

Malta

Regulation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Regulation

Authorization requirements and process

In terms of the Investment Services Act 1994 (ISA), hedge fund managers and advisors established in Malta are typically required to be licensed by the Malta Financial Services Authority (MFSA).

Where a person is required to be licensed by the MFSA to carry on their proposed service, the promoters should apply to the MFSA for a license in terms of the requirements of the ISA. The application procedure is detailed in the Investment Services Rules for Investment Services Providers (the IS Rules). In outline, the MFSA suggests that prior to an application being submitted, the promoters have a preliminary discussion with them to determine the parameters of the proposed activity. The promoters must then submit a draft application including a three year business plan and the required supporting documents as detailed in the IS Rules. This stage of the process is intended for the applicant and the regulator to discuss and clarify all queries that the parties and the regulator may have. Following the review of the draft application, and the agreement on the license conditions, the MFSA will issue an in principle approval. Once all conditions and requirements as detailed by the MFSA are met, the final application is submitted and the license issued.

The MFSA seeks to ensure that representatives of the applicant fulfils the Fit and Proper test, in that such individuals must demonstrate to the MFSA that they have the required integrity, competence and solvency to carry on the proposed activity.

Where a hedge fund manager or advisor is to exercise their right to provide services or the right of establishment under the EU Passporting regime in Malta, their activity shall be regulated by the Investment Services Rules for Investment Services Provides, particularly the Rules for Maltese Branches of European Investment Firms and Rules for European Management Companies providing Services in Malta.

Typical timescale to receive approval

A hedge fund manager and advisor would typically receive regulatory approval within four weeks from the submission of the draft application supporting documents. The preparation of the application, business plan, and supplementary documentation would generally take eight weeks.

Regulatory capital requirements

The capital resources a Manager is required to maintain is based on the Capital Requirements Directive (CRD) and is regulated in Malta under the ISA and the particular IS Rules issued there under.

The Capital Resources Requirement shall be the higher of the two items below:

- Initial capital; and
- The higher of the following:
 - risks to which the company is exposed; and
 - the fixed overheads requirement.

The minimum initial Capital Resources Requirement for Managers is EUR 125,000. The minimum initial Capital Resources Requirements for Advisors depends on the activities and license category of such Advisor.

The license holder may be required to maintain further financial resources as determined by the MFSA.

Significant restrictions on marketing to investors

The marketing of hedge funds, in or from Malta, requires either the entity being advertised and promoted to be licensed under the ISA or, where the entity is not so licensed, the advertisement to be approved by an entity licensed under the ISA.

Hedge fund structures

Regulation

Authorization requirements

All hedge funds which are to be established in Malta must be licensed in terms of the ISA. Hedge funds in Malta are to be set up as Professional Investor Funds (PIFs).

Where the fund opts to appoint a third party manager, and such Manager is not established and licensed in Malta, the MFSA would require such Manager to be established and regulated in a Recognized Jurisdiction. A Recognized Jurisdiction includes all EU and EEA Member States and signatories to a Multilateral MoU or Bilateral MoU with the MFSA, covering the relevant sector of financial services.

Where none of the PIF's service providers have an established place of business in Malta, the fund is required to appoint a Local Representative. Such Local Representative shall have access to all records of the scheme so as to be in a position to provide any documents or respond to any queries that the MFSA may have.

Restrictions on types of investments, concentration levels, and the manner in which hedge funds can invest and/or strategies

The Investment Services Rules for Professional Investor Funds (Rules) do not impose any restrictions on the types of investment concentration levels and the investment strategies to be adopted by PIFs. The MFSA will review on a case by case basis the investment policies and restrictions the applicant intends to adopt as part of its investment strategy.

Professional Investor Funds promoted to qualifying and extraordinary investors are not subject to any borrowing or leverage restrictions. PIFs promoted to experienced investors are required to limit their borrowing for investment and leverage through the use of derivatives to a maximum of 100 percent of their NAV. Furthermore, where the fund is a property fund promoted to experienced and qualifying investors, the fund shall be subject to the Property Fund Policy Document which sets out the investment, borrowing, and leverage parameters applicable to such funds.

Rules regarding the publishing of the accounts and prospectuses

A hedge fund is required to publish an offering document or marketing document in terms of the Rules as the case may be. Such offering document/marketing document must be approved by the directors of the fund and submitted to the MFSA for its approval. The MFSA's prior approval is required for any amendments thereto.

All hedge funds shall have annual audited financial statements published and submitted to the MFSA and investors within four months of the end of the financial year.

The Scheme shall also submit to the MFSA any statistical returns which may be required by the Central Bank of Malta to fulfill European and other relevant reporting obligations.

Time-scale of establishment of a hedge fund

In the case of PIFs promoted to experienced and/or qualifying investors the MFSA binds itself to providing its comments on the draft application documents within seven working days from the submission of the documents. This period is reduced to three working days for PIFs promoted to extraordinary investors. These time frames apply where the appointed Manager, Advisor, Custodian or Prime Broker, where applicable, are based and regulated in a Recognized Jurisdiction.

Where all documents are in order, a hedge fund may be licensed within four to eight weeks.

Investors

Regulation

Restrictions on which type of investors can invest in a hedge fund and/or the minimum/maximum number of investors in a hedge fund

PIFs may be promoted to specific classes of investors who meet the qualification requirements set out in the Rules which are experienced investors, qualifying investors, and extraordinary investors.

Each class of investors is required to meet specific criteria and is subject to minimum investment thresholds.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.