

Regulated Hedge Funds Making the complex simple



A Professional Investor Fund (“PIF”) is a type of collective investment scheme licensed and regulated by the Malta Financial Services Authority (“MFSA”). A PIF is a non-retail fund which is not subject to investment restrictions and is not regulated to the same degree as other collective investment schemes, and accordingly may only be promoted to specified categories of investors. Given the characteristics of a PIF, the objective of this regime is to create a “fast track” for regulatory approval for this type of investment vehicle and a reduced level of ongoing regulation and supervision. These features of the PIF, together with an attractive fiscal environment, have made Malta an increasingly popular hedge fund domicile.

PIFs are regulated by the Investment Services Act and the Guidelines for Professional Investor Funds issued by the MFSA.

Legal Form

A PIF may take the form of a SICAV, INVCO, a public limited liability company, a limited partnership or a unit trust. A PIF may be constituted as a multi-class fund or an umbrella fund.

Categories of Professional Investor Funds

A PIF may only be promoted to specified categories of investors and the licensing and ongoing regulatory obligations of the PIF depend on the category of target investor (Experienced, Qualifying or Extraordinary investors).

PIFs promoted to Experienced Investors

Investors must satisfy at least one of the following eligibility criteria:

1. work experience in the finance sector (at least 1 year in a professional position); or
2. experience in dealings with similar funds; or
3. has frequently carried out investment transactions of significant size; or
4. can provide other appropriate justification.

Key features:

- Investors must invest a minimum of €15k or a currency equivalent;
- No specific investment restrictions apply (except if a Property Fund);
- The PIF may leverage up to 100% of NAV;
- The PIF must appoint a Custodian;
- An Offering Document must be issued.

PIFs promoted to Qualifying Investors

Investors must satisfy at least one of the following eligibility criteria:

1. a body corporate which has/forms part of a group having net assets in excess of €750k; or
2. an unincorporated association or bona fide body of persons which has net assets in excess of €750k;
3. a trust where the net value of the trust's assets is in excess of €750k;
4. a person who has reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile or property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates; or
5. an individual whose net worth or joint net worth with that person's spouse exceeds €750k;
6. senior employee or director of service providers to the PIF;
7. entity with more than €3.75m under discretionary management, investing on its own account;
8. entity owned by any of the above used as an investment vehicle.

Key features:

Investors must invest a minimum of €75k or a currency equivalent;

- No specific investment restrictions apply (except those specified in the offering document);
- Unlimited leverage is permitted;
- The PIF need not appoint a Custodian provided adequate safekeeping arrangements are in place;
- An Offering Document must be issued.

PIFs promoted to Extraordinary Investors

Investors must satisfy at least one of the following eligibility criteria:

1. a body corporate which has/forms part of a group having net assets in excess of €7.5m; or
2. an unincorporated association or bona fide body of persons which has net assets in excess of €7.5m;
3. a trust where the net value of the trust's assets is in excess of €7.5m;
4. an individual whose net worth or joint net worth with that person's spouse exceeds €7.5m;
5. senior employee or director of service providers to the PIF;
6. a PIF promoted to Qualifying Investors;
7. an entity owned by any of the above used as an investment vehicle.

Key features:

- Investors must invest a minimum of €750k or a currency equivalent;
- No specific investment restrictions apply (unless the PIF invests in immovable property);
- Unlimited leverage is permitted;
- The PIF need not appoint a Custodian provided adequate safekeeping arrangements are in place;
- A Detailed Offering Document is optional (a Marketing document is sufficient);
- Expedited licensing procedures.

Service Providers

Details of service providers must be disclosed to the MFSA for approval. Where a service provider is not established in an EU/EEA Member State or a signatory to a Memorandum of Understanding with the MFSA, the service provider may be accepted by the MFSA provided that it is considered to be adequately regulated.

Manager

A PIF may appoint a third-party manager or may opt to be self-managed. Additional licensing conditions apply where a PIF is self-managed.

Administrator

Administrative services must be provided by a third-party administrator or by the Manager. A person established in Malta providing administration services to a fund is required to obtain Recognition from the MFSA in terms of Article 9A of the Investment Services Act.

Custodian

PIFs promoted to Experienced Investors must appoint a third-party custodian. This requirement is optional in the case of PIFs promoted to Qualifying and Extraordinary Investors provided that adequate safekeeping arrangements are put in place.

Malta Tax Treatment

The income of a licensed collective investment scheme (including PIFs), other than income from immovable property situated in Malta, is exempt from Malta tax. However, if the value of the assets situated in Malta allocated to the fund is expected to be at least 85% of the value of the total assets, the fund will be liable to a withholding tax at source on certain categories of investment income receivable from Malta sources at a rate ranging from 10% to 15%.

No Malta tax is levied upon a distribution of dividends to or redemption of units in the PIF by a non-resident investor.

Malta has entered into Double Taxation Treaties based on the OECD model with 59 countries.

No Malta VAT is chargeable by the fund to investors on subscription to shares/units in the fund.

Fund management and administration services are exempt from VAT in Malta.

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LU140909