



Regulatory Framework applicable to UCITS Funds

“Highly professional team that
continuously exceeds expectations”

The Legal 500

INTRODUCTORY REMARKS

Undertakings for Collective Investment in Transferable Securities ('UCITS') are retail collective investment schemes which have been established in accordance with, and which must comply with, the UCITS Directive. Since it was first adopted in 1985 (by means of EU Directive 85/611/EU) the UCITS Directive has been modified several times to take into account developments in financial markets. The latest version of the UCITS Directive (EU Directive 2009/65/EC), also known as UCITS IV, was adopted in 2009 and entered into force on 1 July 2011 (the "UCITS Directive").

The success of UCITS funds is rooted in the stable, high quality, well-regulated investment product which is provided by adherence to the UCITS Directive, with significant levels of investor protection.

Although the dust had barely settled on the revised UCITS Directive, the 2008 financial crisis and concerns about the need to protect the retail investor base of these funds, together with the need to ensure the legislative framework keeps abreast of industry developments, led the European Commission to gear up for the draft UCITS V Directive ('UCITS V') which was published on 3 July 2012. Just three weeks later, on 26 July 2012, the European Commission published a consultation paper seeking the views of market participants on proposals for additional wide-ranging amendments to the UCITS Directive. The latest set of changes is referred to as 'UCITS VI'.

CATEGORIES OF RETAIL FUNDS

Pursuant to the implementation of the Alternative Investment Fund Managers Directive (Directive 2011/61/EU) (the "AIFMD"), retail investment funds may now fall within either one of the following categories: (i) the UCITS category, which must be regulated by the UCITS Directive; (ii) the AIFMD category, which must comply with the AIFMD; or (iii) the AIFMD-exempted retail funds (the latter two categories falling outside the scope of this briefing note).

UCITS REGULATION IN MALTA

The UCITS Directive has been transposed into Maltese law primarily by means of the rules for Retail Collective Investment Schemes, including the standard licence conditions applicable to Malta-based Retail UCITS Collective Investment Schemes (the "Investment Services Rules"). This briefing note provides a brief overview of the regulatory framework applicable to UCITS IV funds established in Malta.

Legal Form

UCITS IV funds may take a variety of legal forms:

- I. Investment Company with Variable Share Capital (SICAV)
- II. Limited Partnership
- III. Unit Trust
- IV. Contractual Fund
- V. Incorporated Cell Company (ICC)

Investment Compartments (sub-funds)

The legal forms listed above may permit the creation of investment compartments. 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

A UCITS fund established in Malta must obtain a collective investment scheme licensed under the Investment Services Act (Cap. 370 of the laws of Malta) before commencing any activity in or from Malta. The parties involved in the fund and its service providers must meet the MFSA's "fit and proper" criteria, a process that assesses integrity, competence and solvency. The application process ideally commences with preliminary meetings held between the applicant, its consultants and the MFSA with a view to submitting draft application documents. Once the documentation has been vetted and informally approved by the MFSA, an 'in principal' approval is issued followed by the issuance of the formal licence upon finalisation of all final matters. The applicant may be required to satisfy certain post-licensing matters prior to the formal commencement of business.

Service Providers of a UCITS Fund

This section gives an overview of the service providers of UCITS IV funds:

A. Management of the fund

UCITS funds may either be managed by a third party manager, that is, a UCITS management company, or be self-managed, that is, the board of directors in the case of a SICAV, will be responsible for the day-to-day investment management of the assets of the fund.

Self-managed funds are a popular choice with non-EU managers wishing to establish an EU base for passporting their units in the EU, as the day-to-day management function may be delegated to a non-EU licensed manager – subject to the fulfilment of certain criteria, including that co-operation between the MFSA and the supervisory authority of such manager is ensured and that the scheme does not delegate its functions to the extent that it becomes a "letter-box/brass-plate" entity. A self-managed fund may also appoint a non-EU investment adviser to advise the fund – in such cases the party appointed is often the non-EU promoter of the fund.

The third-party UCITS management company may either be established in Malta or be a UCITS management company established in another EU member state that has established a branch in Malta or is providing its services under the UCITS management company passport introduced by the UCITS IV Directive.

B. Investment Adviser

The investment adviser is responsible for the provision of investment advice to the fund or the third-party manager. UCITS funds are not required to appoint an investment adviser. Such advisers need not be established and regulated in Malta.

C. Custodian or Depositary of the fund

UCITS IV funds must appoint a custodian based in Malta to safe-keep the assets of the fund and to monitor the activities of the manager or the management function, in the case of a self-managed UCITS. The custodian must have an established place of business in Malta and may either be: (i) a credit institution licensed under the laws of Malta; or (ii) an entity in possession of a licence to act as a custodian issued by the MFSA in terms of the Investment Services Act (Cap. 370 of the laws of Malta).

D. Administration of the fund

The administrative function may be carried out by the management company or a delegated third party regulated fund administrator.

MFSA LICENSING FEES

An application fee payable on submission of the application for a collective investment scheme licence as a Maltese UCITS Scheme must be payable. The fee is €2,500 for the collective investment scheme itself and €450 for each sub-fund thereof, which fee is applicable per sub-fund up to 15 sub-funds. Licensed collective investment schemes are required to pay the first annual supervisory fee on the date the licence is granted and annually thereafter upon the anniversary of the granting of the licence. The annual supervisory fee for the collective investment scheme is €3,000 whereas the fee applicable per sub-fund up to 15 sub-funds is €500 (no such supervisory fee would be payable for the 16th sub-fund upwards).

If the scheme is to be incorporated in the form of a SICAV, the registration thereof with the Registry of Companies is €1,750.

UCITS STRUCTURES

A UCITS fund may be established as any of the following structures:

Single Fund Structure

A UCITS fund can be structured as a single fund, where the UCITS will have one strategy which all investors will participate. The fund would be able to establish different rights for different investors by establishing different and distinct share classes.

Umbrella Fund Structure

UCITS funds can also be structured as multi-strategy umbrella funds. Depending on the legal form of the UCITS fund (for instance, an investment company), the UCITS fund entity may

have multiple investment strategies represented by classes of shares constituted as different sub-funds. This option allows the UCITS fund to create new sub-funds in the future to cater for different investors and investment objectives and strategies over time. The fund would have segregated liability between its sub-funds and accordingly any liability incurred on behalf or attributable to any sub-fund should be discharged solely out of the assets of the patrimony of the relevant sub-fund.

Master/Feeder Fund Structure

The UCITS manager may prefer setting up a master fund in one jurisdiction and another feeder fund in another jurisdiction. Certain conditions would apply to UCITS master-feeder structures, including the following:

- an agreement should be in place between the master and the feeder so that the feeder may obtain the necessary information it requires by law;
- the feeder must invest at least 85% of its assets into the master;
- the master must have at least one feeder, not hold any shares in any feeder UCITS, must not be a feeder UCITS itself and must not charge the feeder any subscription and/or redemption fees;
- an information-sharing agreement between custodians of the master and the feeder is in place, if their custodians are different; and
- an information-sharing agreement between auditors of the master and the feeder is in place, if their auditors are different.

The benefit of this structure is that managers may efficiently consolidate multiple portfolios into one, meaning that they may improve efficiencies as to costs and lower overall expense ratios. Moreover, managers may strategically favour establishing feeder UCITS funds in certain EU Member States rather than exercising the UCITS fund's passporting rights.

MARKETING DOCUMENTATION

Prospectus

The fund must publish a prospectus that must include all the necessary information for investors to make an informed judgment of the investment proposed and understand the risks attached thereto. The prospectus must contain all information required in terms of the Investment Services Rules.

Key Investor Information Document

In line with the UCITS IV requirements, the Key Investor Information Document (KIID) must also be prepared. The KIID is a very short document containing the essential elements of the fund being marketed.

EU MARKETING PASSPORT

UCITS funds established in Malta benefit from the EU wide marketing passport that gives them the ability to be promoted in all 27 Member States of the EU through the single authorisation of the MFSA.

TAXATION

This section touches upon the features of Malta's taxation regime in the context of UCITS IV funds.

The fund

UCITS funds investing more than fifteen per cent (15%) of their assets outside Malta are exempt from tax on the income generated from their investments, provided that such revenue is not derived from immovable property situated in Malta. UCITS funds are typically not subject to value added tax (VAT) for the supply of services outside Malta.

Investors in the fund

No withholding tax is applicable to dividend distributions effected to non-Maltese resident persons by UCITS funds (provided they are not owned and controlled by, directly or indirectly, nor act on behalf of, an individual who is ordinarily resident and domiciled in Malta). Also, capital gains or profits derived by a non-resident investor in Malta upon the transfer or redemption of units in a fund are exempt from tax in Malta. Similarly, no withholding tax is levied in Malta upon the payment by the fund of interest to non-Malta resident investors.

Highly Qualified Employees

Certain highly qualified persons employed by the fund may be eligible for a reduced flat rate of income tax of fifteen per cent (15%) on their income.

Third Party Manager

A Malta fund manager is chargeable to tax in Malta on its income at the standard corporate tax rate of 35%. However, non-resident shareholders in receipt of dividends distributed by the fund manager are entitled to claim a refund of up to 6/7ths of the tax paid in Malta on the profits out of which the dividend is distributed. Such refund is not subject to further tax in Malta. No refunds of tax paid in Malta are available in respect of income derived, directly or indirectly, from immovable property situated in Malta.

Double Taxation Treaties

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

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.

MALTA STOCK EXCHANGE

UCITS funds may increase their investor base by applying for listing on the Malta Stock Exchange ('MSE'). The listing of a UCITS fund may also be of benefit for daily valuations. A UCITS 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 such as IOSCO, and has been designated a recognised stock exchange for tax purposes by the HM Revenue in the UK.

UCITS V - WHAT IS IT CHANGING?

On the 25 February 2014, the European Parliament and the Council backed the European Commission's proposal of July 2012 for the UCITS V Directive. The key elements of the agreement reached by the co-legislators are as follows:

- (1) strengthening the rules on eligible entities that can act as a depositary - only national central banks, credit institutions and regulated firms with sufficient capital and adequate infrastructure will be eligible as UCITS depositaries and will hold for safe-keeping all UCITS assets;
- (2) UCITS assets will be protected in the event of insolvency of the depositary through clear segregation rules and safeguards provided by the insolvency law of the Member States;
- (3) The depositary's liability has been strengthened. The depositary will be liable for any loss of UCITS assets held in custody. The UCITS investors will always have the right of redress directly against the depositary and will not have to rely on the management company's ability to accomplish this task;
- (4) Remuneration policies for all risk takers involved in managing UCITS funds have been introduced so that remuneration practices do not encourage excessive risk-taking and instead promote sound and effective risk management. The transparency of the remuneration practices will be enhanced. The remuneration policies are now to be in line with those in the Alternative Investment Fund Managers Directive (2011/61/EC);
- (5) The agreement strengthens the existing regime to ensure effective and harmonised administrative sanctions. The use of criminal sanctions is framed so as to ensure the cooperation between authorities and the transparency of sanctions. A harmonised system of strengthened cooperation will improve the effective detection of breaches of UCITS rules.



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 :



Laragh Cassar, Partner

CAMILLERI PREZIOSI

ADVOCATES

Level 3, Valletta Buildings,
South Street, Valletta VLT 1103, Malta.

T +356 2123 8989

F +356 2122 3048

E info@camilleripreziosi.com

W www.camilleripreziosi.com

