is expected to act according to the best practices of governance, honesty, fairness and integrity as well as comply with laws and anti-money laundering practices. Schemes are encouraged to avoid any form of conflicts of interest. Where this would not be possible, the scheme is expected to follow these procedures at board meetings:
  - Establish policies to ensure investors are treated fairly.
  - The person having the conflict of interest must immediately advise other members of the board as soon as the relating issue with which the conflict exists arises.
  - Unless otherwise agreed to by the other board members, the person having the conflict of interest must withdraw from any discussions or voting pertaining to the matter of interest.
  - Meetings should be accurately recorded.
Annex 5: Offering/marketing document contents

<table>
<thead>
<tr>
<th>Area</th>
<th>Information required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scheme details</td>
<td>▶ The following text, printed prominently on the front page:</td>
</tr>
<tr>
<td></td>
<td>- “[Name of the scheme] is licensed by the Malta Financial Services Authority (MFSA) as a professional investor fund which is available to investors qualifying as experienced investors/qualifying investors/extraordinary investors [delete as appropriate]”</td>
</tr>
<tr>
<td></td>
<td>- Professional investor funds are nonretail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA’s investment and borrowing restrictions and other requirements for retail schemes do not apply</td>
</tr>
<tr>
<td></td>
<td>- Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund’s failure</td>
</tr>
<tr>
<td></td>
<td>- The MFSA has made no assessment or value judgment on the soundness of the fund or on the accuracy or completeness of statements made or opinions expressed with regard to it.”</td>
</tr>
<tr>
<td></td>
<td>▶ The following must also be printed on the front page in the case of PIFs targeting extraordinary investors:</td>
</tr>
<tr>
<td></td>
<td>- “PIFs targeting extraordinary investors are subject to the minimum level of supervision for a fund regulated in Malta.”</td>
</tr>
<tr>
<td></td>
<td>▶ A statement by the directors, general partners or manager (as applicable) that the offering document has been approved by them</td>
</tr>
<tr>
<td></td>
<td>▶ Name of the scheme</td>
</tr>
<tr>
<td></td>
<td>▶ Date of establishment of the scheme and duration (if applicable)</td>
</tr>
<tr>
<td></td>
<td>▶ Name or style, form in law and registered office</td>
</tr>
<tr>
<td></td>
<td>▶ An indication of the subfunds (if established as an umbrella fund)</td>
</tr>
<tr>
<td></td>
<td>▶ The investment objectives, policies and restrictions of the scheme, together with the level of leverage used. This information must be provided for each subfund in the case of umbrella funds</td>
</tr>
<tr>
<td></td>
<td>▶ A statement indicating that:</td>
</tr>
<tr>
<td></td>
<td>- Changes to the investment policies and restrictions of the scheme, or in the case of an umbrella scheme, its subfunds, shall be notified to investors in advance of the change.</td>
</tr>
<tr>
<td></td>
<td>- Changes to the investment objectives of the scheme, or in the case of an umbrella scheme its subfunds, shall be notified to investors in advance of the change. The change in the investment objectives will only become effective after all redemption requests received during such notice period, have been satisfied</td>
</tr>
<tr>
<td></td>
<td>▶ Accounting and distribution dates</td>
</tr>
<tr>
<td></td>
<td>▶ Name of auditor</td>
</tr>
<tr>
<td></td>
<td>▶ Details of unit types including the nature and rights of each type, and an indication of the voting rights, if any, of unit holders</td>
</tr>
<tr>
<td></td>
<td>▶ The scheme must identify the holders of the voting shares if it has issued voting shares to the promoters and nonvoting shares to prospective investors. If voting shares are held by a corporate entity or a trustee, the offering document may include the name of the entity without disclosing the names of the individual beneficial owners. However, the scheme will need to state that the identity of the ultimate beneficial owners of the holders of voting shares will be disclosed upon request</td>
</tr>
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</table>
### Offering document requirements - continued

<table>
<thead>
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<th>Area</th>
<th>Information required</th>
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</thead>
</table>
| **Scheme details - continued** | • Procedures and conditions for the creation, issue, sale, repurchase, redemption and cancellation of units including all relevant details of the circumstances in which repurchase or redemption may be suspended  
• Rules for the valuation of assets  
• Method used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of units, including the method and frequency of NAV calculation, information on the charges imposed on the sale or issue and redemption or repurchase of units, and any dealing arrangements applicable to unit holders  
• Umbrella funds must quote the charges of shifting investments between subfunds  
• Information concerning the nature, amount and basis of calculation of the remuneration payable to the manager (or in the case of a self-managed scheme, the investment committee), administrator, custodian, advisor, and to third parties, and in respect of the reimbursement of costs by the scheme to the manager, custodian and to third parties  
• In the case of investment companies, the amount of authorized and paid-up share capital. Such entities must also disclose details of board members. If one or more corporate directors are appointed there must be details of the corporate director and its directors together with a brief description of the nature and objects of the company. If the corporate directors have nominee shareholders and directors, the scheme must either disclose the ultimate beneficial owners or include a statement that this information is available upon request  
• PIFs set up as limited partnerships must provide details of the general partner. Where the scheme has appointed corporate general partners, details on the corporate general partners and its directors must also be disclosed, together with a brief description of the nature and objects of the company. If the corporate general partners have nominee shareholders and directors, the scheme must either disclose the ultimate beneficial owners or include a statement that this information is available upon request |
| **Service provider details (manager, investment advisor, administrator, and custodian/prime broker)** | • Name or style, registered office and head office.  
• If the service provider is part of a group, the scheme must provide the name of the group  
• Regulatory status  
• In the case of an investment advisor or administrator, there must be a statement indicating whether the person was appointed by the scheme or its manager  
• If one or more service providers are not appointed, the scheme must provide a description of how it intends to carry out such functions  
• In the case of self-managed PIFs, the scheme must provide details of the members of the investment committee, including an overview of their experience and expertise together with an outline of the persons responsible for the day-to-day management of the assets |
| **Local representative details** | • Name, registered office and head office  
• Main activities |
| **Risk warnings** | • Detailed and clear information of the main risks associated with investment in the scheme must be disclosed |
### Offering document requirements - continued

<table>
<thead>
<tr>
<th>Area</th>
<th>Information required</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>• Details of any possible conflicts of interest between the manager, investment advisor, and custodian/prime broker, and the scheme  &lt;br&gt;• The name of the entity which has been appointed by the scheme or its manager to carry out its work  &lt;br&gt;• Information relating to the arrangements for making payments to unit holders, purchasing or redeeming units, and making available information concerning the scheme  &lt;br&gt;• An indication, if applicable, that the PIF intends to use trading companies or SPVs</td>
</tr>
</tbody>
</table>

### Marketing document requirements

<table>
<thead>
<tr>
<th>Area</th>
<th>Information required</th>
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</thead>
</table>
| General | • A list of service providers, directors, general partners and trustee (as applicable), and their contact information  <br>• A definition of an extraordinary investor  <br>• A description of the principal risks applicable to the PIF  <br>• The investment objectives, policies and restrictions that apply to the PIF or its subfunds  <br>• Fee structure  <br>• Details of the units or classes on offer  <br>• If a custodian or prime broker is not appointed, a description of the safekeeping arrangements must be provided  <br>• If the PIF has issued voting shares to promoters and nonvoting shares to prospective investors, the PIF must clearly identify the holders of voting shares, together with a declaration that details of the ultimate beneficiaries will be made available upon request  <br>• The Extraordinary Investor Declaration Form and the Subscription Form  <br>• The latest constitutional document in full or summarized form must be annexed to the marketing document. If a summary is provided, the PIF must state that full constitutional documents will be made available upon request  <br>• The following text:  
  - “[Name of fund] is licensed by the Malta Financial Services Authority (MFSA) as a professional investor fund which is available to investors qualifying as “extraordinary investors.” This entails the minimum level of supervision for a fund regulated in Malta.  
  - Professional investor funds are nonretail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA’s investment and borrowing restrictions, and other requirements for retail schemes, do not apply.  
  - Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund’s failure.  
  - The MFSA has made no assessment or value judgment on the soundness of the fund or on the accuracy or completeness of statements made or opinions expressed with regard to it.” |
## Annex 6: Prospectus contents

<table>
<thead>
<tr>
<th>Type</th>
<th>Information required</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Specific information on mutual funds/unit trusts</strong></td>
<td>• Name of the scheme</td>
</tr>
<tr>
<td></td>
<td>• Date of establishment of the scheme and a statement as to its duration, if limited</td>
</tr>
<tr>
<td></td>
<td>• Statement of the place where the trust deed or fund rules, if it is not annexed, and periodic reports may be obtained</td>
</tr>
<tr>
<td></td>
<td>• Brief indications relevant to holders of units of the tax provisions applicable to the scheme, including details of whether deductions are made at source from the income and capital gains paid by the scheme to holders of units</td>
</tr>
<tr>
<td></td>
<td>• Accounting and distribution dates</td>
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<tr>
<td></td>
<td>• Name of auditor</td>
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<tr>
<td></td>
<td>• Details of the types and characteristics of the units, including:</td>
</tr>
<tr>
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<td>• The nature of the right represented by the unit</td>
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<td></td>
<td>• Whether certificates providing evidence of title will be issued, or whether there will be an entry in a register or in an account</td>
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<tr>
<td></td>
<td>• An indication of any denominations which may be provided for</td>
</tr>
<tr>
<td></td>
<td>• Indication of the voting rights of the holders of units, if such rights exist</td>
</tr>
<tr>
<td></td>
<td>• Circumstances in which the winding-up of the scheme can be decided upon and the winding-up procedures, in particular as regards the rights of holders of units</td>
</tr>
<tr>
<td></td>
<td>• Where applicable, details of the regulated market where the units are listed or dealt in</td>
</tr>
<tr>
<td></td>
<td>• Procedures and conditions for the creation, issue and sale of units</td>
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<tr>
<td></td>
<td>• Procedures and conditions for the repurchase, redemption and cancellation of units, and details of the circumstances in which repurchase or redemption may be suspended</td>
</tr>
<tr>
<td></td>
<td>• Description of the rules for determining and applying income</td>
</tr>
<tr>
<td></td>
<td>• Description of the scheme’s investment objectives, including its financial objectives, investment policy, any limitations on that investment policy, and an indication of any techniques and instruments which may be used for the purposes of efficient portfolio management, and of any borrowing powers which may be used in the management of the scheme</td>
</tr>
<tr>
<td></td>
<td>• Rules for the valuation of assets</td>
</tr>
<tr>
<td></td>
<td>• Method to be used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of units, in particular:</td>
</tr>
<tr>
<td></td>
<td>• The method and frequency of the calculation of prices (ideally each business day, but at least twice each month)</td>
</tr>
<tr>
<td></td>
<td>• Details of the means, places and frequency of the publication of prices (ideally each business day, but at least twice each month)</td>
</tr>
<tr>
<td></td>
<td>• Information concerning the charges relating to the sale or issue and the repurchase or redemption of units</td>
</tr>
<tr>
<td></td>
<td>• Arrangements whereby holders of units and prospective holders of units may deal</td>
</tr>
<tr>
<td></td>
<td>• Information on the nature, amount and the basis of calculation in respect of remuneration payable by the scheme to the manager, administrator, custodian, investment advisor and to third parties, and in respect of the reimbursement of costs by the scheme to these persons</td>
</tr>
<tr>
<td></td>
<td>• Information concerning any applicable exchange control regulations as they affect the unit holders and the scheme</td>
</tr>
<tr>
<td><strong>Specific information on investment companies/limited partnerships</strong></td>
<td>• Name of the scheme</td>
</tr>
<tr>
<td></td>
<td>• Form in law, registered office and head office if different from the registered office</td>
</tr>
<tr>
<td>Type</td>
<td>Information required</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Specific information on investment companies/limited partnerships    | ▶ Date of registration or incorporation of the scheme  
▶ A statement of the duration of the scheme, if limited  
▶ Statement of the place where the memorandum and articles of association or the deed of partnership of the scheme, if they are not annexed, and periodic reports may be obtained  
▶ Brief indications relevant to holders of units of the tax provisions applicable to the scheme, including details of whether deductions are made at source from the income and capital gains paid by the scheme to holders of units  
▶ Accounting and distribution dates  
▶ Name of auditor  
▶ Details of the types and characteristics of the units, including:  
  - Whether securities or certificates providing evidence of title will be issued, or whether there will be an entry in a register or in an account  
  - An indication of any denominations which may be provided for  
  - An indication of the voting rights of the holders of units, if such rights exist  
  - Circumstances in which the winding-up of the investment company can be decided upon and the winding-up procedures, in particular as regards the rights of holders of units  
▶ Where applicable, details of the regulated market where the units are listed or dealt in  
▶ Procedures and conditions for the creation, issue and sale of units  
▶ Procedures and conditions for the repurchase, redemption and cancellation of units, and details of the circumstances in which repurchase or redemption may be suspended  
▶ Description of the rules for determining and applying income  
▶ Description of the scheme’s investment objectives, including its financial, investment policy, any limitations on that investment policy, and an indication of any techniques and instruments which may be used for the purposes of efficient portfolio management, and of any borrowing powers which may be used in the management of the scheme  
▶ Rules for the valuation of assets  
▶ Method to be used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of units, in particular:  
  - The method and frequency of the calculation of prices (ideally each business day, but at least twice each month)  
  - Details of the means, places and frequency of the publication of prices (ideally each business day, but at least twice each month)  
  - Information concerning the charges relating to the sale or issue and the repurchase or redemption of units, and  
  - Arrangements whereby holders of units and prospective holders of units may deal  
▶ Information concerning the nature, amount and the basis of calculation in respect of remuneration payable by the scheme to the manager, administrator, custodian, investment advisor and to third parties, and in respect of the reimbursement of costs by the scheme to these persons  
▶ Names and positions in the scheme of those responsible for its administrative, management and supervisory functions together with their experience, both current and past, which is relevant to the scheme, and including the details of their main activities outside the scheme where these are of significance  
▶ Authorized share capital  
▶ Information concerning any applicable exchange control regulations as they affect the unit holders and the scheme |
### Full prospectus of open-ended Maltese non-UCITS schemes - continued

<table>
<thead>
<tr>
<th>Type</th>
<th>Information required</th>
</tr>
</thead>
</table>
| Additional information on the fund manager | • Name of the manager  
• Form in law, registered office and head office if different from the registered office  
• If the manager is part of a group, the name of that group and the ultimate parent  
• Date of registration or incorporation of the manager, and an indication of its duration if limited  
• Material provisions of the contract between the scheme and the manager which may be relevant to the holders of units  
• Information on other CISs that are managed by the manager  
• Names and positions in the manager of those responsible for its administrative, management and supervisory functions together with their experience, both current and past, which is relevant to the scheme and including details of their main activities outside the manager where these are of significance  
• Amounts of authorized and paid-up capital                                                                                                                                     |
| Additional information on the custodian    | • Name of the custodian  
• Form in law, registered office, and head office if different from the registered office  
• Material provisions of the contract between the scheme and the custodian which may be relevant to the holders of units  
• Main activity                                                                                                                                                                       |
| Additional information on the investment advisor | • Name of the investment advisor  
• Form in law, registered office, and head office if different from the registered office  
• Material provisions of the contract between the investment advisor and the manager or the scheme which may be relevant to the holders of units  
• Main activity                                                                                                                                                                      |
| Additional information on the fund administrator | • Name of the administrator  
• Form in law, registered office, and head office if different from the registered office  
• Material provisions of the contract between the administrator and the manager or the scheme which may be relevant to the holders of units  
• Main activity                                                                                                                                                                      |
| Additional information on the legal advisor | • Name of the legal advisor  
• Registered office, and head office if different from the registered office  
• Main activity                                                                                                                                                                      |
| Additional information on umbrella fund structures | • A statement that the scheme as a whole is constituted as an umbrella fund and name the subfunds  
• The charges, if any, applicable to the exchange of units in one subfund for units in another  
• The procedures and basis of valuation to be applied to the exchange of units in one subfund for units in another  
• The basis of apportioning charges, expenses, liabilities and amounts received between subfunds. This basis should be fair to the holders of units in each subfund |
### Full prospectus of open-ended Maltese non-UCITS schemes - continued

<table>
<thead>
<tr>
<th>Type</th>
<th>Information required</th>
</tr>
</thead>
</table>
| **Additional information on umbrella fund structures - continued** | - If applicable, a statement that, although each subfund will bear its own liabilities, the scheme as a whole will remain liable to third parties for all its liabilities (unless the subfunds are being set up as separate patrimonies)
- If an underlying scheme is denominated in a currency other than that in which the scheme itself is denominated, the scheme's prospectus shall explain the risks involved and, if appropriate, the techniques which may be used to reduce this risk. These techniques shall be agreed in advance with the MFSA |
| **Additional information on fund of funds structures** | - The prospectus shall accurately reflect the characteristics of the underlying scheme or schemes. Where appropriate, holders of units in the scheme shall be given the opportunity to receive copies of the prospectus for each underlying scheme
- Details of all fees, charges, taxes, commissions and other costs to be borne directly or indirectly by the scheme and, where appropriate, by each underlying scheme |
| **Additional general information** | - A statement to the effect that the authorization of the scheme by the MFSA does not constitute a warranty by the MFSA as to the performance of the scheme and the MFSA shall not be liable for the performance or default of the scheme
- A description of the potential conflicts of interest which could arise between the manager, investment advisor or custodian and the scheme
- The name of any entity which has been contracted by the manager to carry out its work
- Material provisions of any contracts between third parties and the manager or the scheme which may be relevant to unit holders, including those relating to remuneration
- Information concerning the arrangements for making payments to holders of units, purchasing or redeeming units and making available information concerning the scheme |

### Full prospectus of Maltese UCITS schemes

<table>
<thead>
<tr>
<th>Type</th>
<th>Information required</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General</strong></td>
<td>Maltese UCITS schemes must include all the information that has been listed above in respect of open-ended Maltese non-UCITS schemes. Information below must be provided in addition to this</td>
</tr>
</tbody>
</table>
| **Scheme information** | - A prominent statement drawing attention to the investment policy where the scheme:
  - Invests principally in any permissible investment instrument other than transferable securities and money market instruments or
  - Replicates a stock or debt securities index
- Indication of the categories of assets the scheme is authorized to invest in.
The prospectus shall mention if transactions in FDIs are authorized. In this event, it must include a prominent statement indicating if these operations may be carried out for the purpose of hedging or with the aim of meeting the investment objectives, and the possible outcome of the use of FDIs on the risk profile of the scheme
- When the NAV of the scheme is likely to have a high volatility due to the scheme’s portfolio composition or the portfolio management techniques that may be used, the prospectus shall include a prominent statement drawing attention to this characteristic |
### Full prospectus of Maltese UCITS schemes - continued

<table>
<thead>
<tr>
<th>Type</th>
<th>Information required</th>
</tr>
</thead>
</table>
| Scheme information - continued | • Where the scheme invests a substantial proportion of its assets in other schemes, the prospectus shall disclose the maximum level of the management fees that may be charged to both the scheme itself and to the other schemes in which it intends to invest  
  • Where a scheme is authorized to invest up to 100% of its assets in different transferable securities and money market instruments issued or guaranteed by any Member State, its local authorities, a non-Member State or public international bodies of which one or more Member States are members, a prominent statement drawing attention to such authorization and indicating the states, local authorities or public international bodies in the securities of which it intends to invest or has invested more than 35% of its assets  
  • The constitutional documents need not be annexed to the full prospectus provided that the unit holder is informed that on request they will be provided with these documents or be informed of the place where they may consult them |
| Additional information on the fund manager | • A list of the functions which the manager has been permitted to delegate                                                                                                                                                  |
| Additional investment information | • Historical performance of the scheme, if not attached  
  • Profile of the typical investor for whom the scheme is designed                                                                                                                                                    |
| Additional economic information | • Possible expenses or fees (other than those already mentioned above) distinguishing between those to be paid by the holder of the unit and those to be paid out of the scheme’s assets  
  • Details (where applicable) of fee-sharing agreements or soft commissions which should allow an investor to understand to whom expenses are to be paid and how possible conflicts of interest will be resolved in their best interest |

### Full prospectus of close-ended Maltese non-UCITS schemes

<table>
<thead>
<tr>
<th>Type</th>
<th>Information required</th>
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</thead>
</table>
| General    | • The scheme may draw up the full prospectus as a single document or separate documents. A full prospectus composed of separate documents must divide the required information into a registration document, a securities note and a summary note. The registration document must contain the information relating to the scheme. The securities note must contain the information concerning the units offered to the public  
  • The full prospectus shall be valid for 12 months after its publication for offers to the public  
  • The registration document shall be valid for a period of up to 12 months. In the case of a listed scheme, the full prospectus must be updated with any information that the scheme was required to disclose to the public over the preceding 12 months  
  • The registration document accompanied by the securities note and the summary note shall be considered as constituting a valid full prospectus |
<table>
<thead>
<tr>
<th>Type</th>
<th>Information required</th>
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</table>
| **General - continued** | - Where the scheme has a registration document approved by the MFSA, it shall only draw up the securities note and the summary note when units are offered to the public or admitted to trading on a regulated market. In this case, the securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development which could affect investors' assessments since the latest updated registration document. The securities and summary notes shall be subject to a separate approval. Where the scheme has only filed a registration document without approval, the entire documentation, including updated information, shall be subject to approval.
- The full prospectus of the scheme shall include a summary. The summary must, in a brief manner and in nontechnical language, convey the essential characteristics and risks associated with investing in the scheme. It must also convey the essential characteristics and risks associated with any guarantor and the scheme. The summary shall also contain a warning that:
  - It should be read as an introduction to the full prospectus
  - Any decision to invest in the units of the scheme should be based on consideration of the full prospectus as a whole by the investor
  - Where a claim relating to the information contained in the full prospectus is brought before a court, the plaintiff investor might have to bear the costs of translating the full prospectus before the legal proceedings are initiated
  - Civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the full prospectus.
- Information may be incorporated in the full prospectus by reference to one or more previously or simultaneously published documents that have been approved by the MFSA. When information is incorporated by reference, a cross-reference list must be provided in order to enable investors to easily identify specific items of information. The summary shall not incorporate information by reference.
- In the case of a full prospectus comprising several documents or incorporating information by reference, the documents and information making up the full prospectus may be published and circulated separately provided that the said documents are made available, free of charge, to the public. Each document shall indicate where the other constituent documents of the full prospectus may be obtained.
- Where the scheme makes an offer to the public in Malta, the full prospectus shall be drawn up in English or Maltese.
- Where an offer to the public is made or admission to trading on a regulated market is sought in one or more EU Member or EEA States (excluding Malta), the full prospectus of the scheme shall be drawn up either in a language accepted by the competent authorities of those states or in a language customary in the sphere of international finance, at the choice of the scheme.
- Where an offer to the public is made or admission to trading on a regulated market is sought in more than one Member State (including Malta), the full prospectus shall be drawn up in English or Maltese and shall also be made available either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the scheme.
- The full prospectus of the scheme may be drawn up either as:
  - A combination of a share registration document, securities note and summary note
  - A single document |
### Full prospectus of close-ended Maltese non-UCITS schemes - continued

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<th>Type</th>
<th>Information required</th>
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| **General - continued** | - These documents must be drawn in compliance with both the local Companies Act and EU requirements. However, under certain conditions, the MFSA may exempt a scheme from having to comply with certain EU directive requirements. The main driver of this exemption is the protection of investors and clarity of information  
- The full prospectus must clearly indicate both the offer price as well as the number of units to be issued. It must also include a declaration by the directors of the scheme, or its administrative management body (whose names and functions, or in the case of legal persons, their names and registered offices appear on the full prospectus), to the effect that to the best of their knowledge, the information contained therein is in accordance with the facts and the full prospectus makes no omission likely to affect its import |

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### Simplified prospectus

<table>
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<th>Information required</th>
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| **Scheme information** | - When the scheme was created and reference to its place of registration/incorporation  
- Where applicable, reference to the scheme being an umbrella fund  
- Details of the manager appointed by the scheme (when applicable)  
- Expected period of existence of the scheme (if of limited duration)  
- Details of the custodian  
- Details of the scheme's auditors  
- Details of the financial group promoting the scheme |
| **Investment information** | - Short description of the scheme's investment objectives, which should include:  
  - A concise and appropriate description of the outcomes sought for any investment in the scheme  
  - A clear statement of any guarantees offered by third parties to protect investors and any restrictions on those guarantees  
  - A statement where relevant, that the scheme is intended to track an index/indices, and sufficient indications to enable investors both to identify the relevant index and to understand the extent or degree of tracking pursued  
  - Description of the scheme’s investment policy and particular characteristics. For this purpose, the following information should be included, provided it is material and relevant:  
    - The main categories of eligible financial instruments which are the object of the investment  
    - Whether the scheme has a particular strategy in relation to any industrial, geographic or other market sectors or specific classes of assets  
    - Where relevant, a warning that, while the actual portfolio composition is set to comply with the broad legal and statutory rules and limits, risk-concentration may occur in regard to certain tighter asset classes, economic and geographic sectors  
    - If the scheme invests in bonds, an indication of whether they are corporate or government, their duration and the rating requirements  
    - Whether the scheme employs an active or passive investment management style  
    - Whether the scheme’s management style contemplates some reference to a benchmark and, in particular, whether the scheme has an “index tracking” objective with an indication of the strategy to be pursued to achieve this |
Investment information - continued

- A brief assessment of the scheme’s risk profile, including:
  - A statement to the effect that the value of investments may fall as well as rise, and that investors may get back less than they originally invested
  - A statement that details that all the risks actually mentioned in the simplified prospectus may be found in the full prospectus
  - A textual description of any risk investors have to face in relation to their investment, but only where such risk is relevant and material. The description should include a brief explanation of any specific risk arising from particular investment policies or strategies or associated with specific markets or assets relevant to the scheme.
    These may comprise market risk, credit risk, settlement or custody risk (particularly relevant in emerging markets), liquidity risk, exchange rate or currency risk, inflation risk and risks related to the concentration of assets or markets
  - The description should also include, where relevant and material, the following factors that may affect the scheme, prioritized by scale and materiality:
    - Performance risk, including the variability of risk levels depending on individual fund selections, and the existence, absence of, or restrictions on any guarantees given by third parties
    - Risks to capital, including potential risk of erosion resulting from withdrawals/cancellations of units and distributions in excess of investment returns
    - Exposure to the performance of the provider/third-party guarantor, where investment in the product involves direct investment in the provider, rather than assets held by the provider. Inflexibility, both within the product (including early surrender risk) and constraints on switching to other providers
    - Lack of certainty that environmental factors, such as a tax regime, will persist
- Schemes which have been set up for at least one year must also include, on a per subfund basis, the standard deviation of the subfund’s NAV over the period
- Historical performance of the scheme (where applicable) and a warning that this is not an indicator of future performance. In this respect, the scheme must also present:
  - The scheme’s past performance using a bar chart showing annual returns for the last 10 full consecutive years. If the scheme has been in existence for fewer than 10 years but at least for a period of one year, the annual returns should be given for as many years as are available. Returns are calculated net of tax and charges, but excluding subscription and redemption fees with an appropriate statement drawing attention to this fact
  - The cumulative performance or cumulative average performance of the scheme over the last 10 consecutive years, or if the scheme has been in existence for less than 10 years, over as many years as are available. The scheme should also compare the cumulative performance or cumulative average performance with the cumulative performance or cumulative average performance of a benchmark, when a comparison with a benchmark applies (see below)
  - If the scheme is managed according to a benchmark or if its cost structure includes a performance fee depending on a benchmark, the information on the past performance of the scheme should include a comparison with the past performance of the benchmark according to which the scheme is managed or the performance fee is calculated. The comparison is to be achieved by representing the past performance of the benchmark and that of the scheme on the same bar chart or separately
- Profile of the typical investor the scheme is designed for
<table>
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<tr>
<th>Type</th>
<th>Information required</th>
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</table>
| Economic information | • The tax regime applicable to the scheme and a statement indicating that the income or capital gains received by individual investors are subject to the tax law applicable to the personal situation of each individual investor and to the place where the capital is invested. This must also include a note that if investors are unclear as to their fiscal position, they should seek professional advice.  
• Entry and exit fees and any other expenses payable directly by the investor and not by the scheme.  
• Disclosure – either within or annexed to the simplified prospectus together with historical performance details – of a total expense ratio (TER), calculated as an indicator of the scheme’s total operation costs, except for newly created schemes where a TER cannot yet be calculated. Reference to an information source (such as the scheme’s website), where the investor may obtain previous years’/periods’ TER figures should also be included.  
• Disclosure of the expected cost structure.  
• An indication of all the other costs not included in the TER, including disclosure, when available, of transaction costs.  
• As an additional indicator of the importance of transaction costs, the portfolio turnover rate.  
• An indication of the existence of fee-sharing agreements and soft commissions, and a reference to the full prospectus for detailed information on such arrangements. |
| Commercial information | • The procedure and any other relevant details for the purchase of units in the scheme.  
• The procedure and any other relevant details for the sale of units in the scheme.  
• In the case a scheme set up as an umbrella fund, how to switch from one subfund into another and the charges applicable in such cases.  
• When and how dividends on units of the scheme (if applicable) are distributed.  
• Frequency of publication or issue of unit prices and where/how prices are published or made available. |
| General information | • A statement that, on request, the full prospectus, and the annual and half-yearly reports may be obtained free of charge before the conclusion of the contract of investment and afterwards.  
• Reference to the scheme having been licensed by the MFSA in terms of the ISA, 1994 and that, where applicable, it qualifies as a Maltese UCITS scheme in terms of the UCITS Directive.  
• Indication of a contact point where additional explanations may be obtained if needed.  
• Publishing date of the simplified prospectus. |
Annex 7: Application fees and expenses

All application fees must be paid together with an application for a CIS or with a notification request by a European UCITS scheme. These fees are not conditional on the outcome of application/notification processes and are nonrefundable. All supervisory fees must be paid when a license is granted or when a European UCITS scheme is given authorization to market products in Malta. The supervisory fees must also be paid on each anniversary within a period of seven days.

<table>
<thead>
<tr>
<th>Scope of application</th>
<th>Fees</th>
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</table>
| **Malta UCITS / non-UCITS scheme** | Application fees for license of a CIS / subfund  
- €1,514.09 per scheme  
- €291.17 per subfund up to 15 subfunds  
- €174.70 per subfund for 16 subfunds or more  

Supervisory fees  
- €1,630.56 per scheme  
- €291.17 per subfund up to 15 subfunds  
- €174.70 per subfund for 16 subfunds or more  

The issue of additional classes of shares/units within an existing scheme are not subject to application and supervisory fees as long as they do not constitute a distinct subfund. |
| **Overseas non-UCITS scheme** | Application fees for notification  
- €1,514.09 per scheme  
- €291.17 per subfund up to 15 subfunds  
- €174.70 per subfund for 16 subfunds or more  

Supervisory fees  
- €1,630.56 per scheme  
- €291.17 per subfund up to 15 subfunds  
- €174.70 per subfund for 16 subfunds or more  |
| **European UCITS scheme** | Application fees for notification  
- €1,514.09 per scheme  
- €291.17 per subfund up to 15 subfunds  
- €174.70 per subfund for 16 subfunds or more  

Supervisory fees  
- €1,630.56 per scheme  
- €291.17 per subfund up to 15 subfunds  
- €174.70 per subfund for 16 subfunds or more  |
| **European management companies providing services through a branch** | €931.75 on application  
- €2,795.25 annual supervisory fee  |
| **European investment firms with conditions similar to Category 1A licenses** | €698.81 on application  
- €1,164.69 annual supervisory fee  |
| **European investment firms with conditions similar to Category 2 licenses** | €931.75 on application  
- €2,795.25 annual supervisory fee  |
| **European investment firms with conditions similar to Category 3 licenses** | €1,154.09 on application  
- €3,494.06 annual supervisory fee  |
## Annex 7: Application fees and expenses

<table>
<thead>
<tr>
<th>Scope of application</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Private CISs</strong></td>
<td>• €1,164.69 on application</td>
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<tr>
<td></td>
<td>• €349.41 annual supervisory fee</td>
</tr>
<tr>
<td><strong>PIFs</strong></td>
<td>Application fee for a preliminary indication of acceptability</td>
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<tr>
<td></td>
<td>• €465.87</td>
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<tr>
<td></td>
<td>Application fee for license of a PIF</td>
</tr>
<tr>
<td></td>
<td>• €698.81 per scheme</td>
</tr>
<tr>
<td></td>
<td>• €698.81 per subfund</td>
</tr>
<tr>
<td>Supervisory fees</td>
<td>• €698.81 per scheme</td>
</tr>
<tr>
<td></td>
<td>• €291.17 per subfund</td>
</tr>
<tr>
<td></td>
<td>€291.17 per subfund up to 15 subfunds</td>
</tr>
<tr>
<td><strong>Investment Service License holders</strong></td>
<td>• Category 1A: €698.81 on application and €1,164.69 annual supervisory fee</td>
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<tr>
<td></td>
<td>• Category 1B: €698.81 on application and €1,397.62 annual supervisory fee</td>
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<tr>
<td></td>
<td>• Category 2: €931.75 on application and €2,795.25 annual supervisory fee</td>
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<tr>
<td></td>
<td>• Category 3: €1,514.09 on application and €3,494.06 annual supervisory fee</td>
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<tr>
<td></td>
<td>• Category 4: €3,494.06 on application and €6,988.12 annual supervisory fee</td>
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<tr>
<td><strong>Application for recognition as a fund administrator</strong></td>
<td>• €2,329.37 on application</td>
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<tr>
<td></td>
<td>• €465.87 annual supervisory fee</td>
</tr>
<tr>
<td><strong>Tied agents</strong></td>
<td>• Individuals: €81.53 on application and €232.94 annual supervisory fee</td>
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<td></td>
<td>• Nonindividuals: €116.47 on application. Supervisory fees of €291.17 and €174.70 apply per individual employed by the tied agent, and those directly involved in the provision of tied agent activities</td>
</tr>
</tbody>
</table>
### Annex 8: Double taxation treaty network

<table>
<thead>
<tr>
<th>Country 1</th>
<th>Country 2</th>
<th>Country 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>Greece</td>
<td>Pakistan</td>
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<tr>
<td>Australia</td>
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<td>Barbados</td>
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<tr>
<td>Canada</td>
<td>Korea, Republic of</td>
<td>Slovakia</td>
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<tr>
<td>China, P.R</td>
<td>Kuwait</td>
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<tr>
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<td>Latvia</td>
<td>South Africa</td>
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<tr>
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<td>Denmark</td>
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<td>Luxembourg</td>
<td>Syrian Arab Republic</td>
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<td>Tunisia</td>
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<td>Morocco</td>
<td>United Kingdom</td>
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<td>France</td>
<td>Netherlands</td>
<td>United States of America</td>
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<tr>
<td>Germany</td>
<td>Norway</td>
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</tbody>
</table>

*a* Agreement limited to profits derived from operation of ships or aircraft in international traffic.

*b* Agreement signed and pending ratification through United States Senate Committee on Foreign Relations review.
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Asset Management

Ronald Attard
Leader (TAS)
ronald.attard@mt.ey.com

Assurance

Mario P Galea
Country Managing Partner
marlo.p.galea@mt.ey.com

Anthony Doublet
Leader (AABS)
anthony.doublet@mt.ey.com

Tax

Christopher J. Naudi
Leader (Tax)
chris.naudi@mt.ey.com

Ernst & Young
Regional Business Centre
Achille Ferris Street
Msida, MSD 1751 Malta

Tel: +356 2134 2134
Fax: +356 2347 1600
E-mail: ey.malta@mt.ey.com

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