

## Malta Investment Fund Structures

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### Investment Companies

Funds can be set up as limited liability companies. Companies may be established either as:

- Open-ended investment companies (SICAVs); or
- Close-ended investment companies (INVCOs).

Investment funds may be established domestically as UCITS, retail or non-retail Alternative Investment Funds (AIFs) professional investor funds (PIFs) or Private Collective Investment Schemes.

### Investment Companies (SICAVs)

- SICAVs may be formed as public or private companies with variable share capital and are governed by the Companies Act;
- Public companies may offer their shares or debentures to the public;
- Private companies are limited to the extent to which they can transfer shares and are barred from issuing any invitation to the public to subscribe to any shares or debentures;
- SICAVs permit the introduction of additional investors without having to wait for the liquidation of the current holding;
- A unit's value in an open-ended scheme reflects the NAV of the scheme;
- SICAVs have become the most common form of retail and professional investor fund structures for both local as well as international offerings. This is due to investment companies being able to benefit from Malta's broad network of double taxation treaties and have low-running costs.

### Close-ended Investment Companies (INVCOs)

- INVCOs are public companies with a fixed share capital;
- An INVCO's business is restricted to the investment of its funds, mainly in securities, or can operate as a retirement fund;
- Further restrictions for INVCOs include:
  - The company's holdings in any other company that is not an investment company with fixed share capital, is not greater than 15% by value of its investments;
  - Distributions of company's capital profits are prohibited by its Memorandum and Articles of Association; and
  - Companies must not keep hold of over 15% of the income derived from securities.

Both SICAVs and INVCOs may operate as umbrella funds, through which the share capital may be divided into different classes, with each class of shares representing a distinct sub-class of the company. This enables the scheme to operate a number of separate sub-funds having different investment policies.

Investment Funds may also be formed as Incorporated Cells (ICs) of Recognised Incorporated Cell Companies (RICCs). In doing so, each incorporated cell within the platform of the RICC would constitute a distinct limited liability company endowed with its own legal identity.

## Limited Partnerships

- Private equity funds tend to be set up as limited partnerships. The limited partnership (LP), was introduced to Malta in 2003. Nonetheless, 2011 saw the implementation of improved regulations for partnerships: all Partnerships must have a registered office in Malta, where personal information of all partners is held;
- under Maltese Law, a limited partnership is any partnership that includes one or more limited partners. Their liability to pay the partnership's obligations is limited up to the amount that they have invested in the partnership;
- a limited partnership still needs general partners, who would be fully liable if any debts are incurred by the partnership. Both partners may be limited liability companies formed in any jurisdiction;
- the capital of the partnership can be divided into shares, however new regulations do not require the capital to be divided in this way;
- new regulations allow the possibility for partnerships to be constituted as multi-class partnerships or as multi-fund partnerships.

The new Amendment of the Tenth Schedule Regulations puts the partnership structure for collective investment schemes on the same level as SICAVs, thus offering a more ideal framework for the preferred structuring vehicle used by Anglo-Saxon managers for private equity business. If the general partner is set up as a corporate structure in Malta, tax efficiencies can be obtained at the level of the general partner and its shareholders on the basis of Malta's tax refund system.

## Contractual Funds

- Contractual funds are established through a contractual obligation, and are thus not deemed a separate legal entity;
- They can be licensed as stand-alone or umbrella funds, and are established by way of contract;
- Their main users are private collective investment schemes (limited to 15 participants);
- One or more special purpose vehicles may be set up, enabling the fund to get access to double taxation treaties;
- Both local and foreign custodians and fund managers can be appointed, and funds may be listed on the Malta Stock Exchange.

## Shariah Funds

- Shariah-compliant funds can be set up either as retail(UCITS or non-UCITS) or as PIFs;
- Ijarah funds, commodity funds and Murahaba funds, which mainly invest in nonconventional asset classes, may be licensed in Malta as PIFs, whilst Shariah compliant Equity Funds can be set up as Maltese UCITS schemes, Maltese non UCITS schemes or PIFs.

## Unit Trusts

- Collective Investment Schemes may be constituted by a trust deed between a management company and a licensed trustee;
- They are governed by the Trusts and Trustees Act, which enables both residents and non-residents to set up various trust structures. These include; constructive trusts, discretionary trusts, fixed interest trusts and purpose trusts;

- Trustees operating in Malta must be approved by the MFSA;
- Trusts established in foreign jurisdictions may be recognised in Malta and it is thus possible to set up an investment fund, as a foreign law trust.

## Umbrella Funds

A Collective Investment Scheme may be set up as a multi-fund scheme in Malta, with numerous funds thereunder, made up of one or more different classes of shares:

- Each sub-fund can have its own investment objectives, policies and restrictions;
- The assets and liabilities of each sub-fund are distinct from the assets and liabilities of the other sub-funds;
- Umbrella funds enable major cost-savings and allow investors to easily switch between different sub-funds.

For more information on how Zeta can assist you please contact our Business Development department on [bd@zeta-financial.com](mailto:bd@zeta-financial.com).

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