

Key Facts UCITS

The UCITS (Undertakings for Collective Investment in Transferable Securities) regime was originally developed to harmonise Europe's retail fund structures and promote fund distribution between EU Member States on the basis of a single authorization from one Member state, provided that it follows certain notification procedures. UCITS funds offer a high degree of protection to investors and are a worldwide recognised brand of excellence for funds.

Following the introduction of the UCITS IV directive, Malta now provides the possibility of launching funds under the UCITS V regime. The regime provides a number of features and benefits which are expected to enhance the attractiveness of the UCITS product:

- Duties, delegation, eligibility, and liability of the depositary and rules relating to which tasks and responsibilities may be delegated;
- Remuneration policy of senior management;
- The harmonization of the minimum sanctions regime across EU member states.

Regulatory Considerations

- A UCITS fund must be approved by the Malta Financial Services Authority ("MFSA"). This approval process requires approval of the scheme's instruments of incorporation, its rules, the Board of Directors and all service providers proposed to be appointed to the scheme.
- A UCITS fund must appoint a single depositary licensed and based in Malta (i.e. the jurisdiction of the Scheme). The depositary is to monitor the cash flow of the UCITS, in particular all payments made by or behalf of investors upon subscription of units, and will be liable to the UCITS for the loss of any financial instrument held in custody.

- Every UCITS fund may appoint an external manager, which may also be licensed by the MFSA. Alternatively, a Scheme may choose not to appoint a third party manager whereby the functions of a Manager are undertaken by the UCITS fund through an Investment Committee, subject to the MFSA being satisfied that a number of conditions are met.
- The management company and the depositary must be independent and separate entities.
- A local auditor must be appointed.
- A UCITS fund is required to have robust systems of internal control and sound procedures spanning across its entire operations.
- A UCITS fund is required to appoint a Compliance Officer and a Money Laundering Reporting Officer.
- The minimum initial capital requirement for a third-party managed Scheme is €125,000, whereas for a self-managed Scheme, the minimum is €300,000.
- UCITS are exempt from income and capital gains tax, subject to not investing in immovable property in Malta.

The Licensing Process

The MFSA will only grant a Collective Investment Scheme licence to a UCITS fund if it is satisfied that the fund will comply in all respects with the

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provisions of applicable laws and regulations and that its Directors and officers, or in the case of a unit trust or limited partnership, its Trustee(s) or General Partner(s) respectively, are fit and proper persons to carry out the functions required of them in connection with the fund.

In this respect, the MFSA will look into the experience and track record of all parties who will be involved with the UCITS fund. The licensing process can be split into three stages:

Preparatory

- The MFSA recommends that the promoters arrange to meet its representatives to describe their proposal in advance of submitting an application for a licence. At this stage, the applicant is required to provide a comprehensive description of the proposed activity. Following the meeting with the MFSA, the applicant would be required to complete the application form and ancillary documents for submission to the MFSA in draft (and not final) form.
- The MFSA will review the documentation and may ask for supplementary information to be provided. The MFSA's assessment of the applicant's 'fit and proper' credentials will also commence at this stage. The expected turnaround time for the MFSA to review the documentation provided to it and for it to provide feedback is three weeks. A number of licence conditions are communicated to the applicant at this stage, adherence to which is required throughout the life of the UCITS fund.

Pre-licensing

- The MFSA will issue an 'in principle' approval for the issuance of a licence, conditional upon the applicant finalising any outstanding matters. At this stage, the application form and supporting documentation are provided to the MFSA in their final format.

Post-licensing/Pre-commencement of Business

- The Applicant may be required to satisfy a number of post-licensing matters prior to the formal commencement of business.

The Application Documents

The documentation requiring submission to the MFSA comprises:

- An application form
- Draft version of the full prospectus and if applicable the simplified prospectus of the Scheme
- Draft version of the Memorandum & Articles of Association of the Scheme
- Draft Management, Administration, Custody, Advisory agreements (as applicable)
- Draft Board of Directors' resolution
 - Confirming the directors' intention to apply for a Collective Investment Scheme licence in favour of the Scheme
 - Identifying the person(s) responsible for signing the application documents
 - Identifying the person(s) responsible on behalf of the Board for the Compliance obligations of the Scheme
 - Identifying the person(s) responsible on behalf of the Board for the AML Obligations of the Scheme
 - Approving and assuming responsibility for the contents of the full and simplified prospectus (if applicable)
- Application fee
- Marketing plan
- Directors of the Scheme and submission of a completed personal questionnaire in the case of individual directors; where corporate directors are proposed details of the regulatory status of

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the corporate director(s) and the name of the individual(s) representing the corporate director on the Board of Directors of the Scheme are required

Regulatory Fees

Regulatory fees comprise of a non-recurring application fee payable on submission of the application for a UCITS fund and an annual supervision fee which is due on the anniversary of the licence being granted:

- Application fee: €2,500 for the Scheme; €450 for each sub-fund
- Annual supervisory fee: €3,000 for the Scheme; €500 per sub-fund up to 15 sub-funds. No annual supervisory fee per sub-fund from the 16th sub-fund

How We Can Assist

Trident Fund Services (Malta) Ltd is a recognised Fund administrator regulated by the Malta Financial Services Authority pursuant to the Investment Services Act, 1994. We have broad experience in handling the administration of a variety of fund structures and can provide the following services:

- Assistance with the licensing of a UCITS fund in Malta including liaison with the MFSA, legal advisors and other parties
- Incorporation of the UCITS fund and the fund manager
- Provision of registered office and local directors
- Preparation of net asset value calculations
- Preparation of interim and annual financial statements
- Transfer agency services
- Company secretarial services
- Administration services and coordination of the year-end audit

Fund Administration Fees

Please complete our Fund Establishment Worksheet, which provides a summary of the administration services that we offer. On the basis of a completed worksheet and proposed offering memorandum we will provide you with a fee estimate for the establishment and annual administration costs of the proposed UCITS fund.

Do not hesitate to contact us should you have any questions regarding our fund administration services or in connection with the completion of the worksheet.

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