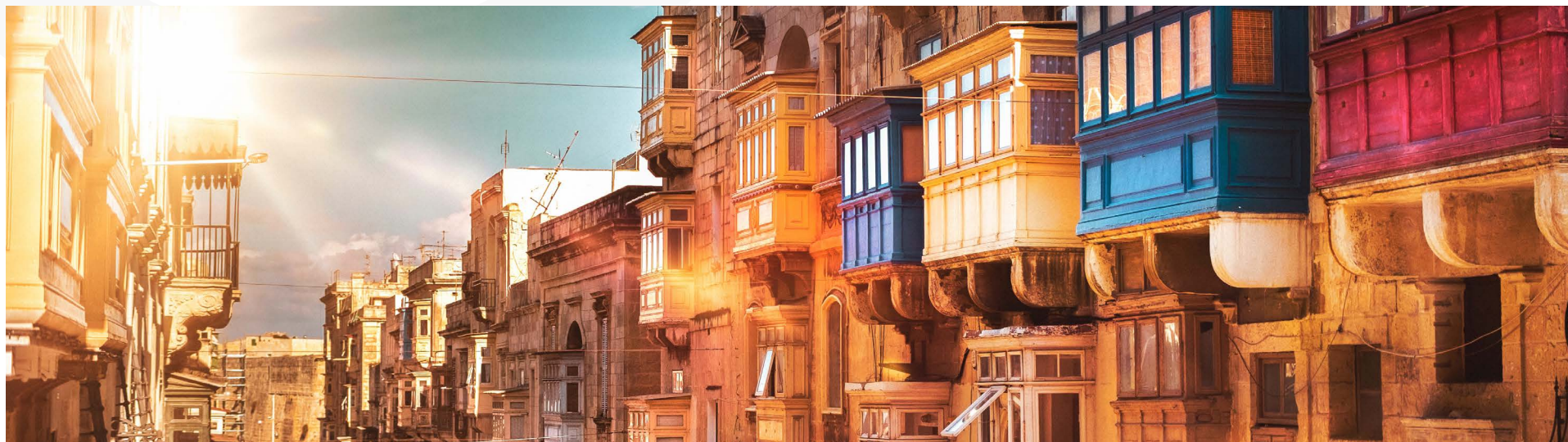




ESTABLISHING AN INVESTMENT
FUND IN MALTA
COMPARISON CHART

The Investment Services Act, Chapter 370 of the laws of Malta (the “Act”) provides for a legal framework which regulates investment funds and services in Malta. Through the introduction of the Act, fund managers in Malta have been given the opportunity to choose from various corporate structures to cater for their different investment strategies. Offering a variety of investment funds allows fund managers and promoters the flexibility to adapt the use of the appropriate structure in different circumstances.

Disclaimer: *This newsletter aims to provide the required information with regards to the regulatory requirements for the establishment of different investment funds in Malta. Readers of this newsletter should note that at the date of circulation of this article, the laws and regulations to which this newsletter makes reference to may be subject to further amendments which will not be reflected in this newsletter.*



| | Professional Investor Fund (PIF) | Alternative Investment Fund (AIF) | Undertakings for Collective Investments in Transferable Securities (UCITS) |
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| Definition | <p>A collective investment scheme designed for professional and high net worth investors.</p> <p>A professional investor is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.</p> | <p>A collective investment scheme which:</p> <p>(i) raises capital for a number of investors, with a view of investing it in accordance with a defined investment policy for the benefit of those investors; and</p> <p>(ii) which does not qualify as a UCITS fund in terms of the UCITS Directive.</p> | <p>A retail collective investment scheme, which has as a sole object the collective investment in transferable securities or other liquid financial assets.</p> |
| Eligible Investors | <p>A PIF may target Qualifying Investors who are required to satisfy the below criteria:</p> <ul style="list-style-type: none"> invest a minimum of EUR 100,000 or its currency equivalent to the PIF (which investment may not be reduced below this amount at any time by way of a partial redemption); declare in writing to the investment fund manager and the PIF that they are aware of and accept the risks associated with the proposed investment; and satisfy at least one of the following criteria; | <p>Option 1 – An AIF may target Qualifying Investors who are required to satisfy the below criteria:</p> <ul style="list-style-type: none"> invest a minimum of EUR 100,000 or its currency equivalent to the AIF (which investment may not be reduced below this amount at any time by way of a partial redemption); declare in writing to the investment fund manager and the AIF that they are aware of and accept the risks associated with the proposed investment; and satisfy at least one of the following criteria; | <p>A Retail Investor targeted by a UCITS fund is required to invest his own money on a non-professional basis.</p> <p>A retail client is a client who is not a professional client.</p> |

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| | <p>(i) A body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or, in each case, the currency equivalent thereof;</p> <p>(ii) An unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent;</p> <p>(iii) A trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent; or</p> <p>(iv) An individual whose net worth or joint net worth with that of the person's spouse, exceed EUR 750,000 of the currency equivalent; or</p> <p>(v) A senior employee or director of service providers to the PIF.</p> | <p>(i) A body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or, in each case, the currency equivalent thereof;</p> <p>(ii) An unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent;</p> <p>(iii) A trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent; or</p> <p>(iv) An individual whose net worth or joint net worth with that of the person's spouse, exceed EUR 750,000 of the currency equivalent; or</p> <p>(v) A senior employee or director of service providers to the AIF.</p> <p>Option 2 – An AIF may also target Professional Clients who possess the experience, knowledge and expertise to make their own investment decision and properly assess the risks that it incurs. Professional Clients are:</p> <ul style="list-style-type: none"> • Entities who are required to be authorised or regulated to operate in the financial markets; • Large undertakings meeting two (2) of the required criteria; | |
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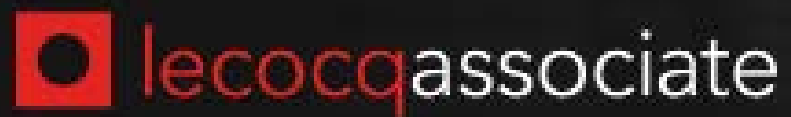
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| | | <ul style="list-style-type: none"> National and regional governments, public bodies that manage public debt, Central banks, international and supra-national institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations; and Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions A client not falling within the above is entitled to ask to be treated as a professional client even though it does not fall within the above criteria. <p>Please note that in Malta we have seen an increase in AIFs targeting both Qualifying Investors and Professional Clients.</p> <p>The above does not apply in the case of a Retail AIF given that in this case, the eligible investors are retail investors.</p> | |
| Regulatory Authority | The Malta Financial Services Authority (the "MFSA") | The Malta Financial Services Authority (the "MFSA") | The Malta Financial Services Authority (the "MFSA") |
| Applicable Legislation and Rules | <ul style="list-style-type: none"> The Markets in Financial Instruments Directive (the "MiFiD") – Directive 2014/65/EU The Investment Services Act – Chapter 370 of the laws of Malta The Companies Act – Chapter 386 of the laws of Malta MFSA Rules for Professional Investor Funds targeting Qualifying Investors. | <ul style="list-style-type: none"> The Alternative Investment Fund Management Directive (the "AIFMD") – Directive 2011/61 The Investment Services Act – Chapter 370 of the laws of Malta The Companies Act – Chapter 386 of the laws of Malta MFSA Rules for Alternative Investment Funds | <ul style="list-style-type: none"> The Undertakings for the Collective Investment of Transferable Securities Directive (the "UCITS Directive") – Directive 2014/91/EC The Investment Services Act – Chapter 370 of the laws of Malta The Companies Act – Chapter 386 of the laws of Malta MFSA Rules for Malta Retail UCITS Collective Investment Schemes |

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| Incorporation Requirements | <p><u>Documents for Incorporation:</u> A number of documents need to be submitted to the registry of companies for the incorporation of the company. These include the following:</p> <ul style="list-style-type: none"> (i) Memorandum and Articles of Association signed by the shareholders of the company; (ii) Proof of transfer of the required share capital of the company; (iii) Proof of payment of the necessary registration fee; (iv) Due diligence documents on the shareholders and directors of the company; and (v) Declaration regarding Beneficial Owners. <p><u>Process for the incorporation of a PIF:</u> Upon the submission of the above-mentioned documents, the registry of companies will assign a case officer who will be in charge of reviewing the documents. If the registry of companies requires clarifications and/or amendments to the documents, they will communicate with the legal advisers who will do the necessary. Upon the satisfactory approval of the registry of companies, they will incorporate the company. Details of the company will be included on the portal of the registry of companies which can be accessed through the website of the registry of companies.</p> <p>Please note that the incorporation process can only take place once the company receives the in-principle approval from the MFSA for the licensing of the PIF, as further described below.</p> | <p><u>Documents for Incorporation:</u> A number of documents need to be submitted to the registry of companies for the incorporation of the company. These include the following:</p> <ul style="list-style-type: none"> (i) Memorandum and Articles of Association signed by the shareholders of the company; (ii) Proof of transfer of the required share capital of the company; (iii) Proof of payment of the necessary registration fee; (iv) Due diligence documents on the shareholders and directors of the company; and (v) Declaration regarding Beneficial Owners. <p><u>Process for the incorporation of an AIF:</u> Upon the submission of the above-mentioned documents, the registry of companies will assign a case officer who will be in charge of reviewing the documents. If the registry of companies requires clarifications and/or amendments to the documents, they will communicate with the legal advisers who will do the necessary. Upon the satisfactory approval of the registry of companies, they will incorporate the company. Details of the company will be included on the portal of the registry of companies which can be accessed through the website of the registry of companies.</p> <p>Please note that the incorporation process can only take place once the company receives the in-principle approval from the MFSA for the licensing of the AIF, as further described below.</p> | <p><u>Documents for Incorporation:</u> A number of documents need to be submitted to the registry of companies for the incorporation of the company. These include the following:</p> <ul style="list-style-type: none"> (i) Memorandum and Articles of Association signed by the shareholders of the company; (ii) Proof of transfer of the required share capital of the company; (iii) Proof of payment of the necessary registration fee; (iv) Due diligence documents on the shareholders and directors of the company; and (v) Declaration regarding Beneficial Owners. <p><u>Process for the incorporation of a UCITS fund:</u> Upon the submission of the above-mentioned documents, the registry of companies will assign a case officer who will be in charge of reviewing the documents. If the registry of companies requires clarifications and/or amendments to the documents, they will communicate with the legal advisers who will do the necessary. Upon the satisfactory approval of the registry of companies, they will incorporate the company. Details of the company will be included on the portal of the registry of companies which can be accessed through the website of the registry of companies.</p> <p>Please note that the incorporation process can only take place once the company receives the in-principle approval from the MFSA for the licensing of the UCITS, as further described below.</p> |
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| Licence/ Notification Required | Licence by the MFSA is required. | Umbrella Structure AIF – Licence by the MFSA is required. Notified AIFs –Notification to the MFSA is required (<i>should you require further information on this, kindly let us know and we will provide it separately as this involves a different process</i>). | Licence by the MFSA is required. |
| Licensing Requirements | <p><u>Process for the licensing of the PIF:</u></p> <p>(i) Phase 1 – Preparatory Phase – the promoters would meet with the MFSA to discuss the project. After the meeting, the promoters shall submit the draft documents mentioned above for the review and comments of the MFSA;</p> <p>(ii) Phase 2 – Pre-Licensing Phase– once the MFSA is satisfied of the application and the supporting documents, it shall issue the 'in-principle' approval for the issue of the licence. A list of outstanding matters would be listed by the MFSA and the applicant need to satisfy such before the licensing of the PIF. At this stage, the documents would need to be finalised and duly executed and sent to the MFSA. It is at this stage that the PIF can move forward with the incorporation process mentioned above; and</p> <p>(iii) Phase 3 – Post-Licensing/Prior Commencement of Business Phase– after the MFSA issues the licence, a set of conditions might be listed in the letter of approval. These would need to be satisfied after the issuing of the licence however before the PIF can commence its business.</p> | <p><u>Process for the licensing of the AIF:</u></p> <p>(i) Phase 1 – Preparatory Phase – the promoters would meet with the MFSA to discuss the project. After the meeting, the promoters shall submit the draft documents mentioned above for the review and comments of the MFSA;</p> <p>(ii) Phase 2 – Pre-Licensing Phase– once the MFSA is satisfied of the application and the supporting documents, it shall issue the 'in-principle' approval for the issue of the licence. A list of outstanding matters would be listed by the MFSA and the applicant need to satisfy such before the licensing of the AIF. At this stage, the documents would need to be finalised and duly executed and sent to the MFSA. It is at this stage that the AIF can move forward with the incorporation process mentioned above; and</p> <p>(iii) Phase 3 – Post-Licensing/Prior Commencement of Business Phase– after the MFSA issues the licence, a set of conditions might be listed in the letter of approval. These would need to be satisfied after the issuing of the licence however before the AIF can commence its business.</p> | <p><u>Process for the licensing of the UCITS fund:</u></p> <p>(i) Phase 1 – Preparatory Phase – the promoters would meet with the MFSA to discuss the project. After the meeting, the promoters shall submit the draft documents mentioned above for the review and comments of the MFSA;</p> <p>(ii) Phase 2 – Pre-Licensing Phase– once the MFSA is satisfied of the application and the supporting documents, it shall issue the 'in-principle' approval for the issue of the licence. A list of outstanding matters would be listed by the MFSA and the applicant need to satisfy such before the licensing of the UCITS fund. At this stage, the documents would need to be finalised and duly executed and sent to the MFSA. It is at this stage that the UCITS fund can move forward with the incorporation process mentioned above; and</p> <p>(iii) Phase 3 – Post-Licensing/Prior Commencement of Business Phase– after the MFSA issues the licence, a set of conditions might be listed in the letter of approval. These would need to be satisfied after the issuing of the licence however before the UCITS fund can commence its business.</p> |

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| | <p>Please note that Phase 1 would also include the submission of the necessary due diligence documents in relation to all the shareholders, directors and appointed service providers of the PIF unless they are already approved by the MFSA. This is a separate process then that of the licensing of the PIF however they move hand in hand given that the non-approval of one might lead to the non-licensing of the PIF.</p> | <p>Please note that Phase 1 would also include the submission of the necessary due diligence documents in relation to all the shareholders, directors and appointed service providers of the AIF unless they are already approved by the MFSA. This is a separate process then that of the licensing of the AIF however they move hand in hand given that the non-approval of one might lead to the non-licensing of the AIF.</p> <p>Exception – Please note that the above applies in the case of licensed AIFs that is for umbrella structure AIFs. It does not apply for Notified AIFs as the process in the latter case is totally different. In the case of Notified AIFs, the process involves only a notification to the MFSA and hence no approval/licence will be issued by the MFSA.</p> | <p>Please note that Phase 1 would also include the submission of the necessary due diligence documents in relation to all the shareholders, directors and appointed service providers of the UCITS unless they are already approved by the MFSA. This is a separate process then that of the licensing of the UCITS however they move hand in hand given that the non-approval of one might lead to the non-licensing of the UCITS.</p> |
| Structure | <p>A PIF can be one of the following:</p> <ul style="list-style-type: none"> (i) an Investment Company with variable share capital (SICAV); (ii) an Investment Company with Fixed Share Capital (INVCO); (iii) a Limited Partnership; (iv) a Unit Trust/Common Contractual Fund; or (v) an Incorporated Cell Company. | <p>An AIF can be one of the following:</p> <ul style="list-style-type: none"> (i) an Investment Company with variable share capital (SICAV); (ii) an Investment Company with Fixed Share Capital (INVCO); (iii) a Limited Partnership (iv) a Unit Trust/Common Contractual Fund; or (v) an Incorporated Cell Company. | <p>A UCITS fund can be one of the following:</p> <ul style="list-style-type: none"> (i) an Investment Company with variable share capital (SICAV); (ii) a Limited Partnership; (iii) a Unit Trust; or (iv) Common Contractual Fund. |

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| | <p>PIFs may be incorporated as a multi-fund company whereby the shares may be divided into different share classes to form distinct sub-funds of the PIF.</p> <p>Moreover, a PIF can be either self-managed or externally managed by an investment manager duly licensed under MiFiD.</p> | <p>AIFs may be incorporated as a multi-fund company whereby the shares may be divided into different share classes to form distinct sub-funds of the AIF.</p> <p>Moreover, an AIF can be either self-managed or externally managed by an alternative investment fund manager (the "AIFM") duly licensed under the AIFMD.</p> | <p>UCITS fund may be incorporated in the form of umbrella fund company whereby the shares may be divided into different share classes to form distinct sub-funds of the UCITS fund.</p> <p>Moreover, UCITS fund can be either self-managed or externally managed by a UCITS management company as licensed under the UCITS Directive.</p> |
| Minimum Share Capital | <p>EUR 125,000 for self-managed PIFs</p> <p>EUR 1,200 for externally managed PIFs</p> | <p>EUR 300,000 for self-managed AIFs</p> <p>EUR 125,000 for externally managed AIFs</p> | <p>EUR 300,000 for self-managed UCITS</p> <p>EUR 125,000 for externally managed UCITS</p> |
| Segregated Sub-Funds | Yes | Yes | Yes |
| Public Offering | Yes | Yes | Yes |
| European Passport | Yes – under the national private placement regimes where such regimes exist. | Yes –under the AIFMD. | Yes – under the UCITS Directive |
| Incorporation Fee | EUR 1,750 | EUR 1,750 | EUR 1,750 |
| Licence Application Fee | EUR 2,000 and EUR 1000 per sub-fund | EUR 2,000 and EUR 1000 per sub-fund | EUR 2,500 and EUR 450 per sub-fund |
| Annual Supervisory Fee | EUR 2,000 and EUR 600 per sub-fund | EUR 2,000 and EUR 600 per sub-fund | EUR 3,000 and EUR 500 per sub-fund up to 15 sub-funds. No annual; supervisory fee will be payable from the 16th scheme sub-fund upwards. |



OUR EXPERIENCE

lecocqassociate provides a full range of financial regulatory, corporate and commercial advice in relation to the structuring and incorporation of entities. The group is gaining a reputation for outstanding service in the areas of data protection and online reputation management, as well as cyber security, blockchain and crypto asset regulation.

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GENEVA

Boutique Law Firm

Ave de la Gare des Eaux-Vives
28, CH-1208 Geneva,
Switzerland

t: +41 22 707 93 33
f: +41 22 786 14 68

MALTA

Regulatory Advisory Practice

Swiss Urban Factory, The
Regulatory Suite, 5, Saint
Frederick Street, Valletta VLT 1470
Malta

t: +356 22482900
f: +356 22482919

DUBAI

Structuring Advisory Practice

Central Park Offices, Office 15-32,
Dubai International Financial Cen-
tre (DIFC), P.O.Box 506652, Dubai,
UAE

t: +971 4 242 7843
f: +971 4 242 8081

ABU DHABI

Legal Consultants

Al Sila Tower, Office 2435, Al
Maryah Island, Abu Dhabi Global
Market Square, P.O.Box 128666,
Abu Dhabi, UAE

t: +971 2 6948693
f: +971 2 6948694