

PROFESSIONAL INVESTOR FUNDS IN MALTA

A Professional Investor Fund (“PIF”) is a non-retail collective investment scheme. Only certain investors may invest in a PIF and these are divided into three categories - 'Experienced Investors', 'Qualifying Investors' and 'Extraordinary Investors'.

'Experienced Investors'

An Experienced Investor is a person having the expertise, experience and knowledge to be in a position to make his own investment decisions and understand the risks involved. When subscribing investors must confirm the basis on which they satisfy this definition either:

- a) by confirming that he/she is:
 - i) a person who has relevant experience having worked in the financial sector for at least one year in a professional position or who has been active in the same type of investments as the fund; or
 - ii) 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 fund in question relates; or
 - ii) a person who has carried out investment transactions in significant at a certain frequency.

OR

- b) by providing any other appropriate justification.

The minimum investment for Experienced Investors is USD 10,000 / EUR 10,000 or equivalent in another currency. The total amount invested may not fall below this threshold unless this is the result of a fall in the net asset value of the PIF.

'Qualifying Investors'

A Qualifying Investor is required to meet one or more of the following criteria:

- i) a body corporate which has net assets in excess of EUR 750,000 / USD 750,000 or which is part of a group which has net assets in excess of EUR 750,000 / USD 750,000;
- ii) an unincorporated body of persons or association which has net assets in excess of EUR 750,000 / USD 750,000;
- iii) a trust where the net value of the trust's assets is in excess of EUR 750,000 / USD 750,000;

- iv) an individual, or in the case of a body corporate, the majority of its Board of Directors or in the case of a partnership its General Partner who has reasonable experience in the acquisition and / or disposal of :-
 - funds of a similar nature or risk profile;
 - property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates;
- v) an individual whose net worth or joint net worth with that person's spouse, exceeds EUR 750,000 / USD 750,000;
- vi) a senior employee or Director of service providers to the PIF;
- vii) a relation or close friend of the promoters limited to a total of 10 persons per PIF;
- viii) an entity with (or which are part of a group with) EUR 3.75 million / USD 3.75 million or more under discretionary management, investing on its own account;
- ix) the investor qualifies as a PIF promoted to Qualifying or Extraordinary Investors; or
- x) an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

The minimum investment for Qualifying Investors is USD 75,000 / EUR 75,000 or equivalent in another currency. The total amount invested may not fall below this threshold unless this is the result of a fall in the net asset value of the PIF.

'Extraordinary Investors'

An Extraordinary Investor is required to meet one or more of the following criteria:

- i) a body corporate, which has net assets in excess of EUR 7.5 million / USD 7.5 million or which is part of a group which has net assets in excess of EUR 7.5 million/ USD 7.5 million;
- ii) an unincorporated body of persons or association which has net assets in excess of EUR 7.5 million / USD 7.5 million;
- iii) a trust where the net value of the trust's assets is in excess of EUR 7.5 million / USD 7.5 million;
- iv) an individual whose net worth or joint net worth with that persons spouse, exceeds EUR 7.5 million /USD 7.5 million;
- v) a senior employee or Director of service providers to the PIF;
- vi) the investor qualifies as a PIF promoted to Extraordinary Investors; or
- vii) an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

The minimum investment for Extraordinary Investors is USD 750,000 / EUR 750,000 or equivalent in another currency. The total amount invested may not fall below this threshold unless this is the result of a fall in the net asset value of the PIF.

Investment Restrictions

PIFs promoted to Qualifying or Extraordinary Investors are not subject to any investment restrictions. Those targeting Experienced Investors are subject to certain investment, borrowing and leverage limits. PIFs targeting Experienced Investors may not leverage their position (either through direct borrowing or the use of financial derivative instruments) by more than 100% of their Net Asset Value.

Service Providers

A PIF may appoint any service provider as it may deem necessary. Notwithstanding, PIFs promoted to Experienced Investors are required to appoint a Custodian responsible for the safe custody of the assets of the PIF and for monitoring compliance by the Investment Manager with the investment policies and restrictions of the PIF. The regulator in Malta requires that all service providers appointed directly by a PIF should be established and regulated in a Recognised Jurisdiction.

Local Representative

None of the service providers to a PIF need be based in Malta but where all the service providers of a PIF are based outside Malta and where the PIF has not appointed a local resident Director the PIF will be required to appoint a Local Representative.

The Local Representative is responsible for the following functions:

- i) act as point of liaison between the Malta regulator and the PIF;
- ii) receive any instructions from the regulator;
- iii) provide any information to the regulator as may be requested from time to time; and
- iv) act as the PIFs Money Laundering Reporting Officer (where applicable).

Licence Application Procedure

The following documents are required in support of an application for a collective investment scheme licence by a PIF:

Application Form;

Application Fee;

A near final draft of the Offering Document;

A copy of the PIF's board resolution approving the Offering Document;

A near final draft of the Mems & Arts of the PIF, or other constitutive document if the PIF is not in corporate form;

A Personal Questionnaire of each proposed director of the PIF;

In relation to service providers operating from non-Recognised Jurisdictions only, Personal Questionnaires of the Directors and Qualifying Shareholders of such service-providers (ie. those shareholders holding more than 10% of the shares in such entities); and

Details of the PIF's proposed Local Representative (where applicable).

Application Fees

Fund: EUR 1,500

Sub-funds: EUR 1,000 per sub-fund.

One off registration fee payable to the Registry of Companies: approx EUR 1,750

Where a PIF proposes to use a service provider not from a Recognised Jurisdiction it is recommended that an 'In Principle' approval is first sought from the Malta regulator. The fee for this would be Euros 600

Annual Fees

Fund: EUR 1,500

Sub-Funds: EUR 500 per sub-fund

Fee payable to the Registry of Companies for filing of Annual Return: approx. EUR 1,000

The regulator in Malta will usually process a licence application within 7 days of all the required documentation and information having been submitted.

Taxation

PIFs are exempt from Maltese income and capital gains tax. In addition capital gains made by non-Maltese investors when redeeming units in a PIF are not subject to any withholding tax.

Funding and Structuring

A PIF is not subject to any 'own funds' requirements and is able to commence business with a capital of EUR 2,000. The only exception to this general rule arises when the PIF has not appointed an external manager (i.e. it is self managed) in which case it must have an initial capital of EUR 125,000.

Maltese law allows for a PIF to be set up as an open-ended or closed-ended fund which may take the form of a company with variable share capital (a 'SICAV'), any other corporate entity, a unit trust or a limited partnership. SICAVs are commonly used for open-ended funds as the associated law has recently developed with that use in mind.

SICAVs can issue fractional shares and provide for full flexibility in relation to the redemption of units by investors. They may be incorporated in the form of umbrella / multi-fund companies where each sub-fund is to be represented by a distinct class or classes of shares in the company. Each class may also be designated a different currency. Different rights may be attached to each class of shares.



SICAVs established as multi-fund / umbrella companies may have the assets and liabilities of their sub-funds treated as a patrimony separate from the assets and liabilities of each other sub-fund of the same SICAV thereby providing for segregation of assets and liabilities within the umbrella structure.