



Regulatory framework applicable to AIFs and PIFs

Asset management and funds

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The Legal 500

INTRODUCTORY REMARKS

Following the introduction of the Alternative Investment Fund Management Directive (the “AIFMD”), all investment funds now fall into one of the following two categories: UCITS or Alternative Investment Funds (AIFs). Although the AIFMD is not specifically intended to regulate the AIFs themselves, the enhanced regulation of the manager and other service providers has led to the inception of a new body of rules governing AIFs which have been transposed into local law via the new AIF rulebook.

The successful Professional Investor Fund (PIF) regime has not been abolished. Rather, it has been updated and the new AIF regime shall co-exist simultaneously therewith. New PIF licences may continue to be issued under the updated Investment Services Rules (the “Rules”) in the case of:

- (i) *de minimis* self-managed AIFs;
- (ii) PIFs managed by *de minimis* AIFMs;
- (iii) applicants who opt to apply for a PIF licence provided the PIF is managed by a AIFM in full compliance with the AIFMD; and
- (iv) applicants who opt to apply for a PIF licence provided the PIF is managed by a non-EU AIFM in terms of the relevant conditions of the AIFMD under which other EU-Member States may allow them to market to professional investors in their territory.

PIFs

The De Minimis Carve-out

The MFSA has retained its highly successful PIF regime for *de minimis* managers wishing to set up collective investment schemes (“CISs”) in Malta, as such managers are not subject to the requirements of the AIFMD in relation to AIFs.

In essence, a PIF is an AIF and therefore falls within the ambit of the AIFMD. However the AIFMD regulates AIFMs, not *de minimis* fund managers. The PIF brand, which is lighter and more flexible, may hence *inter alia* continue to be availed of by sub-threshold managers.

	Experienced PIF	Qualifying PIF	Extraordinary PIF
Minimum Investment	€10,000	€75,000	€750,000
Eligible Investors	Experienced Investors	Qualifying Investors	Extraordinary Investors
Investment Restrictions	Direct borrowing for investment purposes and leverage through the use of derivatives is restricted to 100% of NAV. Other investment restrictions apply.	None, unless the fund invests in immovable property	None
Fund Manager	Optional. Self-managed PIFs allowed	Optional. Self-managed PIFs allowed	Optional. Self-managed PIFs allowed
Administrator	Optional	Optional	Optional
Custodian/Prime Broker	Required	Optional (provided that there are adequate safekeeping arrangements)	Optional (provided that there are adequate safekeeping arrangements)
Money Laundering Reporting Officer (MLRO)	Required	Required	Required
Auditor	Required	Required	Required
Offering/Marketing Documents	Must prepare an offering document	Must prepare an offering document	Must prepare an offering document or a brief marketing document

AIF RULEBOOK – KEY FEATURES

The new AIF Rulebook provides AIFMs with a clear regulatory outline which will allow them to establish AIFMD-ready funds for marketing to professional investors in Malta or across the EU. The rulebook applies to both externally managed and self-managed AIFs (albeit with a dedicated section therein applicable solely to the latter). The rulebook *inter alia* regulates (i) the governing body of the AIF; (ii) the appointment of service providers; (iii) investment restrictions; (iv) transparency requirements; (v) dealings by officials of AIFs; and (vi) the marketing of AIFs. Further information on the AIF regime is available upon request.

LEGAL FORMS

CISs (including PIFs and AIFs) may be set up as closed-end funds, open-ended funds, or a combination of both, and may take a variety of legal forms:

- Investment Company with Variable Share Capital (SICAV)
- Investment Company with Fixed Share Capital (INVCO)
- Limited Partnership
- Unit Trust
- Contractual Fund
- Incorporated Cell Company (ICC)

INVESTMENT COMPARTMENTS

The Legal Forms listed above may permit the creation of investment compartments, also referred to as sub-funds. Investment compartments segregate the assets and liabilities of each compartment, making it possible to pursue different investment strategies in each compartment without affecting the returns accruing to the other compartments of the investment vehicle.

LICENSING AND AUTHORISATION

CISs established in Malta must obtain a collective investment scheme license under the ISA before commencing any activity in or from Malta. The parties involved in the CIS and the service providers must meet the MFSA's "fit and proper" criteria, a process that assesses integrity, competence and solvency. PIFs benefit from a fast-track application procedure as the MFSA has undertaken to reply to license applications within 7 business days if all service providers are based in a recognised jurisdiction. Recognised jurisdictions include EU and EEA member states and signatories to a multilateral or bilateral Memorandum of Understanding with the MFSA.

The application process for PIFs/AIFs consists of three phases:

1. Preparatory Phase

Preliminary meetings are held between the applicant and the MFSA to discuss the proposal prior to submitting an application for a license. A draft application form is then submitted together with the supporting documentation, such as the personal questionnaire forms ('PQs') of the proposed management of the fund.

2. Pre-licensing Phase

The MFSA issues an "in-principle" approval for the issue of a license after the applicant finalises any outstanding matters. Signed copies of the application form together with supporting documents in their final format are submitted.

3. Post-licensing Phase

The applicant may be required to satisfy certain post-licensing matters prior to the formal commencement of business

SUPPORTING DOCUMENTS

Together with the application form an applicant must submit the following:

1. Draft offering document or marketing document
2. Draft memorandum and articles of association
3. Draft board of directors resolution
4. Application fee
5. Details of the Directors of the PIF/AIF
6. Details of the Founder shareholders holding more than 10% voting shares

Supplementary application documents are required in the case of a self-managed PIF/AIF. These are:

1. PQs and detailed CV of members of the Investment Committee or Portfolio Manager
2. Terms of reference regulating the procedures of the Investment Committee
3. Confirmation from the Portfolio Manager(s) (if applicable) that he/she/they will:
 - Operate in accordance with the investment objective and policy described in the offering document and the investment guidelines issued by the Investment Committee
 - Report to the Investment Committee on a regular basis any transactions effected on behalf of the PIF/AIF
 - Provide to the Investment Committee, any information it may require from time-to-time
4. Confirmation from the Portfolio Manager(s)/Investment Committee that they have appropriate resources available to them to ensure on-going access to the market information required to make investment management decisions.

Further Documentation required for self-managed AIFs:

- Portfolio and Risk Management Delegation Agreements (as applicable);
- Risk Management Policy Document;
- Programme of Activities (Business Plan); and
- If the AIF intends to cover potential professional liability risks by way of professional indemnity insurance, it shall provide a copy of the cover note to the insurance policy.

Further supplementary supporting documents are required if the PIF intends to target Extraordinary Investors.

SERVICE PROVIDERS

A PIF may appoint any service provider it may deem necessary. Currently, only PIFs promoted to Experienced Investors are required to appoint a custodian.

Service providers PIFs normally appoint may include: a manager, an administrator, an investment advisor, and a custodian or prime broker. These may either be established in Malta or located outside Malta.

In the case of a CIS managed by an AIFM or a self-managed fund (treated as the AIFM in its own right for the purposes of the AIFMD (unless it is a *de minimis* self-managed scheme)), the appointment of a custodian with monitoring duties is compulsory.

INVESTMENT COMMITTEE

The board of directors of a self-managed PIF/AIF must establish an in-house Investment Committee made up of at least three members, whose composition may include board members.

The role of the Investment Committee is to:

- i. Monitor and review the investment policy of the PIF/AIF
- ii. Establish and review guidelines for investments of the PIF/AIF
- iii. Issue rules for stock selection
- iv. Set up the portfolio structure and asset allocation
- v. Make recommendations to the board of directors of the PIF/AIF

The Investment Committee may delegate the day-to-day investment management of the assets of the PIF/AIF to one or more officials of the fund, referred to as Portfolio Managers, who will affect the day-to-day transactions within the guidelines set by the Investment Committee.

MALTA STOCK EXCHANGE

PIFs/AIFs may increase their investor base by applying for listing on the Malta Stock Exchange ('MSE'). A PIF/AIF listed in Malta may seek listing on foreign exchanges.

The MSE offers a solid infrastructure and an international footprint as it is a member of international organisations, and has been designated a recognized stock exchange for tax purposes by the HM Revenue in the UK.

RE-DOMICILIATION

A fund established outside Malta may re-domicile to Malta without being wound-up. The rules on the re-domiciliation of funds facilitate the continuation of funds by giving validity to any agreements or obligations of the fund with its service providers and investors.

TAXATION

This section touches upon the features of Malta's taxation regime in the context of PIFs and AIFs.

The PIF/AIF

CISs investing more than fifteen per cent of their assets outside Malta are exempt from income tax and capital gains tax on the revenue generated from their investments. CISs are neither subject to value added tax (VAT) for the supply of services outside Malta.

Investors in the CIS

Non-resident investors are exempt from income tax and capital gains tax on the dividend received and the income received from the transfer of their participation or shares in the CIS. No stamp duty is payable by investors on a transfer of their participations in the CIS.

Highly Qualified Employees

Certain highly qualified persons employed by the CIS may be eligible for a reduced flat rate of income tax of fifteen per cent.

Third Party Manager

If the manager of the PIF/AIF is owned by non-residents the effective rate of tax payable is reduced to five per cent. This is the result of a partial non-taxable refund of the tax paid by the manager, upon the distribution of dividends to the non-resident unit holders.

Double Taxation Treaties

PIFs/AIFs may benefit from Malta's extensive network of double-taxation treaties with around 58 countries, most of which are modelled on the OECD model.

MFSA LICENSING FEES

The applicable MFSA fees for the licensing of a PIF are:

i. Application fee

Collective Investment Scheme: €1,500

For each sub-fund: €500

ii. Supervisory fee

Collective Investment Scheme: €1,500

For each sub-fund: €1,000

iii. In-Principle approval fee: €600

The applicable MFSA fees for the licensing of an AIF are:

i. Application fee

Collective Investment Scheme: €2,000

For each sub-fund (fee applicable per sub-fund up to 15 sub-funds): €450

For each sub-fund (fee applicable per sub-fund for 16 sub-funds and over): €250

ii. Supervisory fee

Collective Investment Scheme: €2,000

For each sub-fund (fee applicable per sub-fund up to 15 sub-funds): €400

For each sub-fund (fee applicable per sub-fund for 16 sub-funds and over): €150

iiii. Company registration fee

Registration of the SICAV with the Registry of Companies:
€1,750



MALTA

- Robust legal system, based on UK and EU law and in tune with the business world
- Member of the EU: easy access to 28 member states through the EU marketing passport
- Reputable regulator while being easily accessible and sensitive to the particular requirements of applicants
- Tax efficiency: favourable tax regime and extensive double tax treaty network
- Skilled and highly qualified workforce and service providers
- English is an official language
- Currency is the Euro

For more information, please contact :



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