

# Funds





## Malta

the jurisdiction of choice  
for asset managers



The regulatory operating landscape within the European Union (EU) has experienced a seismic change in the wake of the financial crisis of 2008. Since then, regulators have been actively seeking to contain system risk by enforcing measures to regulate various sectors of the Financial Services industry.

In the span of a decade, the European Commission enacted an overwhelming number of legislation and regulation, most of which have generated an even bigger number of sub-regulations, technical standards and guidelines, resulting in a daunting volume of pan-European documentation to assimilate, evaluate and implement. Unsurprisingly, the Asset Management sector was not cast aside in this wave of regulation. On the contrary, it is enough to mention that as of 22 July 2013, subject to a one year transition period, the entire Hedge Fund sector fell to be regulated through the Alternative Investment Fund Managers Directive (AIFMD), when this was previously not regulated at a European Union level.

So, in this daunting regulatory landscape, how can Malta offer a competitive advantage to Financial Services firms looking for a European solution?

In premise, Malta is the EU Member State with a record for efficiency in transposing EU Regulations and Directives into its domestic legislation.

Malta has continued to rank at the top from among European Union Member States, having the best transposition record of European legislation, according to the December 2016 scoreboard published by the European Commission. The scoreboard benchmarks Member States' efforts in the implementation of Internal Market Law, by recording the transposition deficit, which is the gap between the number of Internal Market laws adopted at EU level and those in force in the Member States. To name just one example, Malta was the first Member State to fully transpose the aforementioned AIFM directive. In fact, Malta is the only Member State achieving a perfect score for the fourth time on the compliance deficit scoreboard which measures the number of infringement proceedings for non-conformity on transposition.



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There are even more compelling reasons for Malta to be considered as a natural choice for companies seeking to gain a competitive advantage in terms of regulatory challenges in the Asset Management industry.

Our single best testimonial comes from the industry itself. Regulated companies in Malta repeatedly assert that the big attraction to our industry is the peace of mind with which they are able to deal with regulatory change. This is the result of a well-honed approach which sees all the stakeholders, being the legislator, the regulator, various industry bodies, service providers as well as licence holders themselves, coming together to ensure that regulated entities always have complete visibility, instant access and timely responses on regulatory matters. Our size ensures that we are nimble and effective, and this is something which is difficult for larger jurisdictions to replicate.

Add this to the fact that English is an official language in Malta, and that our company law is based on UK company law, one starts to understand why Malta is a favourite destination for promoters looking for a European Union regulatory solution. To top it all, Malta enjoys a good standard of living, decent infrastructure, an attractive tax regime, and an exceptionally skilled workforce that accommodates the needs of the industry.

Nevertheless, our real strength is the continuous involvement of our regulatory solutions, enabling market players to find a 'best fit' in terms of the most appropriate channel through which to offer their services.

Let's take the introduction of the AIFMD as an example.

Apart from having a fully-fledged AIFMD solution, Malta also provides, amongst other things, the following possibilities:

- Establishing fund structures relying on the regulated status of the manager. In a conscious effort to reduce the time-to-market on the set up of new fund schemes and to eliminate overlapping regulatory requirements, the Malta Financial Services Authority (MFSA) launched the Notified AIF regime, thereby effectively aligning the local product range to the manager-oriented regulatory oversight endorsed by the AIFMD, as opposed to the product-oriented one set forward by the UCITS Directive. This is a further illustration of Malta's ability to create new products that are better aligned to market requirements.
- Establishing a fully regulated manager and fund outside the scope of AIFMD. Malta has retained its popular Professional Investor Fund (PIF) regime and as long as the structure falls outside the scope of the directive, it will be possible to continue operating without adhering to the more onerous obligations of the AIFMD. This provides an attractive solution for private equity funds which operate below the AIFMD thresholds for full compliance and are not pursuing broader distribution channels by means of the passporting benefits enshrined in the AIFMD. Furthermore, the flexibility of PIF structures in Malta allow for the rapid adaption



to the dynamic Asset Management sector. This is evidenced through the recent revision of the rules applicable to PIFs addressing investor protection and market integrity in the context of such fund schemes investing in virtual currencies.

- Fund platforms which allow the co-existence of fund structures operating under different regimes. In this particular sphere Malta has not one, but three different regulatory modules under which a fund platform can be established. These range from the traditional model wherein each sub-fund is legally a separate patrimony of assets, distinct and ring fenced from other sub-funds within the platform, to the more recent incorporated cell concept, where each cell regulated as a fund scheme has its own independent board of directors and is a separate and distinct legal personality at law.
- Redomiciling non-EU managers and non-EU funds into the European Union. Effectively this is a simple continuation procedure wherein the fund or manager transfer their operation to Malta, where they will fall to be licensed and regulated by the MFSA. The continuation is a seamless one wherein the entity retains its track record and there is no requirement for any redemption or realisation of any sort.
- A focus on proportionality principles. Malta does not adopt a one-size fits all approach to regulatory obligations. The principles of proportionality are firmly entrenched in our jurisdiction such that the substance requirements will be firmly in line with the nature and complexity of the operation and the assets being managed.

Yet another strong selling point is the plurality of legal structures available to establish a fund, ranging from a

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limited liability company with variable share capital, to a partnership, a contractual fund and beyond.

In the past four years, regulatory developments in Malta have seen the addition of a new category of loan funds, the introduction of EuVECA and EuSEF funds, the launch of the

European Long Term Investment Funds and the concept of cell structures with a securitisation vehicle, thereby providing a diverse range of regulated product offerings to cater for a demanding Asset Management sector. In addition, the advent of MiFID II, AML IV and General Data Protection Regulation continue to strengthen the regulatory framework in Malta.

In an age where technology plays a vital role in every imaginable aspect of the Asset Management sector, one cannot overlook recent developments evolving around blockchain. Being the first country to have a national strategy for blockchain, Malta has definitely put itself on the map in this sector, this being the essential first step in establishing itself as a fintech hub.

Malta has a vibrant Financial Services industry with one of its main assets being its robust and yet flexible regulatory regime. Our jurisdiction will enable you to transform the EU's challenging regulatory regime into a competitive advantage for your business.

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# Malta, a home away from home: Relocation of Funds and Investment Service Providers post-Brexit



Brexit, a term coined for UK's exit from the EU, has been on everyone's mind for over two years. The referendum results from Thursday 23rd June, 2016, have resulted in more questions than answers. Will Brexit happen? How will it take place? What will the implications be?

Brexit has brought about a cloud of uncertainty, which is an unfortunate situation for investment services providers and funds to be in. Will this result in loss of access to the single market? And what about passporting rights for portfolio managers, fund managers, and distribution companies? Losing access to the single market and the right to passport would significantly impact these aforementioned players. Thus, regardless of whether the UK manages to secure a deal with the EU by the end of March 2019, layers of legal complexity will be added to the current state of play.

According to a survey conducted by KPMG in 2017, one in every three firms in the UK replied that they are looking to relocate in whole or in part overseas, so as not to miss out on the rights and benefits derived from the EU. This number is sure to have risen following an increase in the uncertainty around Brexit and its implications. The next question to naturally follow is: where should one relocate to within the EU?

The island of Malta, which enjoys over 300 days of sun every calendar year, serves as an attractive option to be a gateway to Europe. Malta has been active in the financial industry since the 1950s, and has gone from strength to strength, particularly following its accession into the EU in 2004. It has in fact recently been recognised as the most favoured funds domicile in the EU by publications such as the Hedge Funds Review.

With its strong historical and cultural ties to the UK, Malta is a natural option for UK asset managers and investment services providers. It forms part of the Commonwealth, having formed part of the British Empire for over 150 years. Writing in a local British newspaper, UK Brexit minister David Davis assured that, given Malta and the UK's common history, fundamental values and aspirations, Malta will always continue to have a good working relationship with the UK.

English is one of Malta's two official languages, and thus spoken fluently and widely throughout the country. This is not to mention the fact that most professionals within the financial services industry in Malta also speak a third and sometimes even a fourth language, which helps for business with international clients. All laws in Malta are written in English, which ensures that there is legal certainty and that there can be no misinterpretation when one translates from Maltese to English. Moreover, the Maltese economy boasts one of the highest growth rates within the EU. As one of only two EU member states to register economic growth since the financial crisis in 2008, Malta's strong foundations in the financial services industry helped ensure a strong performance in a time of universal uncertainty and negativity. Such positive results arise also from the fact that Malta has historically always had a flair for innovation

which has in fact attracted various industries such as Pharma, iGaming and, most recently, digital innovation. Malta has been dubbed the world's first Blockchain Island. Within the funds industry, Malta also boasts the record of being one of the first EU member states to fully transpose the AIFM directive.

Of core importance in Malta's offering, is the cost and time effective nature of Malta's financial services industry. Lower salary costs, office rental fees, and license fees, a beneficial tax regime, and other cost effective considerations when compared with the UK and other leading fund jurisdictions such as Ireland and Luxembourg, allow for a lower total expense ratio for asset managers. Malta is also the only EU jurisdiction to apply a full tax imputation system. In addition to this, Malta currently has an extensive network of over 70 double tax treaties, providing for relief from double taxation.



Any practitioner within the financial services industry will also point towards the efficiency of the Malta Financial Services Authority (MFSA), the competent authority for financial services in Malta. The MFSA is a flexible and approachable regulator which allows for a more efficient application process. The combination of above advantages has resulted in Malta becoming the home for numerous well-established investment service providers, asset management companies, fund administrators, and strong local and global banks. The strength of the banking sector in Malta was particularly highlighted during the financial crisis of 2008, following which the Maltese banks ranked as the 13th soundest in the world by the World Economic Forum's Global Competitiveness Report 2009-2010.

The cost and time effective nature of Malta's offering, however, does not come at the cost of lowering the bar from a legal framework or quality of service perspective. Malta provides a comprehensive statutory and regulatory framework, which allows for a large variety and flexibility in fund structures with EU products such as the



Alternative Investment Fund (AIF) and UCITS schemes, as well as the unique Maltese structures such as the Notified AIF (NAIF), Professional Investor Fund (PIF) and Recognised Incorporated Cell Company (RICC).

Additionally, notwithstanding the fact that Malta is 27 kilometres long from North to South and no longer than a 15 minute drive to the nearest beach, the fact that the Maltese Government provides free primary, secondary, and tertiary education (including university) means that there is a deep pool of professional talent on the island, with an ever-rising number of graduates to meet the increasing needs of the market.

With Brexit looming, UK based asset managers and investment service providers have a number of imminent questions to ask. As shown above, Malta provides a clear answer for relocation. With low crime rates, peace, political stability and good reputation, Malta offers an ideal European platform that is ripe with opportunity for asset managers and investment services providers looking to find a new home away from home in a post-Brexit world.



# Fund Typologies

## Alternative Investment Funds





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The Alternative Investment Fund Managers Directive (the Directive) entered into force on the 22 July 2013. Malta was the first EU Member State to completely transpose the Directive ahead of schedule and as a result the Malta Financial Services Authority (MFSA) was in a position to accept applications for the licencing of both Alternative Investment Fund Managers (AIFMs) and Alternative Investment Funds (AIFs) as of such date.

What is an Alternative Investment Fund?

For the purposes of the Directive, an Alternative Investment Fund is any collective investment undertaking which raises capital from investors with a view to investing such money in accordance with a defined strategy, and which does not require authorisation in terms of the UCITS Directive. The definition of an AIF is therefore very wide and most types of funds, be they hedge funds, private equity funds or real estate funds would be caught by the definition.

Alternative Investment Funds in Malta

#### 1. Licencing Requirements

The Investment Services Act (Chapter 370 of the Laws of Malta) prohibits collective investment schemes from issuing or creating units or carrying on any activity in or from Malta, unless they are in possession of a collective investment scheme licence issued by the MFSA. A similar prohibition exists in respect of any collective investment scheme set up in terms of Maltese Law issuing or creating units or carrying on any activity from any country or territory outside of Malta.

A collective investment scheme licence can be issued to an entity to operate as a retail collective investments scheme, whether UCITS or otherwise, professional investor fund or alternative investment fund in terms of the Directive.

As part of the implementation process of the Directive, the MFSA issued the Investment Services Rules for Alternative Investment Funds (the AIF Rules) containing the standard licence conditions applicable to alternative investment funds. The AIF Rules govern both third-party managed AIFs and self-managed AIFs, with the latter being subject to additional requirements akin to those applicable to AIFMs in terms of the Directive.

An AIF established in terms of Maltese Law can take several legal forms, and additional rules apply to each specific legal form in terms of Appendix 1 to the AIF Rules (the Appendix). An AIF may thus be established as a limited partnership, an investment company or as an incorporated cell company, amongst others. The majority of collective investment schemes in Malta are set up as investment companies with variable share capital public limited companies (SICAV plc), and where relevant, it is this legal form which we will be considering here.

#### 2. Appointment of Officers and Service Providers

An AIF is required to appoint a minimum number of officers all of whom must satisfy the fitness and properness test of the MFSA and be approved to take up office, before they can act for the AIF. The replacement of such officers throughout the life of the AIF is also subject to prior MFSA approval. To this end, the AIF is required to submit, in respect of each prospective officer, a detailed personal questionnaire. Prospective AIF officers undergo strict due diligence checks by the MFSA before being approved by the Maltese regulator to take up office.

As a requirement for authorisation, an AIF is required to appoint the following principal officers and service providers:

- **Board of Directors:** The Board of Directors of an AIF must be composed of at least three directors, typically one of whom will be resident in Malta. They must all however be fit to hold office with a licenced collective investment scheme.

The MFSA encourages the appointment of multiple independent directors, being directors who are independent of the investment manager, sponsor and other service providers, and it is a requirement under the Appendix to the AIF Rules, that at least one member of the Board of Directors be independent. Corporate Directors may only be appointed to act as Directors of an AIF where these are regulated in a recognised jurisdiction.

- **Alternative Investment Fund Manager:** Other than in the case of a self-managed fund in which additional requirements would be applicable, the AIF is required to appoint an Alternative Investment Fund Manager to take responsibility for the portfolio management and risk management of the AIF. The AIFM may either have a place of business in Malta or be licenced as a European AIFM, authorised to manage the type of AIF in questions, and who has passported AIF management services to Malta in terms of the AIFMD.
- **Custodian:** The AIF must appoint a single custodian (or depository) who will be responsible for the safekeeping of the AIF's assets. The custodian would principally have the following responsibilities (i) monitoring of the AIF's cashflows; (ii) custody of the AIF's financial instruments; (iii) verifying the ownership interest of the AIF in other assets; (iv) ensuring that the dealings in the shares of the AIF are carried out; and (v) ensuring that the value of the shares in the AIF is calculated according to applicable rules. The Custodian must be independent of the AIFM and must act in the best interests of the shareholders.
- **Auditor:** The AIF must appoint an MFSA-approved auditor, and is required to change the auditor if the MFSA so requests.
- **Compliance Officer:** Whilst ultimate responsibility for compliance by the AIF with its licence conditions and

the AIF Rules rests with the Board of Directors, an AIF is required to appoint a Compliance Officer to assume responsibility for the compliance function and for the AIF's compliance reporting requirements in terms of the AIF Rules on a day-to-day basis. The Compliance Officer role may be carried out by a contracted third party.

- **Money Laundering Reporting Officer:** The AIF is required to appoint a Money Laundering Reporting Officer (MLRO). Responsibility for the AIF's compliance with its Prevention of Money Laundering obligations rests with the Board of Directors. However, the MLRO ensures day-to-day compliance with such obligations. The MLRO must be an officer of the AIF of sufficient seniority and command so as to effectively influence the AIF's anti money laundering and terrorist finance policy. The MLRO must therefore be in employment with, or the executive director of the AIF and resident in Malta. The functions of an MLRO cannot generally be outsourced or carried out by a non-executive director of the AIF, or by the company secretary of the AIF where such company secretary does not hold any other position within the organisation. Neither can the role of MLRO be carried out by a person who undertakes an internal audit function within the organisation. It is however possible for the MLRO duties of a collective investment scheme to be carried out by the MLRO of the administrator of the AIF in accordance with an outsourcing agreement entered into between the AIF and the Administrator.

The Compliance Officer and MLRO of an AIF must be persons who have proven competence to properly fulfil the obligations associated with such role. To this end, prospective Compliance Officers and MLROs are required to submit to the MFSA a completed Competency Form detailing their relevant qualifications and experience with respect to such office in addition to the submission of a Personal Questionnaire.

An AIF may also appoint:

- **An Administrator:** The Administrator of the AIF is generally appointed to act as the share registrar of the AIF, therefore to take care of the issuance and allotment and redemption of shares in the AIF as well as to calculate the NAV of the AIF;
- **An External Valuer:** The External Valuer is responsible for the proper valuation of the AIF's assets, the calculation of the NAV and its publication. Where appointed, the External Valuer must be a legal or natural person independent of both the AIF and the AIFM and of any other person with close links to such AIF and AIFM. The role of External Valuer may be carried out by the AIFM itself provided that the valuation task is functionally independent from the portfolio management function, and measures are undertaken to ensure that conflicts of interest are mitigated. Where the External Valuer function is delegated, possibly to the Administrator, such delegation is carried out by the AIFM and not by the AIF, unless the AIF is self-managed. Delegation of

the External Valuer function does not however diminish the Investment Manager's liability towards the AIF with respect to such function.

3. **Types of AIF and applicable investment restrictions**  
The AIF Rules issued by the MFSA currently allow the setting up of five types of AIFs aimed at investors of varying degrees of investment experience, and with corresponding investment restrictions. Therefore a Maltese AIF can be set up as an AIF targeting retail investors, professional investors, experienced investors, qualifying investors and extraordinary investors: the latter three categories corresponding to the categories the professional investor funds (PIFs) that may be licensed in Malta and which remain the mainstay of the local funds industry.

The AIF Rules impose different levels of restrictions, with more stringent rules applying with respect to AIFs targeting retail investors. Thus, for example, whilst AIFs targeting retail investors are subject to borrowing restrictions, and cannot enter into cross sub-fund investments (being an investment by one sub-fund of an AIF in another sub-fund of the same AIF), such restrictions do not apply to AIFs targeting Professional Investors, which are only subject to the investment restrictions listed in their specific offering documentation and is allowed to invest up to the maximum limit allowed by MFSA rules (being 50%) by way of cross sub-fund investments.

4. **Self-managed AIFs**

A self-managed AIF is subject to additional requirements in terms of the AIF Rules, in line with the rules applicable to AIFMs. Thus, a self-managed AIF is required to abide by applicable financial resources requirements, and is required to have own funds equivalent to an initial capital of at least equal to EUR 300,000, with additional own funds being required where the portfolio of the AIF exceeds EUR 250 million. A self-managed AIF is, amongst others, required to set up an in-house investment committee which may include members of the Board of Directors, have a separate risk management function, abide by conduct of business rules and implement appropriate conflict of interest and remuneration policies, as would a stand-alone AIFM.

The investment services field has been one of the fastest growing sectors of the financial services industry in Malta, and there remains a strong interest in the registration of both AIFs and AIFMs with the demand currently on the increase. The registration process is straightforward and can be handled efficiently. The MFSA remains an accessible regulator, always ready to meet with promoters, and whilst uncompromising on principles and enforcing applicable rules, it strives to be open to developments and, where possible, to assist promoters in seeing their projects through.

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# Types of Fund Vehicles Available In Malta





Funds or collective investment schemes (CIS) are primarily regulated in Malta by means of the Investment Services Act (Chapter 370, Laws of Malta) (ISA). Under the ISA, a CIS is not permitted to issue or create any units or carry on any activity in or from within Malta unless it is licensed by the Malta Financial Services Authority (MFSA). Further and in order for an investment fund to be licensed as a CIS by the MFSA, it must fall within the definition and specific criteria set out in the ISA in order for a structure to qualify as a CIS.

Under the ISA, a CIS is a scheme or arrangement which must:

- have as its objective, or as one of its objectives, the collective investment of capital acquired by means of an offer of units for subscription, sale, or exchange;
- subject to certain exemptions, operate according to the principle of spreading risk; and
- possess one among the three characteristics of (a) pooling of investments, (b) unit holders that are able to request the fund for redemption of their units, or (c) units that will be issued continuously or in blocks at short intervals.

The definition is purposely broad and covers both open-ended and closed-ended funds, retail and non-retail funds as well as funds where the contributions of investors are not pooled. The definition of a CIS under the ISA also covers alternative investment funds (AIFs) as defined under AIFM Directive, undertakings for collective investment in transferable securities (UCITS) defined under the UCITS Directive, as well as, since pooling is an optional element, funds that fall outside either category.

Since the definition of a CIS under the ISA is neutral as regards a fund's legal form (through the use of the generic expression 'scheme or arrangement'), promoters are granted significant latitude under Maltese law as to the appropriate legal form for a fund. This allows promoters to select a vehicle according to considerations as the desired tax treatment for investors, investor expectations or other relevant factors.

Malta accordingly permits CIS to be established as companies, limited partnerships, unit trusts, foundations or mere contractual arrangements.

## Companies

CIS in Malta are usually established as companies under the Companies Act (Cap 386, Laws of Malta) (the Companies Act). Adopting a corporate form means that the CIS is a separate legal entity managed by its board of directors (typically composed of three or more directors) and can enter into contracts in its own name. A CIS established as a company may either appoint an external fund manager or be internally or self-managed.

Under the Companies Act, a promoter may establish a CIS as an investment company with fixed share capital (INVCO) or an investment company with variable share

capital (société d'investissement à capital variable or SICAV). In addition, the Companies Act requires the promoter to select whether the CIS should be registered as a public liability company or a private limited liability company. That choice would typically be driven by, among other things, whether the limit of 50 shareholders and the limitations on the transferability and listing of securities issued by private limited liability companies are acceptable.

The INVCO is a legal vehicle primarily designed for closed-ended fund structures. The INVCO benefits from one main exemption from the typical strictures of public companies (unlike the SICAV, an INVCO must always be a public limited company) in that it is able, provided certain conditions are satisfied, to distribute profits from certain typically undistributable reserves. Perhaps understandably, this structure has fallen into disuse in favour of the far more established and flexible SICAV which can, in addition to open-ended structures, also adequately serve as a closed-ended vehicle.

The SICAV is, by a large margin, Malta's most popular legal form for funds. SICAVs are exempt from many of the strictures of private and public companies and accordingly may, among other things, issue and redeem shares continually according to investor demand, issue fractional or discounted shares, and distribute by way of dividend amounts in excess of the profits and capital which are typically available for distribution by ordinary companies.

Malta has long catered for segregated cell structures (and relatively recently incorporated cell structures) including in areas as diverse as charitable organisations, insurance and securitisation. The SICAV was, however, the first Maltese vehicle to offer these features and is the structure that offers the most flexibility.

A SICAV may be established as a multi-class SICAV (that is, a fund with multiple unsegregated classes) or a multi-fund SICAV (that is, an umbrella fund with multiple sub-funds which may or may not have legal segregation between sub-funds). Subject to regulatory constraints, a sub-fund of a multi-fund SICAV may also cross-invest into another sub-fund of that SICAV.

Although benefiting from robust and detailed provisions about the legal segregation of sub-funds, sub-funds within a multi-fund SICAV do not have a separate legal personality from the SICAV of which they form part.

Promoters, particularly platform operators, wishing to establish an umbrella fund with the highest level of segregation may opt for an incorporated cell company (ICC) whereby the main company is a multi-fund SICAV which can either create sub-funds (without separate legal personality) or create incorporated cells each of which is a multi-class SICAV company in its own right.

A relatively recent innovation in this area is the recognised incorporated cell company (RICC) which is an ordinary private or public company whose activity

is restricted to providing administrative services to its incorporated cells and which can create incorporated cells (ICs) each of which may be a multi-class or a multi-fund SICAV company.

A benefit of such structures is that whilst one SICAV or INVCO may only include sub-funds authorised under one regulatory regime (e.g. AIFMD or UCITS), an ICC or RICC will give you more flexibility in view of the separate legal personality of ICs.

In addition to the incorporation of new companies under Maltese law, the ISA and the Companies Act permit the migration or redomiciliation of funds in the form of a body corporate into and out of Malta.

## Limited partnerships

A limited partnership, or partnership en commandite, can have its capital divided into interests or shares and be licensed as a CIS under the ISA.

Limited partnerships which are established as funds will have objects limited to the collective investment of funds in securities and other property, with the partners benefiting from the proceeds of the management of those funds. Limited partnerships expressly set up as and licensed as a CIS are regulated by the 10th Schedule to the Companies Act.

A limited partnership may be formed by two or more partners, with at least one general partner and one limited partner, as is typical in common law jurisdictions. Unlike conventional common law limited partnerships, however, a Maltese law limited partnership has a separate legal personality distinct from that of its partners and, accordingly, can transact business and own assets in its own name.

Any person (including a limited liability company) can be a partner (general or limited) in a limited partnership, regardless of where it is resident. The limited partnership itself, however, must have a registered office in Malta.

A general partner of a Maltese limited partnership is jointly and severally liable (with any other general partners of that limited partnership) for all debts of that limited partnership without limitation. The liability of the general partners is, however, subordinate to that of the limited partnership itself, so that the assets of the limited partnership must be exhausted before any action can be taken against a general partner. Limited partners are not liable for any debts of the limited partnership beyond the amount so contributed or agreed to be contributed and not yet paid.

Like the SICAV, a limited partnership may be established as a multi-class limited partnership (that is, a fund with multiple unsegregated classes) or a multi-fund limited partnership (that is, an umbrella fund with multiple sub-funds with a choice as to whether or not to have legal segregation between the sub-funds).

## Unit trusts

A CIS may be constituted as a trust, and the Trusts and Trustees Act (Cap 331, Laws of Malta) (the Trusts Act) and the ISA contain provisions which permit a unit trust arrangement to operate much the same way as a SICAV. Maltese trust law, notably the Trusts Act, is based on English common law principles and it also has contract-like flexibility which is expressly provided for at law. As is typical with ordinary Maltese trusts, a CIS which is structured as a unit trust will not have legal personality separate from that of its trustee; however, the assets of the trust will constitute a separate, distinct estate to that of the trustee.

A unit trust is constituted by an instrument of trust usually between the investment manager and the trustee. The trust instrument will govern matters such as the appointment and retirement of the investment manager and the trustee (the two main functionaries), their respective powers and duties as well as how the trust will operate.

Both foreign trusts and foreign trustees are recognised in Malta, but trustees carrying on business in Malta would need to be approved by the MFSA.

## Foundations

It is possible for a CIS to take the form of a foundation, which is an organisation that comprises a 'universality of things' constituted by a founder for (i) the fulfilment of a specified purpose or (ii) the benefit of a named person or class of persons, and whose assets are administered by a designated person.

Foundations can be used to further any legitimate business or activity; however, unlike trusts, foundations are granted legal personality by statute. Typically, a foundation would have a finite existence, but when used for collective investment purposes there is no limit on its life.

## Contractual funds

A CIS can be established by a 'deed of constitution' - a contract - between an investment manager and a custodian. Contractual funds will not have legal personality, can be open-ended or closed-ended, and the interests in the fund can be divided into units, title to which will be evidenced by certificates or contract notes issued jointly by the investment manager and the custodian.

A contractual fund can be a single fund or an umbrella fund, with separate strategies or different investors housed across sub-funds, as is the case for SICAVs.