

Key features of UCITS based in Malta

■ Background and Scope

A Maltese scheme that takes advantage of the UCITS brand, which is recognised globally as a liquid, transparent and regulated product and operates independently throughout the EU on the basis of a single authorisation from one member state, must satisfy the legal and regulatory requirements set out in the UCITS Directive. UCITS funds are able to be freely marketed across Europe and their units distributed cross-border by following the notification procedure set out in the UCITS Directive. Maltese UCITS schemes are popular due to their flexibility and the tax efficient features that they offer.

■ Legal Structures

A Maltese UCITS scheme can be an open ended fund formed as an investment company with variable share capital (SICAV) in terms of the Companies Act, 1995, a partnership en commandite or limited partnership (LP) whose share capital is divided into shares (with variable share capital) in terms of the Companies Act, a unit trust in terms of the Trust and Trustees Act and a contractual fund, in accordance with the Investment Services Act (Contractual Funds) Regulations (Legal Notice 3 of 2011).

■ Corporate Requirements

The scheme's head office and registered office are to be both established in Malta. There must be a minimum of three Directors, at least one independent from the manager and the custodian. Self-managed schemes shall have as a minimum one Maltese resident director.

Service providers



Fund Manager

A Maltese UCITS scheme may be self-managed or may appoint a UCITS European management company approved by the MFSA. The manager must have satisfactory financial resources and liquidity at its disposal.

Administrator

The UCITS scheme may appoint an administrator who need not be based in Malta, provided such administrator is recognized by the MFSA. The services typically provided include valuation, transfer agency and registrar and corporate secretariat.

Custodian

The UCITS scheme must appoint a custodian to whom the assets of the scheme are entrusted for safekeeping. The custodian must have an established place of business in Malta and be a licensed institution or another institution acceptable to the MFSA, with a place of business in Malta.

Auditor

An auditor must be approved by the MFSA and is responsible for certifying the fund's annual report and accounts, which should include an audit report. The scheme must have at all times a Compliance Officer and a Money Laundering Reporting Officer.

■ License Application

The documents required are as follows:

- Application form
- Draft version of the Memorandum & Articles of association
- Prospectus and marketing documents to investors
- Key Investor Information Document (KIID)
- Details on all services providers involved
- Agreements with the fund's service providers
- Personal questionnaire of the directors
- Business plan
- Marketing plan
- Application fee
- Other documents which have an effect on the member's rights.

■ Capital Requirements

Third-party managed: €125,000 (if formed as a company)

Self-managed: €300,000

■ Reporting Requirements

The Scheme must submit both half-yearly and annual reports to the MFSA, and such other information, returns and reports that the MFSA may from time to time request. The accounting information within the annual report must be audited by a qualified auditor, who has been approved by the MFSA. The auditor's report shall be included in full within the annual report. The half-yearly and annual reports are to be published and submitted to the MFSA within two and four months of the end of the relevant period.

■ Marketing and Distribution of the UCITS

A Maltese UCITS Scheme is required to draw up a Prospectus and a short document (on each sub-fund) containing key information for investors, the Key Investor Information Document.

EU membership in 2004 brought the European stamp of approval to Malta's financial legislation and it enabled passporting rights for UCITS certified funds. Appropriately certified funds can be freely distributed and marketed in Malta and other EU jurisdictions by following the notification procedures set out in the UCITS Directive.

It is also possible for a PIF licensed in Malta to be converted into a Malta-based UCITS scheme. The regulatory framework sets out a number of documents that would need to be submitted for such conversion to take place.

■ UCITS V

On 3 July 2012 the European Commission issued a proposal for a Directive amending the UCITS Directive as regards depositary functions, remuneration policies and sanctions, known as the “UCITS V” proposal.

The Madoff Ponzi scheme and the Lehman Brothers default drew the EC’s attention to the UCITS depositary whose duties had been governed by a set of generic principles that led to diverging national interpretations across the EU, specifically in relation to liability. The challenge was to clarify the role and responsibilities and ensure consistency between Member State rules, thus enhancing investor protection. The EC also intended through this revised proposal to align the UCITS framework with the Alternative Investment Fund Managers Directive (AIFMD) regime, which entered into force in July 2013.

The financial crisis had also brought attention to remuneration policies and incentive schemes across the financial sector. The implementation of UCITS V was carried out with the intention to apply new rules on remuneration of UCITS managers consistent with those under the AIFMD and the Capital Requirements Directive.

On 1st March, 2013 the MFSA published a revised set of Investment Services Rules for Retail Collective Investment Schemes (the “RCIS Rules”) and appendices (including a revised Appendix 11 Investment Services Rules for Investment Services Providers) reflecting ESMA’s Guidelines on ETFs and other UCITS issues (ESMA/2012/832) (the “Guidelines”) issued in December, 2012. The revised RCIS Rules introduce a number of new requirements applicable to:

- UCITS ETFs,
- Index-tracking by UCITS,
- The use of efficient portfolio management (EPM) techniques and over-the-counter (OTC) derivatives by UCITS,
- The management of collateral received by UCITS, and
- The eligibility of financial indices for investment by UCITS,

as well as new investor disclosure requirements in relation to the above.

■ Listing

A Maltese UCITS may apply for listing on the Malta Stock Exchange.



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