Professional Investment Funds

CAMILLERI CASSAR

ADVOCATES

General

As a result of the recent consolidation of the fund legal framework in Malta, CISs may be categorized as falling under three distinct classes;

- Retail funds – UCITS Funds and Retail Alternative Investment Funds
- Alternative Investment Funds (AIFs), and
- Professional Investor Funds (PIFs).

PIFs are essentially AIFs, and to the extent that the assets under management of PIF managers falls below the AIFMD threshold, PIFs are not regulated by the AIFMD[1].

Therefore, PIF fund managers (whether externally or internally managed) falling below the said threshold, also referred to be licensed as what is known as a *de minimis* managers in addition to the PIF license as a collective investment scheme.

[1] Directive 2011/16/EU

Marketing of PIFs

Falling outside of the scope of the AIFMD, *de minimis* PIF managers may avail themselves of existing EU member states' national private placement regulatory regimes in order to market PIFs, insofar such regimes are retained by the respective EU member states.

Classes of Investors

PIFs are only available to set classes of investors who must satisfy certain criteria based on the participating investor's wealth, expertise and experience. Such investors are categorised into what are referred to as, *Qualifying Investors* (requiring a minimum investment of €100,000) and *Extraordinary Investors (requiring a minimum investment of €750,000).*

A qualifying investor is an investor who:

1. invests a minimum of €100,000 or its currency equivalent in the PIF/AIF/NAIFs which investment may not be reduced below this minimum amount at any time by way of a partial redemption; and
2. declares in writing to the fund manager and the PIF/AIF/NAIF that it is aware of and accepts the risks associated with the proposed investment; and
3. satisfies at least one of the following:

3.1 a body corporate which has net assets in excess of €750,000 or which is part of a group which has net assets in excess of €750,000 or, in each case, the currency equivalent thereof;

3.2 an unincorporated body of persons or association which has net assets in excess of €750,000 or the currency equivalent;

3.3 a trust where the net value of the trust's assets is in excess of €750,000 or the currency equivalent;

3.4 an individual whose net worth or joint net worth with that of the person's spouse, exceeds €750,000 or the currency equivalent; or

An extraordinary investor is an investor who meets one or more of the following criteria:

1. a body corporate, which has net assets in excess of €7.5 million or US$7.5 million or which is part of a group which has net assets in excess of €7.5 million or US$7.5 million;
2. an unincorporated body of persons or association which has net assets in excess of €7.5 million or US$7.5 million;
3. a trust where the net value of the trust’s assets is in excess of €7.5 million or US$7.5 million;
4. an individual whose net worth or joint net worth with that person’s spouse or civil partner, exceeds €7.5 million or US$7.5 million;
5. a senior employee or Director of Service Providers to the PIF;
6. the investor qualifies as a PIF promoted to Extraordinary Investors;
7. an entity whether a 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.

Key Features of PIFs

The below is a summary of the key features of PIFs targeting qualifying investors managed by a *de minimis* alternative investment fund manager.

	Qualifying Investors	*Extraordinary Investors*
Minimum Investment	€100,000	€750,000
Own Funds of Internally Manage	A minimum of €125,000 or US$125,000 on an initial basis represented by paid up share capital. The NAV is expected to exceed this amount on an on-going basis.	A minimum of €125,000 or US$125,000 on an initial basis represented by paid up share capital. The NAV is expected to exceed this amount on an on-going basis.
Investment Restrictions	None, unless the fund invests in immovable property	None, unless the fund invests in immovable property
Fund Manager	Optional. Self-managed *de minimis* PIFs (internally managed) allowed.	Optional. Self-managed *de minimis* PIFs (internally managed) allowed.
Administrator	Optional but recommended	Optional but recommended
Custodian/Prime Broker	Optional (provided that there are adequate safekeeping arrangements in place)	Optional (provided that there are adequate safekeeping arrangements in place)

Money Laundering Reporting (MLRO)	Required	Required
Auditor	Required	Required
Offering/Marketing Documents	Must prepare an offering document	At minimum, a marketing document must be prepared. In practice, the same criteria used to prepare an offering document for Qualifying Investors are used for preparing the marketing document.

Application Process

The MFSA will only grant a licence to a PIF if it is satisfied that the PIF will comply in all respects with the provisions of the Investment Services Act, the relevant Regulations and Rules and that the persons involved are 'fit and proper' persons to carry out the functions required of them in connection with the PIF. In general terms, there are three criteria which must be met, to satisfy the "fit and proper" test; integrity, competence and solvency.

The application process consists of a preparatory phase where an application form is submitted together with the supporting documentation, such as the personal questionnaire forms ('PQs') of the proposed management of the fund and payment of the corresponding application fees; a pre-licensing phase and a post-licensing phase.

Application Fees

	Application Fee	*Annual Supervisory Fee*
Scheme	€2,000	€2,000
Per Sub - fund	€1,000	€600

Legal Forms

PIFs may be set up as closed-end funds, open-ended funds, or a combination of both, and may take a variety of legal forms:

- Investment Company with Variable Share Capital (SICAV)
- Investment Company with Fixed Share Capital (INVCO)
- Limited Partnership
- Unit Trust
- Contractual Fund
- Incorporated Cell Company (ICC)

The Legal Forms listed above may permit the creation of investment compartments, also referred to as sub-funds.

Investment compartments segregate the assets and liabilities of each compartment, making it possible to pursue different investment strategies in each compartment without the risk of contagion between the said compartments.

Self-Managed De Minimis - Investment Committee

The board of directors of a self-managed PIF must establish an Investment Committee comprising at least 3 members to:

i. Monitor and review the PIF's investment policy;
ii. Establish and review guidelines for the PIF's investments
iii. Issue rules for stock selection
iv. Set up the portfolio structure and asset allocation
v. Make recommendations to the board of directors.

The Investment Committee may delegate the day-to-day investment management of the assets of the PIF to one or more officials of the fund, referred to as Portfolio Managers.

Malta Stock Exchange

PIFs may increase their investor base by applying for listing on the Malta Stock Exchange ('MSE'). A PIF listed in Malta may seek listing on foreign exchanges.

The MSE offers a solid infrastructure and an international footprint as it is a member of international organisations, and has been designated a recognized stock exchange for tax purposes by the HM Revenue in the UK.

Re-Domiciliation

A fund established outside Malta may re-domicile to Malta without being wound-up. The rules on the re-domiciliation of funds facilitate the continuation of funds by giving validity to any agreements or obligations of the fund with its service providers and investors.

Taxation

The PIF

CISs investing more than 15% of their assets outside Malta are exempt from income tax and capital gains tax on the revenue generated from their investments. CISs are neither subject to value added tax (VAT) for the supply of services outside Malta.

Investors in the CIS

Non-resident investors are exempt from income tax and capital gains tax on the dividend received and the income received from the transfer of their participation or shares in the CIS. No stamp duty is payable by investors on a transfer of their participations in the CIS.

Highly Qualified Employees

Certain highly qualified persons employed by the CIS may be eligible for a reduced flat rate of income tax of 15%.

Double Taxation Treaties

PIFs may benefit from Malta's extensive network of double-taxation treaties with around 58 countries, most of which are modelled on the OECD model.

For further information, kindly contact Laragh Cassar, Partner Camilleri Cassar Advocates on laragh@camillericassar.com

Camilleri Cassar Advocates
9, Brittania House, Level 1,
Old Bakery Street,
Valletta VLT 1450 Malta
T: +356 21224276
www.camillericassar.com

May 2017