

A large, abstract graphic in the top right corner consists of a network of blue squares connected by thin lines, forming a spherical or dome-like structure. The squares are of varying sizes and are arranged in a complex, interconnected pattern.

# Malta

## Regulation

FUNDS AND FUND MANAGEMENT 2010

## 2.1 Type of funds

### General

The Maltese regulatory regime on collective investment schemes licensable under the Investment Services Act 1994, (CAP 370 of the Laws of Malta) may be broadly divided into schemes targeting retail investors and schemes targeting non-retail investors. Retail schemes may be either UCITS schemes or non-UCITS schemes. Non-retail schemes are referred to as professional investor funds. It is also possible to establish a private scheme which schemes do not require licensing and are subject to a lower level of regulation. Private schemes are required to register with the Malta Financial Services Authority (MFSA) for recognition.

Collective investment schemes may be established either as a corporate or a non-corporate entity. Corporate funds would take the form of a private or public limited liability company or a limited partnership. Depending on the requirements of the fund, where the fund is set up as a limited liability company it may be set up as an investment company with variable share capital (SICAV), or an investment company with fixed share capital (INVCO). An INVCO may only be set up as a public company while a SICAV may be set up as a private or a public limited company. Non-corporate funds include funds set-up as a unit trust (regulated by the Trusts and Trustees Act) and mutual funds established by contract.

### Professional investor funds (PIFs)

PIFs are regulated in terms of the Rules for Professional Investor Funds issued by the MFSA. A PIF can be marketed to specific classes of investors who must meet specific criteria as stated in the rules, namely experienced investors, qualifying investors, and extraordinary investors.

Further to the level of experience, knowledge and wealth which each of these categories of investors must meet, investors participating in a PIF are to satisfy a minimum investment threshold as follows:

- Experienced investors - EUR 10,000 or its equivalent in foreign currency

- Qualifying investors - EUR 75,000 or its equivalent in any convertible currency
- Extraordinary investors - EUR 750,000 or its equivalent in foreign currency

PIFs are subject to varying degrees of regulation depending on the type of investors they are targeting, with those targeting experienced investors being the most regulated and those targeting extraordinary investors being the least regulated making the licensing and ongoing obligations of the fund more flexible and less onerous.

PIFs promoted to qualifying and extraordinary investors are not subject to any restrictions on their investment or borrowing powers. PIFs promoted to experienced investors are likewise not subject to any restrictions on their investment powers, although borrowing for investment purposes and leverage via the use of derivatives is restricted to 100 percent of NAV.

The exposure relating to derivative instruments, for PIFs promoted to experienced investors, is calculated taking into account:

- the current value of the underlying asset;
- the counterparty risk;
- future market movements; and
- the time available to liquidate positions.

The PIF's exposure relating to borrowing for investment purposes is the amount so borrowed. The assessment of the PIF's global exposure to derivative instruments should be assessed on the basis of the Value at Risk Approach or the Commitment Approach as set out in the Investment Services Rules for Retail Collective Investment Schemes.

Where PIFs promoted to experienced investors invest in alternative assets, the MFSA may impose tailored investment restrictions. Such a PIF may utilize SPVs subject to the conditions set out in the Rules and any other conditions which the MFSA may consider appropriate, taking into account the nature of the underlying assets and their proposed custody arrangements.

The Scheme may invest up to 20 percent of its total assets in securities issued by the same body and up to 30 percent of its assets in money market instruments issued by the same body provided that:

- the 20 percent / 30 percent limit set out above may be increased to a maximum of 100 percent in the case of securities and money market instruments issued or guaranteed by an OECD or EU/ EEA Member State, its local authorities or public international bodies of which one or more such States are members;

- the 20 percent / 30 percent limit set out above may be increased to a maximum of 35 percent in the case of securities and money market instruments guaranteed by a credit institution authorized in the EEA or which is subject to equivalent prudential requirements;
- the 20 percent limit set out above may be increased up to a maximum of 30 percent in the case of transferable securities traded in or dealt on a regulated market which operates regularly, is recognized and is open to the public.

PIFs promoted to experienced investors may invest up to a maximum of 35 percent of its total assets in deposits held with a single body. PIFs are increasingly being used in Malta for the setting up of hedge funds.

#### Retail schemes

Following Malta's adoption of the UCITS directives, the retail funds regulatory regime has drawn a distinction between UCITS schemes and non-UCITS schemes since not all retail funds fall within the scope of the UCITS directives. The main exclusions for retail funds to qualify as a UCITS scheme include closed-ended funds, funds which raise capital without promoting the sale of their units directly to the public, funds whose deed or articles state that their units may only be sold to the public in non-EU countries, funds whose investment and borrowing policies do not conform with those of the UCITS directives, and funds that are in general not harmonized in accordance with the UCITS directives.

#### Private schemes

A private scheme is one which limits the total number of participants to 15 persons, who are close friends or relatives of the promoter. The scheme is essentially private in nature and purpose, provided that it does not qualify as a professional investor fund as outlined above. Such schemes are subject to a much simpler application process for the recognition of the scheme and a lower degree of regulation and supervision by the MFSA.

#### Property funds

A property fund is a fund set up either with the main objective of investing in immovable property or, directly or indirectly having a limited exposure to immovable property.

The MFSA's property funds policy document on property funds makes several distinctions:

- between funds promoted to investors resident in Malta and investors not resident in Malta;

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- between funds investing in immovable property situated in Malta and outside of Malta;
- between funds investing in immovable property as their main objective and funds having a limited exposure to immovable property by way of investment; and
- between funds investing in property management and/or property financing companies as opposed to investing in the immovable property itself.

Where a fund intends to invest in immovable property various restrictions apply. These restrictions emerge out of the property funds policy document.

A retail fund may only invest, directly or indirectly, a maximum of 10 percent of its net asset value (NAV) in immovable property.

For a fund to be permitted to invest, directly or indirectly, more than 10 percent in immovable property, it must be set up as a PIF.

A PIF investing directly or indirectly in immovable property may invest up to a maximum of 25 percent of its total assets directly or indirectly (through an SPV) in any one single immovable property. Subject to the PIF being operated according to the risk-spreading principle, it will not be required to comply with this restriction before the lapse of three years from its launch.

Where the PIF invests solely in immovable property, rather than also in property funds and/or other securities, it should be exposed to not less than 5 different properties. A PIF investing directly or indirectly in immovable property may invest 100 percent of its total assets in any single property fund provided that such fund complies with the investment, borrowing and leverage conditions applicable to PIFs targeted at Experienced Investors, established as property funds. The PIF may invest up to 100 percent of its assets in a Special Purpose Vehicle (SPV) provided that the applicable investment, borrowing and leverage restrictions are satisfied at the level of the SPV.

Where a PIF chooses to have a limited exposure of direct or indirect investment in property, the fund's investment in such property shall be limited to approximately 10 percent – 20 percent of the fund's NAV. In this case the PIF is not subject to further investment restrictions other than those normally applicable to PIFs. The MFSA would nevertheless require that the fund reports every six months to ensure the agreed exposure limit is satisfied on an on-going basis.

Where a property fund invests in property situated in Malta, such PIF may only be promoted to qualifying investors or to experienced investors who are non-Maltese residents. Where the fund excludes investing in immovable property situated in Malta, such fund may be promoted to qualifying or experienced investors. In this case, the policy document does not impose any restriction as

to the residence of the experienced investors. Apart from maintaining liquid funds as appropriate and the possible investment of up to 25 percent of net asset value in securities issued by property management and/or property financing companies, such funds must invest, directly or indirectly, solely in immovable property as specified by the policy document.

*Figure 1: Professional investor property funds targeting Maltese resident investors*

	<b>Investment in immovable property in Malta</b>	<b>Investment in immovable property outside Malta</b>	<b>Borrowing for liquidity purposes</b>
Experienced investor	Not permitted	Permitted	Unrestricted
Qualifying investor	Permitted	Permitted	Unrestricted

	<b>Leverage to acquire immovable property Open-ended PIF</b>	<b>Leverage restrictions Closed-ended PIF</b>
Experienced investor	Not permitted	< 100 percent of NAV
Qualifying investor	<50 percent NAV *	No restrictions

*Figure 2: Professional investor property funds targeting non-Malta resident investors*

	<b>Location of immovable property</b>	<b>Borrowing for liquidity purposes</b>
Experienced investor	No restrictions	No restrictions
Qualifying investor	No restrictions	No restrictions

	<b>Leverage to acquire immovable property Open-ended PIF</b>	<b>Leverage restrictions Closed-ended PIF</b>
Experienced investor	Not permitted	< 100 percent of NAV
Qualifying investor	<50 percent NAV *	No restrictions

\*MFSA reserves the right to require advanced notification from a local credit institution.

Overseas-based funds which invest directly or indirectly in immovable property may not be promoted to retail investors in Malta, but may be provided to experienced and qualifying investors and must comply with the conditions set out by the MFSA.

MFSA's Policy also applies to the promotion of overseas-based funds whose main objective is to invest in immovable property and overseas based funds which have a limited exposure to immovable property.

### 2.2 Laws

Funds in Malta are governed by the Investment Services Act, 1994 (ISA).

The MFSA, established as an autonomous government agency, is the single competent authority regulating the financial services sector. It is responsible for the licensing and regulation of collective investment schemes and other investment service activities.

The ISA lays down the statutory basis for regulating collective investment schemes. It does not provide detailed rules and regulations to which such schemes must adhere, but empowers the regulator to issue such rules and regulations to license holders as it considers necessary.

The MFSA has consequently issued Investment Services Rules (rules) under the Investment Services Act, 1994. These rules explain, in general terms, the scope and contents of the ISA, set out the application procedure and highlight the standard license conditions that will be applied to a licensed entity in the various regulatory areas and in the appropriate circumstances. The said regulatory framework is also complimented by guidance issued by the MFSA, namely the Guide to the Establishment of Collective Investment Schemes, the Guide to the Establishment of Professional Investor Funds, the Guidelines for Redomiciliation of Offshore Funds to Malta and the Continuation of Companies Regulations.

Furthermore, European passporting regulations are in force to enable Maltese licensed entities to exercise their right to set up a branch or provide services in EU or EEA Member States, and vice versa for European or EEA licensed entities.

### 2.3 Managers, trustees, and custodians

A collective investment scheme licensed by the MFSA may appoint a third-party investment manager. Where such manager is appointed, the MFSA requires that the manager and the custodian, where appointed, are independent of each other. Where no third-party manager is appointed, the scheme would be self-managed.

Where the manager is incorporated in Malta, it must be licensed by MFSA in terms of the ISA to carry out such management services. The manager should have sufficient financial resources at its disposal to enable it to conduct its business effectively and to meet its liabilities. The licensed manager of a SICAV may also be one of its directors. The competent authority is to be satisfied that all directors and officers, or in the case of a unit trust or limited partnership, the trustees or the general partners accordingly, meet the criteria of a fit and proper person to carry out such activities or functions required by the scheme.

### Through adoption of the EU passporting regime, Malta allows EU/EEA licensed managers to offer services in Malta. Retail funds

A manager of a retail fund is to have an established place of business in Malta. However, the MFSA may exempt an overseas fund manager of sufficient standing and repute established and regulated in a recognized jurisdiction from some or most of the licensing requirements. A recognized jurisdiction includes EU and EEA Member States and other countries, to be approved on a case-by-case basis, that are considered as having EU equivalent rules.

Managers are not allowed to delegate functions to the extent that they become a brass-plate entity.

The custodian of a collective investment scheme is required to have an established place of business in Malta and be approved by the MFSA. An overseas-based custodian may be considered by the MFSA provided they are established and regulated in a recognized jurisdictions and secure adequate protection of the scheme's assets.

Where a UCITS scheme is set up as a self-managed scheme, such scheme has to have a minimum initial capital of EUR 300,000 and has to comply with financial resources requirements, Conduct of Business requirements, and record-keeping requirements as may be laid out by the MFSA. A non-UCITS retail fund is required to have a minimum initial share capital of EUR 125,000.

### Professional investor funds

A PIF may be self-managed or managed by an external fund manager. Where the fund manager is established in Malta it must hold a category 2 investment services license. The MFSA may also accept a manager being established and regulated in a recognized jurisdiction.

Where a PIF is to be self-managed, the management of the assets of the Scheme falls within the responsibility of the Board of Directors and at least one of the directors must be resident in Malta. The Board of Directors of the PIF has to establish an in-house Investment Committee made up of at least three members and may include Board members. The initial, paid up share capital for a self-managed PIF should not be less than EUR 125,000, or the equivalent in

any other currency and the NAV of the Scheme is expected to exceed this amount on an on-going basis.

A PIF targeting experienced investors should appoint a third-party custodian to keep safe custody of the assets of the fund and to monitor the activity of the manager. The custodian is to be independent from the manager.

PIFs targeting qualifying or extraordinary investors are not required to appoint a custodian, subject to the regulator being satisfied with the custody agreements the PIF has in place, and such arrangements being disclosed in the offering memorandum.

A fund administrator (if separate from the manager) providing services in or from Malta to license holders and/or schemes, does not require a license. However, it must still apply to the MFSA for appropriate recognition.

## 2.4 Investment restrictions

### Professional investor funds

A PIF is not subject to any restrictions on its investment or borrowing powers. The only restriction which exists in the case of a PIF is where it is promoted to experienced investors (see 2.1. above), where such a PIF is only allowed to leverage its position in limited circumstances.

A PIF promoted to experienced investors is required to comply with the investment restrictions within six months from its launch or upon reaching a value equivalent to EUR 2,500,000, whichever is sooner. However, the PIF will, provided it considers this to be in the best interest of its shareholders and that it observes the principle of risk spreading, not be required to comply with its investment restrictions upon reaching a value equivalent to EUR 2,500,000 subject to it complying with such restrictions within a maximum of six months from launch.

Such PIFs may only enter into repurchase/reverse repurchase and stock lending or borrowing agreements in the following circumstances:

- when in the opinion of the PIF or its Manager, the entering into such agreements by the PIF is appropriate and in the interest of investors in the PIF, and entails an acceptable level of risk; and
- in accordance with good market practice, which involves the provision of adequate collateral to the satisfaction of the PIF or its Manager.

A PIF which is enabled by its investment policy to invest in financial derivative instruments in order to obtain exposure to underlying assets, shall effect such investments without prejudice to the limits set out in the Rules for PIFs targeting experienced investors, which apply in the case of direct investments

in such underlying assets. The exposure to the underlying assets should be calculated using the Commitment Approach as indicated in the Investment Services Rules for Retail Collective Investment Schemes.

PIFs promoted to experienced investors are not subject to any investment restrictions with respect to investments in a single collective investment scheme provided that the underlying scheme is a UCITS or other open ended collective investment scheme subject to risk spreading requirements which are at least comparable to those applicable to the PIF itself. A PIF promoted to experienced investors may invest up to a maximum of 30 percent of its total assets in any single collective investment scheme which does not satisfy these conditions.

Where a PIF promoted to experienced investors is a fund of hedge funds it shall invest in at least five hedge funds.

Where a PIF promoted to experienced investors enters into OTC derivative transactions, it shall ensure that its exposure to a single counterparty is limited to 20 percent of its total assets. The exposure to one counterparty in an OTC derivative transaction may be reduced where the counterparty provides the PIF with acceptable collateral in accordance with good market practice to the satisfaction of the PIF or its Manager. The exposure per counterparty of an OTC derivative should not be measured on the basis of the notional value of the OTC derivative, but on the maximum potential loss incurred by the PIF if the counterparty defaults. Furthermore it may net the mark-to-market value of its OTC derivative positions with the same counterparty, thus reducing the PIF's exposure to its counterparty, provided that it has a contractual netting agreement with its counterparty which creates a single legal obligation such that, in the event of the counterparty's failure to perform owing to default, bankruptcy, liquidation or any similar circumstance, the PIF would have a claim to receive or an obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions.

A PIF promoted to experienced investors is required to limit its aggregate maximum exposure (through securities, money market instruments, deposits and OTC derivatives transactions) to a single issuer/ counterparty to 40 percent of its total assets.

The conditions relating to specialist funds (that is, venture capital or development funds, money market funds, property funds, and futures and options funds) should be discussed beforehand with the MFSA. The MFSA will consider, in each case, the expertise of the managers, the contents of the offering document, the investment and borrowing restrictions, and the marketing and reporting arrangements, to ensure that they are appropriate to the scheme, taking account of the potential investors.

## Non-UCITS

A licensed non-UCITS retail collective investment scheme must operate on the principle of risk-spreading, and may not invest more than 10 percent of its assets in securities which are not traded on a liquid regulated market, which operates regularly and that is open to the public. It may not invest more than 10 percent of its assets in securities of any one issuer and may not hold more than 10 percent of any class of security issued by a single issuer.

Financial Derivative Instruments may be used by such collective investment schemes for efficient portfolio management. Investment in such instruments must be economically appropriate to the scheme and must be used either for the reduction of risk or the reduction of costs of the scheme. Where the scheme is investing in OTC-derivative transactions, the scheme's exposure to one counterparty shall not be more than 5 percent of the value of the schemes assets. Where such counterparty is a credit institution, the limit may be increased to 10 percent.

The scheme may not carry out 'uncovered sales' of securities or other financial instruments. Uncovered sales are transactions in which the scheme is exposed to having to buy securities at a higher price than the price at which the securities are delivered, thus making a loss, and the risk of not being able to deliver the underlying for settlement at the time of maturity of the transaction.

Other restrictions provide that no more than 10 percent of the assets of a collective investment scheme should be deposited with any one entity (or no more than 30 percent with a bank licensed in Malta or a bank outside Malta but which is approved by the MFSA) and that a scheme and its manager should not control more than 20 percent of the share capital or votes of a company, or sufficient instruments to exercise significant influence over an issuer.

Notwithstanding the individual limits set, a collective investment scheme may not combine investments in securities, deposits and/or counter party exposures arising from OTC-derivative transactions in relation to a single body in excess of 35 percent of the scheme's assets.

A collective investment scheme may, with the MFSA's approval, invest up to 100 percent of its assets in securities issued by one state or government. There are restrictions on the amount of derivatives which could be used to hedge currency and other risks. A scheme may allocate in total up to 20 percent of its assets to investments in the units of other collective investment schemes.

Where schemes are promoted to non-private customers, such as license holders or persons whose ordinary business involves the acquisition and disposal of investment instruments of the same kind as the scheme invests in, the scheme need not operate according to the principle of risk spreading.

A scheme must comply with the investment restrictions within six months from the launch of the scheme or upon reaching a value equivalent to EUR 2.5 million, whichever is the sooner. If a breach of investment restrictions occurs (after the preliminary period) for reasons beyond the control of the manager or scheme, the necessary steps must be taken to restore compliance as soon as is reasonably practicable. Such breach is to be remedied within a maximum period of six months.

### UCITS

In the case of UCITS, a number of investment restrictions apply. These include:

Permissible investment instruments: investments of a UCITS scheme must consist solely of any or all of the following instruments: transferable securities and money market instruments dealt in on a regulated market, which operates regularly and is recognized and open to the public; transferable securities and money market instruments admitted to official listing on a stock exchange in a non-member state or dealt in on another regulated market in a non-member state which operates regularly and is recognized and open to the public provided that the choice of stock exchange or market has been approved by the MFSA or is provided for in the scheme's prospectus or the scheme's instrument of incorporation: recently issued transferable securities which are due to be admitted to listing in the short term; units of other UCITS authorized in terms of the UCITS directive and/or other collective investment schemes falling within the definition of a UCITS, should they be situated in a Member State or not, that is, investing in transferable securities but not necessarily authorized in terms of the UCITS directive, provided certain requirements are met; no more than 10 percent of the assets of the UCITS schemes or of the other collective investment schemes whose acquisition is contemplated, can, according to their prospectus or instruments of incorporation, be invested in aggregate in units of other UCITS or other collective investment schemes, deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months provided that the credit institution is registered in an EU Member State or is subject to appropriate prudential rules; financial derivative instruments; money market instruments, other than those dealt in on a regulated market, where the issuer or issuer of such instruments is itself regulated for the purpose of protecting investors and savings. If formed as an investment company or a limited partnership, an UCITS scheme may acquire movable or immovable property essential for its business, and may also hold ancillary liquid assets.

Investment limits: a scheme may not invest more than 10 percent of its assets in transferable securities and money market instruments other than those referred to above. A scheme cannot invest more than 5 percent of its assets in transferable securities or money market instruments issued by any one issuer, although this may be raised to 10 percent if the total value of securities held with issuers in each of which it invests more than 5 percent, is less than 40 percent (this limitation does not apply to deposits and OTC –derivative

transactions made with financial institutions subject to prudential supervision). If the transferable securities or money market instruments are issued/guaranteed by a Member State, Non-Member State, or by public international bodies to which one or more Member States belong, the 5 percent may be raised to 35 percent, and to 25 percent in the case of bonds issued by a credit institution meeting certain requirements.

The MFSA may however authorize a scheme to invest in accordance with the principle of risk-spreading, 100 percent of its assets in different transferable securities or money market instruments issued/guaranteed by any Member State, non-Member States, or public authorities, provided it meets certain conditions.

- Deposits with credit institutions: not more than 20 percent of the assets of the scheme can be deposited with any one body.
- Transactions in certain derivatives: subject to the application of the permissible counterparty collateral, the maximum exposure to one counterparty in an OTC derivative transaction cannot be more than 5 percent in value of the assets of the scheme (extended to 10 percent if the counterparty is a credit institution which is appropriately supervised) and the global exposure relating to derivative instruments should not exceed the total net value of the scheme's portfolio and the overall risk exposure may not exceed 200 percent of the scheme's NAV on a permanent basis.
- Uncovered sales; a scheme may not carry out uncovered sales of transferable securities, money market instruments and certain other financial instruments.
- Single issuer exposures: notwithstanding individual limits, a scheme may not combine investments in transferable securities or money market instruments, deposits, and/or exposures arising from over-the-counter derivative transactions with any one single body in excess of 20 percent of its assets.
- Investment in shares and bonds for tracking an index: there is a 20 percent limit for investment in shares and/or debt securities issued by the same body. This limit may be raised to 35 percent in exceptional circumstances.
- Investment in other UCITS/CISs: when the scheme acquires units of a UCITS and/or other collective investment schemes, this is subject to a limit of 20 percent of its assets. Investments made in units of collective investment schemes other than UCITS, may not exceed, in aggregate, 30 percent of the assets of the scheme. A scheme may not acquire more than 10 percent of the non-voting shares of any single issuing body, 10 percent of the debt securities of any single issuing body, 25 percent of the units of any single UCITS and/or other collective investment schemes in terms of the UCITS directive and 10 percent of the money market instruments of any single issuing body.

In the case of UCITS set-up as umbrella company, a sub-fund may not invest in another sub-fund of that same scheme.

A scheme must comply with the investment restrictions within six months from the launch of the scheme, provided that it observes the principle of risk spreading. If a breach of investment restrictions occurs (after the preliminary period) for reasons beyond the control of the manager or scheme, the necessary steps must be taken to restore compliance as soon as is reasonably practicable. Such breach is to be remedied within a maximum period of six months.

### 2.5 Borrowing

PIFs, promoted to qualifying and extraordinary investors do not have limitations on their borrowing powers. PIFs promoted to experienced investors may only leverage their position in a limited manner but may borrow up to 100 percent of their NAV.

A retail scheme established as an investment company, a limited partnership, or a unit trust may borrow up to a maximum of 10 percent of its assets or value of the scheme as the case may be. Such schemes may acquire foreign currency by means of a back-to-back loan.

### 2.6 Drawdowns

PIFs targeting qualifying or extraordinary Investors are required to only make a fresh call for further commitments once all outstanding commitments from existing investors have been requested.

There is no requirement for all payments further to such call to have been received before the scheme can make a fresh call for further commitment.

Investors who default on their commitments vis-à-vis the scheme may be liable thereto in terms of the agreement they have entered into with the scheme in this context.

### 2.7 Accounts and prospectuses

A collective investment scheme must issue annual accounts to all unitholders and is also required to submit monthly returns, half-yearly, and annual reports, where applicable, to the MFSA. The management company or investment company should agree the financial year end of the scheme with the MFSA.

A prospectus, scheme particulars, or similar document giving details of the scheme should be prepared and submitted to the MFSA for approval when applying for a collective investment license. This document should be dated and essential elements are kept up to date.

## UCITS

UCITS schemes are required to publish both a simplified and a full prospectus, which likewise has to be dated and has to have its essential elements kept up to date.

## Professional investor funds

Maltese-incorporated PIFs do not need to issue a prospectus under the Companies Act 1995, but an offering document or marketing document, as the case may be, is required. The offering document is intended to provide sufficient information to enable a potential authorized investor to make an informed investment decision. This information includes, but is not limited to:

- specifically worded disclosures as required by the MFSA;
- appropriate risk warnings;
- the identification of all principal service providers, or a description of how the principal functions will be carried out;
- the investment objectives and policies of the PIF;
- conditions for the creation, issue, sale, and redemption (where applicable) of units;
- method for calculation of the NAV;
- any investment or borrowing restrictions;
- a brief description of the promoters; and
- information concerning the service providers, directors, and investment committee where applicable.

Where PIFs are promoted to extraordinary investors, promoters may choose whether to provide such investors with an offering document as referred to above or a marketing document.

The marketing document is intended to provide investors with information to make an informed decision. This information should include, but is not limited to:

- a list of service providers including the directors, general partner(s), or trustee – and their respective contact details;
- a definition of extraordinary investor;

- a risk warnings section describing in brief at least the principle risks associated with investing in the scheme;
- investment objectives, policies and restrictions of the PIF;
- the fee structure;
- details of the classes/units on offer;
- an overview of the safe keeping arrangements (where a custodian/prime broker is not appointed);
- details of the beneficial owners of the founder shares (where these shares hold voting rights)/general partner(s)/trustee;

The most recent version of the constitutional document of the scheme is to be annexed to the marketing document.

The offering document or marketing document, as the case may be, must be approved by the PIF's board of directors or by its manager in writing prior to being submitted to the MFSA for its approval. Changes to the offering document must similarly be approved before filing with the MFSA prior to implementation.

The Investment Services Rules require that the offering document provides a detailed and clear indication of the principal risks associated with investing in the scheme. The recent amendments to Appendix II to Part B of the rules require that where it is possible for the scheme to enter into agreements with investors for the purpose of committing funds for subscription at a future date to units at a specific price, a risk warning should be made to the effect that should the scheme issue units at a discount with respect to its current NAV, in terms of such agreements, there will be a risk of dilution to the Net Asset Value of the scheme. Furthermore there should be a clear risk warning that while investors entering into an agreement with the scheme for the purpose of committing funds for subscription at a future date to units at a specific price, would in effect be subscribing for such units at a discount if the NAV per unit prevailing at the time the draw-down request is made exceeds the price at which the investor had agreed to subscribe for units in terms of such agreement. On the other hand, if the NAV per unit at the time a draw-down request is made is lower than the price at which the investor had agreed to subscribe for units in terms of such agreement, the investor would, in effect, be paying a premium for such units.

## 2.8 Supervision

The supervisory authority in Malta is the Malta Financial Services Authority (MFSA).

## 2.9 Fund ownership

There are no restrictions on the number of units which one person or a related group of persons may hold in a fund.

## 2.10 Fund structure

Funds of funds and umbrella companies (or multi fund companies) are permitted in Malta, both in the form of non-UCITS as well as, UCITS schemes. An umbrella company formed as a SICAV may, through provisions in its Memorandum and Articles of Association, have the assets and liabilities of each sub-fund treated as a patrimony separate from the assets and liabilities of each other sub-fund of such company. The fund may also be structured as a multi class company where the same fund issues different classes of shares not constituting a separate fund.

The rules contain supplementary conditions for those UCITS established as an umbrella company or fund of funds. In the case of umbrella companies, there is the requirement for each sub-fund to be approved by the MFSA, in addition to obtaining the approval for the umbrella company. Each sub-fund has to comply with laws and regulations governing UCITS schemes. Furthermore, a sub-fund cannot invest in another sub-fund of that same scheme.

In the case of non-UCITS fund of funds, the supplementary conditions require that the scheme is valued with the same frequency of the underlying schemes, as far as practicable. The scheme cannot invest in a feeder fund or in a fund of funds. Other conditions relate to price quotations and sale and repurchase agreements for units in the scheme, objectives and investment policy of the scheme, and investment restrictions applicable to the underlying schemes.

## 2.11 Stock exchange

Funds may be listed on the Malta Stock Exchange irrespective of whether or not they are set up in Malta. Foreign funds have to obtain MFSA approval before seeking a listing. Overseas-based UCITS schemes enjoying passporting rights into Malta may seek a listing on the Malta Stock Exchange without being licensed under the ISA.

## 2.12 Bank secrecy

The Prevention of Money Laundering Act and regulations which have been adopted in line with the EU Third Directive make money laundering a criminal offence in Malta.

The Professional Secrecy Act provides protection for personal and commercial privacy by clarifying and extending the principle of professional secrecy already provided for in Maltese Law. Amongst persons caught under the Act, one finds

employees and officers of financial and credit institutions, trustees, and persons licensed to provide investment services under the Investment Services Act.

The Banking Act provides that the MFSA may, on the basis of international or reciprocity agreements, disclose information to other foreign competent authorities only to the extent that the foreign authorities receiving the information restrict its use for supervisory and regulatory purposes or for such other purposes as may specifically be agreed upon with the MFSA.

## 2.13 Fund set-up

Application/notification fees and supervisory fees that are payable to the MFSA are the following:

<b>Collective Investment Schemes – Maltese UCITS Schemes, Maltese Non-UCITS Schemes, and Overseas Based Non-UCITS Schemes</b>	<b>Application/ Notification fee (EUR)</b>	<b>Annual Supervisory fee (EUR)</b>
Scheme	2,000	2,500
Sub-fund		
up to 15 funds	450	400
16 sub-funds and over	250	150
Professional Investor Funds		
In principle approval	600	N/A
License per scheme	1,500	1,500
License per sub-fund	1,000	500
<b>Private Schemes</b>	<b>Application/ Notification fee (EUR)</b>	<b>Annual Supervisory fee (EUR)</b>
Recognition fee	1,750	500
<b>European investment firms establishing a branch in Malta in terms of passport rights</b>	<b>Application/ Notification fee (EUR)</b>	<b>Annual Supervisory fee (EUR)</b>
Authorized to provide investment services by their home State but are not authorized to hold and control clients' money or customers' assets	750	1,200
Authorized to provide investment services by their home State and to hold and control clients' money and assets but not to deal for their own account or underwrite or place instruments on a firm commitment basis	1,000	3,000
Authorized to provide	1,650	3,600

European investment firms establishing a branch in Malta in terms of passport rights	Application/ Notification fee (EUR)	Annual Supervisory fee (EUR)
investment services by their home State and to hold and control clients' money or customers' assets		
European management companies establishing a branch in Malta in terms of passport rights	Application/ Notification fee (EUR)	Annual Supervisory fee (EUR)
	1,250	4,000
European UCITS marketing their units in Malta in terms of the UCITS Regulations	Application/ Notification fee (EUR)	Annual Supervisory fee (EUR)
European UCITS scheme	2,000	2,500
Sub-fund		
up to 15 funds	450	450
16 sub-funds and over	250	250

## 2.14 Foreign funds

### Non-UCITS

An overseas (foreign) non-UCITS scheme which intends, either directly or indirectly, to advertise or promote its units in Malta must first seek to apply for, and be granted, a license issued by the MFSA in terms of the Investment Services Act. The license conditions will be specific to such scheme and will depend on the extent of supervision exercised by the competent authority of the home state of such scheme.

### UCITS

An overseas UCITS may only market its units in Malta pursuant to the notification procedure stipulated in the UCITS regulations. In carrying out its marketing activities in Malta, an overseas UCITS must maintain facilities in Malta for making payments to unitholders, repurchasing, or redeeming units, and making available the information which it is obliged to provide in terms of the UCITS regulations. To this end, an overseas UCITS may appoint a local license holder as its local representative or take other adequate measures as may be agreed with the MFSA. When an overseas UCITS markets in Malta in terms of the UCITS directive, it has to pay any applicable fees to the MFSA as they fall due.

Furthermore, overseas UCITS marketing their units in Malta are exempt from the requirement to have their prospectus reviewed by the MFSA.

## Continuation of foreign collective investment schemes in Malta

A body corporate which is formed, incorporated, or registered in a country outside Malta and carrying on the business of a collective investment scheme (which is similar in nature to a body corporate as known under the laws of Malta), may qualify to be authorized or recognized as a CIS under the ISA and may be continued as a collective investment scheme in Malta under the applicable laws of Malta. This provision likewise applies to a Maltese collective investment scheme wishing to continue its existence in a foreign jurisdiction.

Malta introduced the framework for redomiciliation of companies through the Continuation of Companies Regulations, issued pursuant to the Companies Act, in 2002. The continuation of offshore funds into Malta is specifically provided for in Article 31 of the ISA. Furthermore on 22 December 2009, the MFSA issued Guidelines for Redomiciliation of Offshore Funds to Malta. These Guidelines do not provide a new set of rules but merely complement the existing regulatory framework.

The Regulations allow for the continuation of any form of corporate vehicle so long as an application for a Collective Investment Scheme license under the ISA is first submitted to the MFSA's Authorization Unit and the necessary procedure is observed. The Scheme is licensed on the same date it is redomiciled to Malta.

### 2.15 Bearer shares

The general rule is that all shares issued by companies registered in Malta must be registered shares. The only exception provided by law applies in the case of a public company which, if so authorized by its memorandum or articles, may, with respect to any fully paid up shares, issue a warrant to bearer. The bearer of the warrant is entitled to the shares therein specified and the warrant may provide, by coupons or otherwise, for the payment of future dividends on shares included in the warrant. The shares specified in a share warrant may be transferred by the delivery of the warrant. One should note that prior to the issue of such shares, permission from MFSA is required.

### 2.16 Use of the internet

The use of the internet is not specifically regulated under the Investment services Act. Reference to the use of the internet falls under the general ambit of advertising.

Under the Investment Services Guidance Notes, issued by the MFSA, a brief reference is made to promotion of investment services and products. The Guidance notes indicate that License Holders are to include appropriate statements on the Web site indicating to whom the site is being targeted, and giving notice to the investor when leaving the License Holder's site. Other

general provisions relating to advertising in general are also applicable to such kind of advertising.

## 2.17 Compensation schemes

An investor compensation scheme to protect private investors is in force. Collective investment schemes are specifically excluded from contributing towards the investor compensation scheme owing to the fact that they are excluded from claiming under that same scheme. Moreover, license holders providing investment services solely and exclusively to sophisticated persons are also exempt from contributing to the scheme.

## 2.18 Passporting provisions

### Considerations for investment firms

The European Council Directive on markets in financial instruments (Directive 2004/39/EC) (MIFID) gives investment service providers, authorized in a Member State of the European Union or the EEA (home state), a passport, which allows them to operate across the European Union and in the EEA, without requiring any further authorization from the host EU Member and EEA States (host state) in which they choose to operate.

An European investment firm may exercise its European right to passport into Malta those investment services and activities and ancillary services in relation to specific instruments as described in Annex 1 to MIFID, as long as they are included in its home state authorization, by establishing a Malta branch, or by providing cross border services into Malta. Likewise, Maltese firms may passport their services within the EU/EEA. Ancillary services may only be passported if provided in relation to the instruments indicated in Annex 1 to MIFID and in addition to the investment services and activities specified therein. Investment services and activities include, amongst others, reception, transmission, and execution of orders on behalf of investors, dealing for own account, portfolio management and underwriting. Ancillary services include safekeeping and administration, safe custody services, granting credits, or loans to investors to allow them to carry out transactions, underwriting services, and foreign-exchange services, amongst others.

The MFSA requires European investment firms advertising in Malta to adhere to advertising requirements and conduct of business rules ordinarily applicable to locally-licensed firms. The protection of clients' money and clients' assets is reserved to the home state regulator.

### Considerations for collective investment schemes

Specific provisions regulate cross-border investment activity applicable to Maltese and European UCITS, their management companies and custodians.

Maltese UCITS may market their units in another EU/EEA State, provided that prior to commencing such marketing a written notification of such intention is submitted to the MFSA. Furthermore, the Maltese UCITS has to inform the foreign authority and has to simultaneously furnish it with prescribed information, including an attestation by the MFSA that the UCITS fulfils conditions as imposed by the directive; fund rules or instruments of incorporation, a full and simplified prospectus, latest annual report, and subsequent half-yearly reports, where appropriate; and details of the arrangements made in relation to the marketing of the units in the other EU/EEA state. The Maltese UCITS may commence marketing at the expiry of two months after the afore-mentioned requirements have been met, unless prior to the lapse of these two months the foreign authority would have notified the UCITS concerned and the MFSA that arrangements may not be fully compliant.

European UCITS may market their units in Malta, provided they satisfy the conditions as set out in the regulations, and which reflect similar requirements to those outlined above. There is also the obligation to comply with Host state laws and regulations on advertising.

Notification and supervisory fees are payable upon notification to the MFSA by a European management company to establish a branch in Malta, and upon the commencement of business in Malta, respectively. Supervisory fees are also payable annually thereafter.

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