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 two 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 Manger:

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.

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.

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.

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

Licence Application

The documents required are as follows:

- Constitutional documents
- Prospectus and marketing documents to investors. (Note: From July 2012 Maltese UCITS are required to draw up a Key Investor Information Document (KIID) in accordance with UCITS IV rules)
- Details on all services providers involved
- Agreements with the fund's service providers
- Personal questionnaire and curriculum vitae of the directors
- Three year business plan
- Marketing plan
- 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

Monthly statistical return to the MFSA - Half yearly compliance reports - Annual reports

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 outs a number of documents that would need to be submitted for such conversion to take place.

UCITS IV and Maltese Law

UCITS IV, which has been widely welcomed, introduces an "Efficiency Package" of six major amendments that aim to improve the effectiveness of the UCITS regime. This package consists of:

- A full Management Company Passport (MCP).
- Introduction of a framework for master-feeder structures.
- A new framework for fund mergers.
- A Key Investor Information (KII) document in place of the Simplified Prospectus.
- Speedier regulator-to-regulator notification procedures.
- Improved supervisory cooperation mechanisms.
- A Maltese UCITS may be structured as a fund of funds or as a master UCITS or feeder UCITS in a master-feeder structure, provided that the specific rules and supplementary standard licence conditions applicable to such types of UCITS transposing the relevant provisions of the UCITS IV Directive, are complied with.
- The UCITS IV Directive was transposed into Maltese law with effect from 1 July 2011 by means of changes to the Investment Services Rules for Investment Service Providers and the Investment Services Rules for Collective Investment Schemes issued by the MFSA.

A number of desired regulatory changes have been brought about as a consequence of the international financial crisis and a number of changes have also been brought about by innovation within the sector. In the wake of these events, investors have demanded higher transparency and better governance from managers, prompting for instance hedge funds to abandon their 'black-box' approach to investing in order to expand or retain their business

UCITS V Proposal

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 have drawn 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 is to clarify the role and responsibilities and ensure consistency between Member State rules, thus enhancing investor protection. The EC also intends to align the UCITS framework with the Alternative Investment Fund Managers Directive (AIFMD) regime, which will enter into force in July 2013.

The financial crisis has also brought attention to remuneration policies and incentive schemes across the financial sector. UCITS V intends 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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