

Professional Investor Funds

Malta is rapidly developing into an efficient and attractive non-retail fund jurisdiction after it was one of the first European jurisdictions to introduce a specialised regime for professional investor funds (PIFs). Low set-up costs, efficient regulation, a beneficial tax treatment and Malta's specialised professionals give the Maltese domicile a competitive edge.

Furthermore, the Maltese single regulator, the Malta Financial Services Authority (MFSA) is renowned for its efficiency and flexibility, thus ensuring a smooth and unbureaucratic licensing process.

A number of vehicles may be used to set up a Malta registered fund such as open-ended and closed-ended corporate entities, trusts and limited partnerships. However a form of corporate entity is usually preferred due to the separate legal personality and the flexibility it offers.

A Prospectus is not needed as long as the fund issues an Offering Document.

The PIF regime provides for three types of funds: those targeting Extraordinary Investors, those targeting Qualifying Investors and those targeting Experienced Investors.

Extraordinary Investor Funds are suitable vehicles for hedge funds, with no investment or borrowing restrictions and a minimum entry level of € 750,000 or equivalent (for each fund member or joint fund members). Qualifying Investors Funds similarly have a minimum initial investment of € 75,000 or equivalent. A benefit of both these types of funds is that there is no requirement to appoint a Custodian/Prime Broker as long as the Directors ensure that there are adequate safekeeping arrangements which must be described in the Offering Document.

On the other hand, Experienced Investor Funds, must appoint a custodian and the minimum investment (per member) is of €15,000 or equivalent.

Since professional investor funds are not intended for the general public, they are not burdened with the kind of restrictions usually imposed on retail funds thus offering greater flexibility.

There are no residence requirements for any of the fund's service providers other than the need for a local judicial representative. Funds may also be re-domiciled from other jurisdictions under the re-domiciliation of companies' legislation.

Tax treatment

A Malta domiciled fund enjoys an exemption from income tax and capital gains tax at both the fund level and at a non-resident investor level. Any Malta fund or sub-fund can be classified as either prescribed or non-prescribed. A prescribed fund is one in which more than 85% of the value of its assets are situated in Malta, whilst all other funds are classified as non-prescribed.

No tax is withheld on investment income received by non-prescribed funds. Non-residents receiving dividends out of a locally based, non-prescribed fund suffer no withholding tax on such income. Furthermore no tax is payable by non-resident investors when they dispose of their investment.

There is also no stamp duty charged on share issues or transfers and no tax on the net asset value of the scheme.

Uses of a Professional Investor Fund

A PIF can be used as a fully-fledged Hedge Fund for a variety of assets such as securities, bonds, derivatives, money instruments, debt instruments, other funds, tangible movables and immovable property.

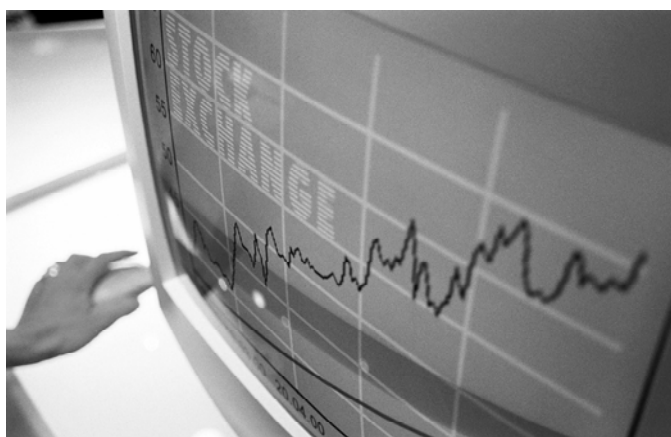
A Maltese PIF offers great potential for fund managers who want to set up a hedge fund within a reputable, modern and efficient EU jurisdiction which also offers a number of tax advantages. Promoters of a fund have the option to utilise a self-managed corporate fund wherein there would be no need for the Fund Manager to have actual presence in Malta. A self-managed fund also offers the benefit of retaining full control (through the Board), whilst appointing skilled individuals to the advisory committee according to the particular array of underlying assets. Maltese PIFS are also ideal for umbrella or multi-class funds through the utilisation and protection afforded by

segregated cell companies which enjoy distinct legal personality.

The Players

In a corporate PIF the Board of Directors plays an essential role. This has actual control over the fund and the fund's strategy and is the point of reference between the fund, the regulator, the fund members and the fund's players. It is important that the majority of board meetings are actually held in Malta.

In a self-managed fund scenario, the Board assumes an even broader function by assuming the role of the Fund Manager. The use of self-managed funds, especially in the non-retail market, has been on the increase in recent years. The Fund Manager is the person entrusted with managing the assets of the Fund. The relationship between the fund and the manager is



regulated by a management agreement. In self-managed funds the Board may still opt to seek aid in its management role through the use of delegation agreements with established Fund Managers. The initial, paid up share capital for such a self-managed fund should not be less than € 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.

The advisory committee has an important role. This is answerable to the board and comprises technical people who have expertise in the underlying assets of the fund. In the absence of such an advisory committee expertise related to the investment strategy of the fund must be shown at Board level and hence, although not compulsory, appointing such a committee is recommended. Such advisors offer specialised research on specific markets or instruments.

The appointment of an administrator is not compulsory, however, an administrator should ideally be appointed so as to assume responsibility for the day to day running of the fund, accounting, calculation of Net Asset Value (NAV) and the retention of the necessary documentation of the member's unit allocation and investments.

The Custodian, also at times referred to as the Depositary, is an independent player entrusted with the actual physical holding of the assets of the fund. The appointment of this player is compulsory for retail funds and Experienced Investor Funds, but not for Extraordinary and Qualifying Investor Funds, as long as sufficient arrangements are made for the safe keeping of the fund's assets. When such a Custodian is appointed, it takes instructions on the disposal of assets from the Manager within the parameters of the prospectus/offering document. The Custodian also assumes the duty of ensuring that the Manager is complying with the law, and the duty of safeguarding assets under its custody, the interests of the scheme and of the holders of units or participants in the scheme.

Furthermore the custodian is to carry out such functions and duties in accordance with the terms and conditions of the agreement appointing it as custodian, the deed or other instrument establishing or regulating the scheme, the conditions of the collective investment scheme licence and such other requirement as may be laid down by the competent authority.

The Manager may also appoint a Registrar of the scheme, who is responsible for maintaining a register of the units/shares of the fund and the respective allotment of the members and to update it with any transfers, acquisitions, redemptions or switching of units.

Requirements for the different classes of Investors

'Extraordinary investors' include corporate or non-corporate entities, groups, trusts or individuals having net assets in excess of € 7.5 million (or equivalent); Senior employees or Directors of the fund, are also recognised as Extraordinary Investors. Other Extraordinary PIFs are deemed to be Extraordinary investors together with any Special deemed Special Purpose Vehicle owned by person qualifying themselves as 'Extraordinary investors'.

'Qualifying investors' include corporate or non-corporate entities, groups, trusts or individuals having net assets in excess

of € 750,000 (or equivalent); to the underlying assets of the PIF in question. Relatives and close friends of the promoters (up to ten), and senior employees or Directors of the fund, are also recognised as Qualifying Investors. Furthermore entities having more than € 3.75 million under their discretionary management, other PIFs promoted to Qualifying or Extraordinary investors and any Special Purpose Vehicle owned by person qualifying themselves, all qualify as 'Qualifying investors'.

'Experienced investors' are persons who have the expertise, experience and knowledge to be in a position to make their own investment decisions and understand the risks involved. These include persons who have at least one year's relevant work experience in a professional position in the financial sector; persons who have reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile as the assets to which the PIF in question is related, or persons who have in the past years carried out investment transactions of a significant size and frequency (for example a person who within the past 2 years carried out transactions amounting to at least €50,000 at an average frequency of 3 per quarter).

How we can help

Given the specialised nature of a PIF, preparatory work needs to be done before a licence application is submitted. RSM Malta offers assistance in the planning (especially in devising a flexible yet secure structure), the setting up process and obtaining a licence.

The planning includes assistance in the decisions as to the appointment or otherwise of a custodian, manager, administrator and the appointment of the advisory committee. The role of these functionaries must be identified and included in the offering document submitted with the application.

Our input may be necessary in relation to the formation of the vehicle itself and the eventual drafting of all necessary applications, offering document, Personal Questionnaires, delegation agreements etc.

RSM Malta may propose suitable personnel to act as Director/s on the Board of Directors of corporate funds. Such Director/s can also act as the local representative. Furthermore we will provide the necessary registered office and company secretary for the company.

RSM Malta may help the promoters in their selection of and dealings with local Fund Managers. Alternatively the Board of Directors may assume the Management function of the fund according to the terms of the licence. In such a scenario RSM Malta can offer qualified personnel to aid the Board in assuming such a Management function.

RSM Malta may offer external administration to the fund according to the delegation arrangement between itself and the Board (or Manager) of the fund. Through our expertise and organisational setup RSM Malta may carry out the fund's accounting requirements, daily calculation of Net Asset Values, reconciliations, pricing of the investment portfolio, preparation of financial statements, performance and compliance reporting, and preparation of contract notes.