



**CENTAUR TRUST**  
– Making Business Simple –

# Alternative Investment Funds (AIFs)

THE MALTA PERSPECTIVE

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# Introduction

## Global Environment

The Financial Crisis which started in 2008, brought about great turmoil and change to the global economic environment, but also brought about a period of rapid and large scale regulatory changes, with the aim of averting similar catastrophes in the global financial markets. The result is a Brave New World, where regulation, compliance and transparency dominate all aspects of finance. However, this has also created a trend in the financial industry, turning towards investment fund vehicles.

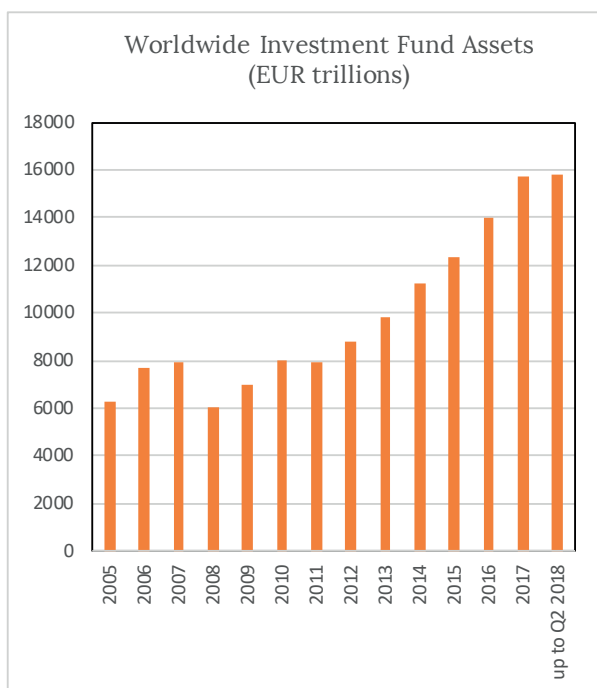
This trend is directly linked to the return of investors' confidence and an increased interest in the capital markets. However, investors are also looking for well-regulated, transparent, cost-efficient investment solutions which offer high levels of investor protection and a stable environment to do business.

At the same time, Technology has changed the way investors access and share relevant information. The application of technology to Investment Fund Vehicles have made automation widely accessible, allowing new levels of information sharing, order processing speed and documentation generation and delivery. Automated transactions have fundamentally changed the way transfer agents operate and e-delivery has dramatically changed the way of doing business in general. Fund managers, as they are today, along with new technologies have delivered economies of scale that never existed in the pre-automation world.

Investment Fund Structures have also introduced new investment strategy opportunities, offering a higher expected Return on Investment, under the continuous supervision of experienced professional fund managers.

### Key Figures

- **Global Growth of 19.2% during the past two years for regulated open-ended funds**
- **AuM by EU Investment Fund Industry grew by 12% during the past two years**
- **The Global Fund Industry is expected to grow at 6% CAGR, over the course of the next 5 years.**
- **Growth fueled by attractiveness of funds due to:**
  - Investor Protection – introduction of more regulation
  - Pursuit of higher ROI
  - Greater variety of investment strategies
  - Risk Return profiles offered by asset managers
  - Global financing crisis and reduced liquidity of banks severely restricted bank lending, leading to funds, becoming important source of finance
  - 4th Industrial Revolution (AI, IoT, VR, etc) > creating new investment opportunities (start-ups etc)



## Why Malta

Malta is positioned as an innovative, reliable and flexible EU Financial Services Center, hosting and attracting a variety of financial services businesses and structures. The country has aspirations to grow and aims to become a center for finance functions of multinationals and mid-scale firms. Digital finance and blockchain technologies are considered as the key to the growth the finance center has enjoyed in recent years.

Asset and wealth management have become the power bases of Malta's financial services sector, which has not only expanded in recent years, but also internationalized like never before. Malta today has become a worthy opponent of Europe's financial hubs and is viewed as a particularly business-friendly location.

The Investment Fund Industry began to expand soon after the introduction of special regimes for alternative investment funds. While there are more than 650 funds domiciled in Malta, the country has proved particularly attractive to fund platforms, managers and administrators who are serving funds internationally from Malta. The country has also developed into an important wealth management location. High-net worth individuals, wealth managers and family offices increasingly benefit from the country's wide range of investment vehicles, including trusts and foundations.

Crypto-Funds and Blockchain Malta is making waves in the cryptocurrency and blockchain sphere with the introduction of the world's first holistic regulatory framework for Distributed Ledger Technologies (DLT), while the MFSA has given the green light and classified virtual currencies as an investable asset for the investment funds industry. The island's government is throwing its doors wide open to innovative blockchain and cryptocurrency companies.



The fund structures and professional services supported under Malta's legislation are the Professional Investor Funds (PIFs), Alternative Investor Funds (AIFs), Notified Alternative Investment Funds (NAIFs), UCITS, Fund Managers and Fund Administrators.

AIFs and NAIFs are direct products of the AIFM directive. This directive aims to establish common regulations and requirements for the authorization and supervision of AIFs and a harmonized regulatory framework between the EU countries.

The local industry enjoys the commitment of the Maltese government as well as the Malta Financial Services Authority (MFSA), which both endeavor to preserve a leading regulatory and legislative regime that is attractive to foreign investors, while at the same time working on their protection.

Malta's key success factors:

- **Fiscally Efficient Framework**

- Malta's legislation is fully in line with EU regulations and directives, which facilitates the conduct of business in or from Malta and provides foreign investors with an assurance of the quality and consistency
- Businesses in Malta can passport their services to all other member states while the growing markets of North Africa and Middle East are also easily accessible
- The Government and MFSA are continuously striving to simplify bureaucracy

- **Easily accessible regulator**

- All financial services are under a single regulator, the Malta Financial Services Authority (MFSA)
- The MFSA provides a friendly environment that encourages businesses in the financial services industry. One of the most appreciated advantages is that the regulator is easily accessible, something that establishes productive working relationships with companies investing in Malta

- **Low operational overheads**

- Malta provides a competitive high-quality labour force at competitive rates. The key attraction of the labour force is its language skills and advanced level of education. The Financial Services Sector attracts human capital with these characteristics, as well as motivated graduates
- Legal and accounting fees, as well as certain regulatory fees, are lower in Malta than in most other European jurisdictions. Overall, operational costs are approximately 20% to 30% lower than those in the UK, Germany, France, Belgium, the Netherlands and Luxembourg

- **Specialist Services**

Malta, although an island with 460,000 people, has managed to build up a remarkably diverse financial services portfolio. The country's banking sector was one of the first to embrace an international approach. Foreign banks have established operations in Malta mostly in the areas of corporate banking and trade finance services

- **Competitive Tax environment**

- Maltese companies can benefit from an extensive network of double taxation treaties and from a significant number of business promotional incentives
- The only state in Europe that applies the full imputation system

- **Infrastructure**

The country has excellent communication links with regular flights to main international airports as well as fully digitalized national telephone network

- **Low living expenses**

Malta has one of the lowest costs of living in the EU. Although on the rise, rents are cheaper than in most other European countries, and apartments are often fully furnished. Public transport and taxi fares are also lower



- **Small Active Stock Exchange**
  - After the country's accession to EU, the Malta Stock Exchange was granted the status of full member of the Federation European Exchanges (FESE)
  - The last years have seen a very successful growth phase that has seen the listing of over 40 companies, and the issuance of over €15 billion in equity, corporate and government bonds and treasury bills. There is a clear appetite for new opportunities for investment amongst retail as well as professional investor base, ensuring that subsequent issues are likely to be consistently successful



## Investment Funds Under Maltese Legislation

- **Malta Professional Investor Funds (PIFs)**
- **Malta Alternative Investment Funds (AIFs)**
- **Malta Notified Alternative Investment Funds (NAIFs)**
- **Malta UCITS Funds**

### Malta Professional Investor Funds (PIFs)

The Professional Investor Fund (PIF) is a Maltese regulated branded investment fund for professional and sophisticated investors.

Malta PIFs are regulated, yet flexible investment vehicles for those promoters who wish to establish a collective investment scheme, but which falls short from being classified as an Alternative Investment Fund (AIF), which fall under the AIFMD Directive.

#### Key characteristics of the PIF regime:

Regulated EU structure
Suitable for all investment strategies: including traditional, alternative and all asset classes
Classifications of investors: qualifying (as defined in Appendix A)
Flexible regulatory regime since PIFs are not intended for the general public, but for professional or high net worth investors, they are not burdened with the restrictions usually imposed on retail funds
Light diversification and leverage rules
Possibility for single fund or multi-fund structure (umbrella scheme), combining different investment strategies or asset classes
Fast-track licensing process
Possibility of internally managed (self-managed)
As there are no restrictions on the types of eligible assets.
Multiple share or unit classes may also be created within a PIF or, in the case of a multi-fund PIF, within a sub-fund
Crypto-Funds: PIFs can be used to set up virtual currency funds



## Legal Framework:

The principal legislation governing the PIFs is the Investment Services Act 1994 “ISA”, as subsequently amended. The ISA establishes the regulatory framework for investment services providers and the Collective Investment Schemes including PIFs. A PIF license is issued by Malta Financial Services Authority (MFSA), once the PIF fully satisfies the requirements and criteria relating to its nature and purpose.

Legal Forms:

- **Company with Variable Share Capital (SICAV)**
- **Investment company with fixed share capital (INVCO)**
- **Public limited liability company**
- **Incorporated Cell Company**
- **Limited partnership**
- **Unit trust**

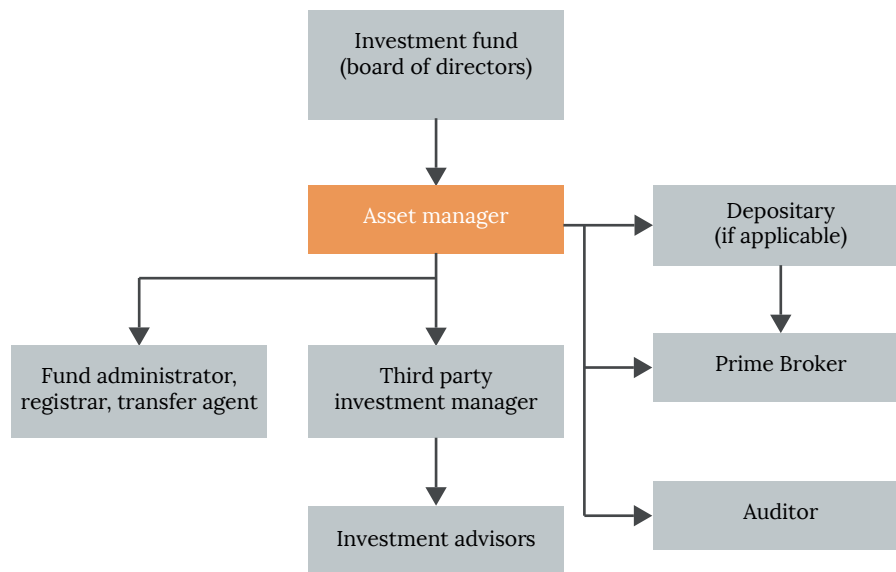
A PIF is an investment fund which is exempt from the relevant requirements of the AIFM directive provided however:

- **When the Professional Investor Fund (PIF) has a total of Assets Under Management which exceed EUR 100M (including leverage) the Scheme would need to be registered as Alternative Investment Fund**
- **In the case of a PIF which does not employ leverage and whereby investors may not redeem their shares for the first 5 years of operation of the fund, the threshold to apply for an AIF license is set at EUR 500M**

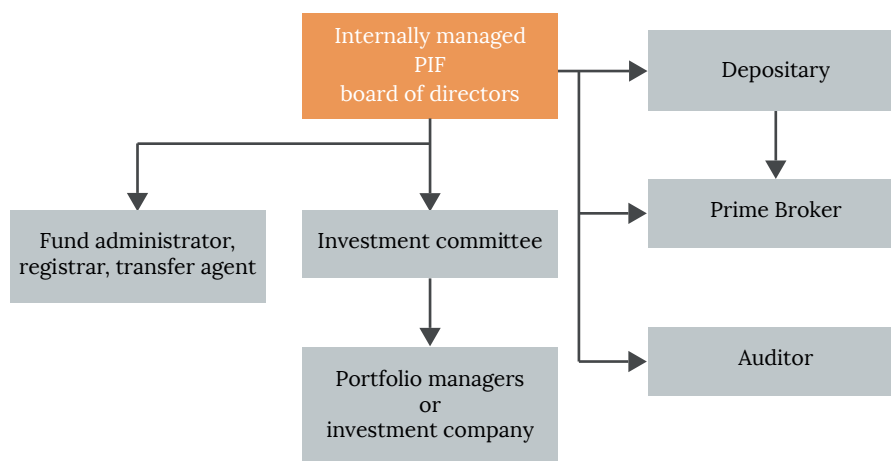


## Key players

### 1.1 PIF investment company which has appointed an asset manager



### 1.2 PIF investment company which has not appointed an asset manager







## Asset Manager

### De minimis AIFM

A PIF may only appoint a De minimis manager as its asset manager, which is exempted from the full scope of the AIFM directive.

*De minimis AIFMs are managing portfolios of AIFs which are less than EUR 100 million*

Or

*AIFMs managing portfolios of AIFs which are less than EUR500 million where the AIFs are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.*

*If the above conditions are met, an entity wishing to set up in Malta must apply for the de minimis Category 2 Investment Services License.*

*PIFs managed by de minimis AIFMs are not subject to the same requirements as AIFs. When the two conditions above cease to apply, the de minimis AIFM must apply for a full AIFM license.*

Requirements for De minimis AIFM:

- **Less onerous than those applicable for a full AIFM**
- **Must have an established place of business in Malta**
- **Must be independent from the Custodian of the AIF**
- **Initial Capital requirement of 125,000 EUR**

The two main Activities undertaken by the De minimis AIFM are portfolio management and risk management but must always retain effective management of the fund.

## Investment Advisor

The investment advisor advises the asset manager or the PIF with respect to the investment, divestment and reinvestment of the assets of the PIF. The investment advisor will not have any discretion with respect to the investment and re-investment of the assets of the PIF.

PIFs are generally not required to appoint an investment advisor. The proposed provider need not be established and regulated in Malta. When the investment advisor is appointed directly by the manager rather than by the PIF, such investment adviser is not subject to the MFSA's approval and no eligibility criteria apply.

## Custodian/Depository

Although the MFSA recommends that PIFs appoint a custodian or depository, under the current MFSA's investment services rules there is no obligation for such PIFs to appoint a custodian or depository. In case that no custodian is appointed, responsibility for the establishment of proper arrangements for the safe keeping of the PIF's assets remains with the directors/general partner(s)/trustee and officers of the PIF. The PIF will be required to outline the arrangements it will put in place to ensure adequate safekeeping of its assets.



## Administrator

Administrative services may be delegated by the investment manager to third-party administrators in Malta or in another recognized jurisdiction. The administrator's role ordinarily covers, amongst other things:

- **Correspondence with the shareholders**
- **Calculation of the Net Asset Value**
- **Pricing of the investment portfolio**
- **Payment of bills**
- **Preparation of financial statements and Reconciliations**
- **Performance reporting**
- **Compliance reporting**
- **Preparation of contract notes**

The administrator ordinarily also provides registrar and transfer agency services.

Where the proposed Administrator is established in Malta, it should be in possession of a Recognition Certificate issued in terms of Article 9A of the Act. 3.13

## Prime Broker

The PIF may appoint one or more prime brokers. Before entering into relevant agreements with a prime broker, the PIF shall exercise due skill, care and diligence on an on-going basis. The depositary may be appointed as prime broker provided that it must separate the custody activities from its brokerage activities.

## Compliance Officer

A compliance officer must be appointed whose role is to ensure compliance with the AIF obligations and requirements.

## Money Laundering Reporting Officer

A Money Laundering Officer must be appointed whose role is to ensure compliance with the Anti Money-Laundering and Combating the Financing of Terrorism (AML/CFT) obligations and requirements.

The Compliance Officer can also act as Money Laundering Officer.

## Auditor

The PIF shall appoint an auditor approved by the MFSA and the PIF shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of appointment.

## Board of Directors

A PIF must have at least one independent director and one Malta resident director.

## Self-Managed PIFs

A PIF has the option not to appoint an external manager for the investment management function.

In this case the Board of Directors is responsible for the portfolio management and risk management function, which may either be directly involved in the portfolio management function or else shall establish an in-house investment committee.

The fund must organize and control its affairs in a responsible manner and is required to have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements. The PIF would also need to have adequate and appropriate human and technical resources that are necessary for proper management and to effectively perform its activities.

Initial Capital: 125,000 euros



## Alternative Investment Funds

An Alternative Investment Fund (AIF) is a pan-European regulated branded investment fund mainly for professional and sophisticated investors.

AIFs are defined as collective investment undertakings which raise capital from a number of investors with a view of investing therein in accordance with a defined investment strategy and which do not require authorization under the UCITs directive.

### Some key characteristics of the AIF regime:

- **A regulated EU structure under the Alternative Investment Fund Managers directive (AIFM directive)**
- **Suitable for all investment strategies; including traditional, alternative and all asset classes**
- **Five different classifications of investors: retail, experienced, professional, qualifying and extraordinary depending on the target (as defined in Appendix A)**
- **Light diversification and leverage rules depending on target investor**
- **Availability of marketing passporting of AIFs to all EU member states through the AIFMD Directive**
- **Possibility for single fund or multi-fund structure (umbrella scheme), combining different investment strategies or asset classes**
- **Multiple share or unit classes may also be created within a PIF or, in the case of a multi-fund PIF, within a sub-fund**
- **The management of the AIF can be carried out internally by the AIF (self-managed AIFM) or by appointing an AIFM management company**

A Maltese AIF may be set up as:

- **A limited partnership**
- **A unit trust, constituted by a trust deed between a management company and a trustee**

- **A Contractual Fund**
- **An investment company with variable share capital (“SICAV”)**
- **An investment company with fixed share capital (“INVCO”)**
- **Incorporated Cell Company**

The most popular structure is the SICAV, usually established as an open-ended fund.

### Legal Framework

The principle legislation governing Alternative Investor Funds (“AIFS”), in Malta is the Investment Services Act, 1994 (“ISA”) as subsequently amended. AIFs are a special class of collective investment schemes that fall within the provisions of the Act.

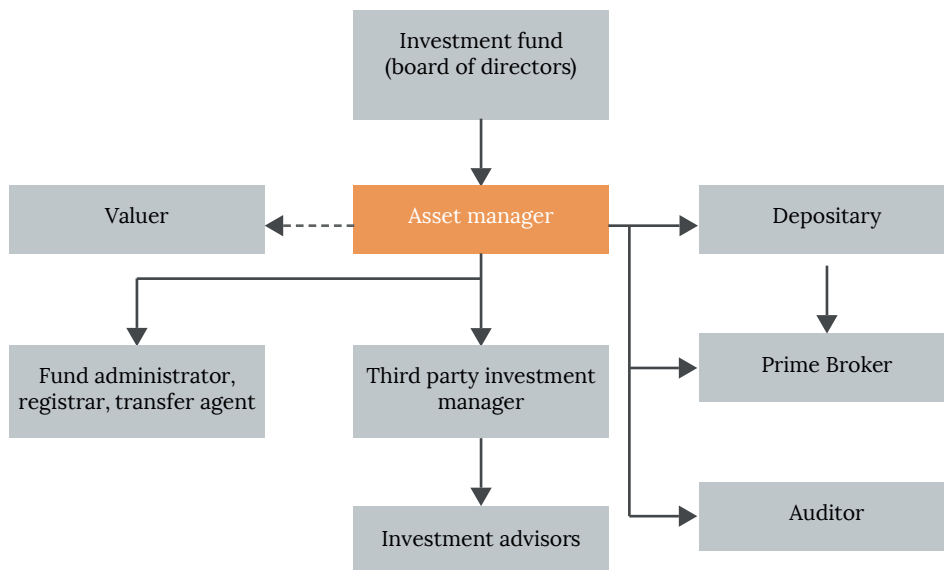
According to the AIFM directive, the following undertakings shall not be considered as AIFs:

- **A holding company**
- **An institution for occupational retirement provision which is covered by directive 2003/41/EC**
- **Employee participation schemes or employee savings schemes**
- **Securitization special purpose vehicles (SPV)**
- **Insurance contracts and joint ventures**
- **Supranational institutions**
- **National central banks**
- **National, regional and local governments and bodies or institutions which manage funds supporting social security and pension systems**

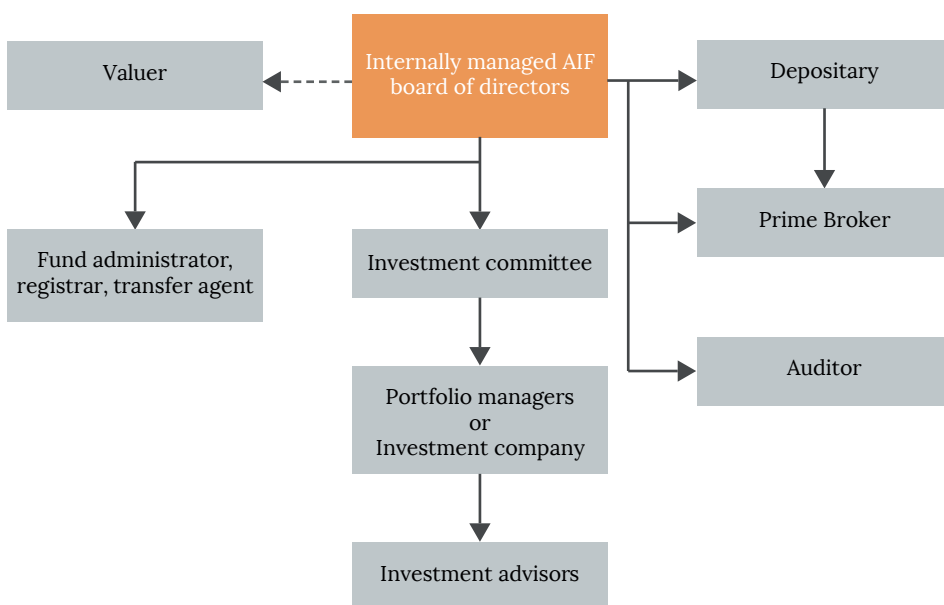


## Key Players

### 1.3 An AIF which has appointed an external asset manager



### 1.4 An AIF which has not appointed an external asset manager





## Asset Manager

An AIF may only appoint an AIFM, under the terms of the AIFM directive, as its asset manager to be responsible for the management and investment of its assets. The AIFM is a delegate of the AIF and must be duly authorised to provide such services.

Two main Activities undertaken by the AIFM are portfolio management and risk management but it must always retain effective management of the fund.

An AIFM may also undertake ancillary activities such as administration, marketing, fiduciary duties and facilities management and advice to undertakings on capital structure.

The AIFM shall take all necessary steps to comply with the investment policies and restrictions of the AIF.

The AIFM may only delegate one of the following:

- **Portfolio Management**
- **Risk Management**

These functions must only be delegated to undertakings authorized or registered for the purpose of asset management and subject to adequate supervision and should not be delegated to a depositary or any entities which may be in conflict with the interests of the AIF or AIFM.

If the AIFM is also performing the valuation service, the latter should be independent from the portfolio management function and the remuneration policy and other measures should be in place to ensure that conflicts of interests are mitigated and that undue influence upon employees is prevented.

AIFMs must also comply with the transparency requirements with regards to the financial position of the AIFs and other relevant information that must be provided to investors of the AIFs under management and to the MFSA.

If established in Malta, the Investment Manager must be in possession of a **Category 2 Investment Services License** and must also be licensed as an Alternative Investment Fund Manager.

If not established in Malta the manager must be licensed as an AIFM and situated in another EU Member State.

## Investment Advisor

The investment advisor advises the AIF's asset manager in respect of transactions relating to financial instruments. The investment advisor will not have any discretion with respect to the investment and re-investment of the assets of the AIF.

The appointment of an investment advisor is on voluntary basis and the advisor need not be based in the same jurisdiction as the AIF, but shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business.

## Custodian/Depositary

A single independent depositary is required to be appointed for each AIF under management to be responsible for safe-keeping, cash monitoring and oversight duties. The depositary must adhere to a strict liability regime which dictates that a loss by a depositary or its delegate of a financial instrument held in custody will give rise to an obligation to replace the instrument or pay compensation to the AIF without undue delay. The depositary is also responsible for overseeing the AIFM's compliance with the AIF's constitutional documents and rules and to monitor the AIF's cash flows.

The safe-keeping task is the only task that a depositary may delegate.

AIFs established in Malta should appoint depositaries established in Malta which would be in possession of a Category 4a License in terms of Investment Services Act (ISA)



Entities established in Malta in possession of Category 4b license in terms of the ISA may be appointed as a depositary to AIFs which have no redemption rights exercisable during the period of 5 years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody and to third country AIFs managed by a Maltese or EU AIFM, which are marketed in the EU/EEA.

### Board of Directors

Must consist of one or more Directors, independent from the AIFM and the depositary.

### Administrator

Administrative services in relation to an AIF may be carried out by an administrator. The appointment of an administrator is on voluntary basis. Alternatively the tasks can be executed by the AIFM. The responsibilities of the administrator cover, among other things:

- Correspondence with the shareholders
- Calculation of the Net Asset Value
- Pricing of the investment portfolio
- Payment of bills
- Preparation of financial statements and Reconciliations
- Performance reporting
- Compliance reporting
- Preparation of contract notes

The administrator ordinarily also provides registrar and transfer agency services.

Where the proposed Administrator is established in Malta, it should be in possession of a Recognition Certificate issued in terms of Article 9A of the Act. 3.13

The Administrator shall have the business organization and procedures, systems, experience and expertise

deemed necessary by the MFSA for it to act as an Administrator. The AIF shall satisfy the MFSA that the proposed Administrator meets the above requirements.

### Prime Brokers and Counterparties

The AIF or the AIFM may appoint one or more prime brokers or counterparties. Before entering into a relevant agreement with a prime broker or counterparty, the AIF or the AIFM shall exercise due skill, care and diligence on an on-going basis. The depositary may be appointed as prime broker provided that it must separate the custody activities from its brokerage activities.

### Valuer

The AIFM or the AIF, shall be responsible for the valuation of the assets of the AIF it manages. Such valuations may either be performed by an external valuer, being independent from the AIFM or AIF and any other persons with close links to the AIF, or the AIFM itself, provided that safeguards are implemented by the AIFM to ensure that the task is independent from the portfolio management and remuneration policy.

### Compliance Officer

The Fund must appoint a Compliance Officer whose role is to ensure compliance with the AIF obligations and requirements.

### Money Laundering Reporting Officer

The Fund must appoint a Money Laundering Officer whose role is to ensure compliance with the AML/CFT obligations and requirements.

### Auditor

The AIF shall appoint an auditor approved by the MFSA. The AIF shall obtain a signed letter of engagement from its auditor outlining the extent of the auditor's responsibilities and the terms of appointment.



## Initial Capital

Initial Capital Requirement of 125,000 euros.

## Self-Managed AIFs

An AIF has the option not to appoint an AIFM and thus the AIF will be carrying out internally the investment management function. In this regard, the AIF shall at least perform the portfolio management and risk management functions.

An AIF must organise and control its affairs in a responsible manner and must have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements. The AIF would also need to have adequate and appropriate human and technical resources necessary for proper management and to effectively perform its activities.

The AIF's board of directors would be responsible for the investment management function and must consist of at least one independent director and one Malta resident director.

In undertaking its activities, the AIF must separate the functions of portfolio management and risk management.

### **An Investment Committee must be appointed:**

Discretionary Management activities are vested in the Investment Committee which should be made up of no less than three members and is under the responsibility of the Board of Directors. The majority of Investment Committee meetings, must be physically held in Malta, and must be convened at least on a quarterly basis.

## Initial Capital

Initial Capital Requirement of 300,000 euros.

In the case of a self-managed AIFM, it must fully comply with all requirements of the AIFMs under AIFMD



## Supplementary Conditions for AIFs established as Limited Partnerships:

- **The AIF should obtain written consent from the MFSA before admitting a General Partner. The request shall be accompanied by a Personal Questionnaire completed by the person proposed or by the Directors and Qualifying Shareholders of the proposed General Partner, in case of a body corporate. If the corporate General Partner is regulated in a recognized jurisdiction, the request for consent shall include details of the regulatory status of the General Partner.**
- **General Partners shall be persons falling within these categories:**
  - A company licensed under the Investment Services Act 1994, for the provision of fund management services
  - A company falling within the exemptions applicable to overseas fund managers
  - Any other entity of sufficient standing and repute as approved by the MFSA
  - Any other individual who satisfies the fit and proper test
- **The AIF, or the AIFM or Administrator is required to disclose to potential investors, the identity of the beneficial owners of the General Partners upon request**
- **The AIF shall – through its Directors or General Partners – at all times maintain the majority directorship of any SPV**

## Passporting

The AIFMD confers an EU-wide marketing passport to the AIFM to market AIFs that it manages to professional investors across the EU.

An AIFM license also confers an EU-wide management passport to the AIFM that permits the management of AIFs based in any EU Member State, either directly or through a branch. The host country competent authorities cannot impose any additional requirements on the AIFM in respect of the areas covered by the Directive.

AIFMs that fall under the *de minimis* regime cannot benefit from the EU-wide management or marketing passport, however, small AIFMs can apply for a full AIFM license, which would make passporting possible.





## Notified Alternative Investment Fund

On the 11th February 2016 the Malta Financial Services Authority (MFSA) announced the launch of a new investment framework introducing provisions for the notification of Alternative Investment Funds - the “Notified AIFs” or NAIF.

The most significant advantage of this framework lies in the fact these funds are able to come into the market faster without the need to be authorised by the MFSA and will not be subject to ongoing supervision. Within 10 business days from the date of filing of a complete notification pack, the MFSA will proceed to include the AIF in the List of Notified AIF and the fund can start operations.

The new framework is only applicable to qualifying or professional investors and to any structures authorised by Maltese law and shall be managed by a full-scope AIFM.

The AIFM will assume full responsibility for the Notified AIF and for the fulfilment of the obligations of the Notified AIF. EU/EEA AIFMs may submit a notification to the MFSA for a NAIF to be included on the List of Notified AIFs. Third country AIFMs will be able to submit a request for notification of an AIF once the country where these have been established has been granted passporting rights pursuant to the AIFMD.

### Some key characteristics of the NAIF regime:

- **Short set up period (10 working days)**
- **Supervision indirectly through the AIFM**
- **Investor Protection ensured by full compliance with the AIFMD regime**
- **Full Access to other EU jurisdictions through the European Passport**
- **Product that is easy to understand and with reduced costs**

- **May take various legal forms**
- **The NAIF can be both open & closed ended**
- **The NAIF cannot be in the form of a Loan Fund**
- **Target Investors – professional and qualifying (as defined in Appendix A)**
- **May be structured as umbrella vehicle with ring-fenced compartments**
- **Investment Restrictions – cannot invest in non-financial assets (including real estate)**
- **Prospectus Required;**
- **Cannot be self-managed, always managed by an AIFM**

### A Maltese NAIF may be set up as:

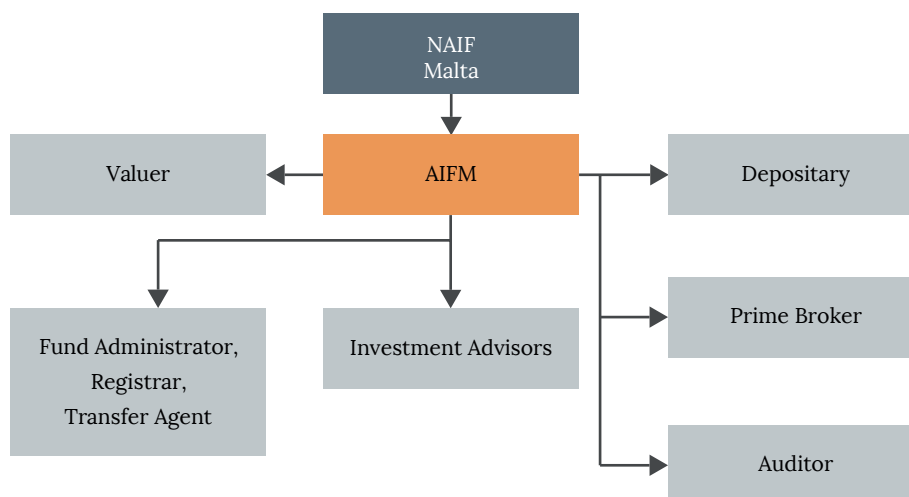
- **A limited partnership**
- **A unit trust, constituted by a trust deed between a management company and a trustee**
- **A Contractual Fund**
- **An investment company with variable share capital (“SICAV”)**
- **An investment company with fixed share capital (“INVCO”)**
- **Incorporated Cell Company**

### Legal Framework

The principle legislation governing Notified Alternative Investment Funds in Malta is the Investment Services Act, 1994 – “ISA” as subsequently amended.



## Key Players



### Fund Manager

An AIF may only appoint an AIFM, under the provisions of the AIFM directive, as its asset manager to be responsible for the management and investment of its assets. The AIFM is a delegate of the AIF and must be duly authorised to provide such services.

- The AIFM shall undertake and ensure that each service provider and governing body of the AIF maintain the “fit and proper” standard on an ongoing basis
- The AIFM should notify the MFSA in the case of any changes in service providers and/or members of the governing body of the AIF
- The AIFM shall keep records of all evidence of, and correspondence regarding, the due diligence process carried out

The inclusion of an AIF in the list of Notified AIFs is a concession and a privilege revocable by the competent authority at any time at its sole discretion on notice to the AIFM. The burden of ensuring that the AIF should be retained on the List of Notified AIFs shall rest at all times on the AIFM.

### Board of Directors

When structured as an investment company, the NAIF shall at all times have one or more directors, independent from the AIFM and custodian. Moreover, the board of directors of the investment company shall be composed of at least 3 members, one of whom must be resident in Malta.

### Administrator

An Administrator must be appointed and needs to be located in Malta.

### Depository

A Depository needs to be appointed in accordance with AIFMD requirements and should be based in Malta.



## Money Laundering Reporting Officer (MLRO)

The NAIF shall appoint a money laundering reporting officer to carry out the money laundering reporting function in relation to the NAIF. The AIFM should notify the MFSA for the appointment, resignation and removal of the money laundering officer. The function could also be outsourced to an administrator.

## Compliance Function

The compliance function of the NAIF shall be carried out by the compliance officer of the AIFM. The AIFM shall ensure that the NAIF complies on an ongoing basis with the provisions of the act and any applicable rules or regulations issued. The AIFM shall also comply with any obligations in respect of the NAIF and its investors under the AIFMD and the relevant rules and regulations as well as applicable regulations in any jurisdiction where the NAIF is marketed.

## Auditor

The NAIF shall appoint an external auditor

## Reporting Requirements

Quarterly reports

## Cross-Border Basis

Where the AIFM intends to market the NAIF on a cross-border basis as governed by the Investment Services Act (Marketing of Alternative Investment Funds) regulations, the NAIF shall be marketed to professional investors as defined above or as otherwise permitted in the applicable jurisdiction that the NAIF is being marketed.

## Notification Process

Although, the NAIF is not subject to the standard licensing procedure, it is still subject to Notification process:

- i. The Board of Directors of the NAIF must pass a resolution certifying that the Offering Documents of the NAIF satisfy the minimum criteria as prescribed by the MFSA
- ii. Within 30 days, the AIFM must submit a duly completed notification request to the MFSA
- iii. Within 10 business days of a duly completed notification pack being filed with it, the MFSA will include the NAIF on its online “List of Notified AIFs, held in good standing”
- iv. The prospectus must be dated.

# Investment Fund Vehicles at a glance

	<b>Professional Investor Funds</b>	<b>Alternative Investment Funds</b>	<b>Notified Alternative Investment Funds</b>
<b>Regulator</b>	MFSA	MFSA	MFSA
<b>Authorization/ licensing procedure</b>	Prior to set-up	Prior to set-up	No License Required, supervised through AIFM (not subject to the licensing procedure)
<b>Targeted Investors</b>	Qualifying	Retail, Professional, Experienced Qualifying and Extraordinary	Professional and qualifying Investors
<b>Structures available</b>	<ul style="list-style-type: none"> <li>• <b>Investment Companies</b></li> <li>• <b>Limited Partnerships</b></li> <li>• <b>Unit Trust</b></li> <li>• <b>Contractual Fund</b></li> <li>• <b>Incorporated Cell Company</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Investment Companies</b></li> <li>• <b>Limited Partnerships</b></li> <li>• <b>Unit Trust</b></li> <li>• <b>Contractual Fund</b></li> <li>• <b>Incorporated Cell Company</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Investment Companies</b></li> <li>• <b>Limited Partnerships</b></li> <li>• <b>Unit Trust</b></li> <li>• <b>Contractual Fund</b></li> <li>• <b>Incorporated Cell Company</b></li> </ul>
<b>Maximum Number of shareholders</b>	No limit	No limit	No Limit
<b>Minimum Number of shareholders</b>	No minimum	No minimum	No minimum
<b>Portfolio Management</b>	De minimis AIFM (externally managed) or self-managed	Full-Scope AIFM (Externally managed) or self-managed	Full-Scope AIFM, always external manager must be appointed (never self-managed)
<b>Administration</b>	If established in Malta, it should be in possession of a Fund Administration Recognition Certificate	If established in Malta, it should be in possession of a Recognition Certificate	Must always be established in Malta and should always be in possession of a Recognition Certificate.
<b>Money Laundering Reporting Officer</b>	Required	Required	Required but can be outsourced to an administrator



	<b>Professional Investor Funds</b>	<b>Alternative Investment Funds</b>	<b>Notified Alternative Investment Funds</b>
<b>Compliance Officer</b>	Required (May also act as MLRO)	Required	Compliance Function: carried out by the Compliance Officer of the AIFM
<b>Custodian/ Depository</b>	Recommended – if no custodian is appointed, responsibility falls on the directors/general partners	Required: credit institution having substance in Malta and authorized by the MFSA	Required: needs to be based in Malta and appointed in accordance with AIFMD requirements
<b>Valuer</b>	External (independent from the AIF), if self-managed, otherwise may be carried out by the AIFM. However, in the latter case, the valuation task must be functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon employees is prevented.	External (appointed by the AIFM), if self-managed, otherwise may be carried out by the AIFM. However, in the latter case, the valuation task must be functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon employees is prevented.	Carried out by the AIFM. However the valuation task must be functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon employees is prevented.
<b>Initial Capital</b>	125,000 euros, if self-managed	300,000 euros if self-managed	No, always external manager is appointed
<b>Minimum Investment</b>	€100,000 or equivalent	€ 10,000 or equivalent if marketed to experienced investors € 100,000 or equivalent if marketed to qualifying investors. € 750,000 or equivalent if marketed to extraordinary investors	€ 100,000 or equivalent if marketed to qualifying investors.
<b>Use of sub-funds</b>	Yes	Yes	Yes



	<b>Professional Investor Funds</b>	<b>Alternative Investment Funds</b>	<b>Notified Alternative Investment Funds</b>
<b>Investment restrictions</b>	No restrictions - PIFs may be set up to hold one asset. However, funds intended for virtual currencies have some specific restrictions	Yes, mainly in the case of Retail AIFs. AIFs for Professional or Qualifying Investors are not subject to any investment restrictions.	Yes - cannot invest in non-financial assets)
<b>Leverage restrictions</b>	Exempt from any leverage restrictions.	Retail AIF may borrow up to 10% of its assets on a temporary basis subject to risk exposure not exceeding 110% of its assets. AIFs for Professional or Qualifying Investors are not subject to any borrowing restrictions	Exempt from any leverage restrictions.
<b>Multiple share or unit classes</b>	Possible on fund and sub-fund level	Possible on fund and sub-fund level	Possible on fund and sub-fund level
<b>Cross Sub-Investments</b>	<p>Yes</p> <ul style="list-style-type: none"> <li>Allowed to invest up to 50% of its assets into any sub-fund within the same PIF</li> <li>The target sub-fund/s may not themselves invest in the sub-fund which is to invest the target sub-fund/s</li> </ul> <p>When applicable avoid duplication of fees</p>	<p>No - if marketed to experienced investors</p> <p>Yes if marketed to qualifying or extraordinary investors:</p> <ul style="list-style-type: none"> <li>Allowed to invest up to 50% of its assets into any sub-fund within the same PIF</li> <li>The target sub-fund/s may not themselves invest in the sub-fund which is to invest the target sub-fund/s</li> </ul> <p>When applicable avoid duplication of fees</p>	<p>Yes</p> <ul style="list-style-type: none"> <li>Allowed to invest up to 50% of its assets into any sub-fund within the same PIF</li> <li>The target sub-fund/s may not themselves invest in the sub-fund which is to invest the target sub-fund/s</li> </ul> <p>When applicable avoid duplication of fees</p>
<b>Passporting</b>	No, cannot benefit EU-wide management or marketing passport	Yes, if managed by an AIFM, through AIFMD	Yes, since always managed by full scope AIFM, through AIFMD
<b>Listing</b>	Optional	Optional	Optional
<b>Auditor</b>	Required	Required	Required



# Taxation

General comments on the country's tax system:

- **The only state in Europe that applies the full imputation system**
- **Excellent treaty network resulting in significant fiscal benefits**
- **Efficient fiscal regime for non-Maltese taking up residence in Malta**
- **Availability of the participation exemption**
- **Wide network of double tax treaties**

The tax law of Malta is one of the most modern, effective and attractive tax systems in the EU, that is fully compliant with the EU Directives.

Malta has one of the lowest OECD compliant tax rates within the EU area. Investors can set up tax efficient structures in Malta and benefit from the interaction of the full imputation system of company taxation (whereby dividends carry a tax credit equivalent to the tax paid on the profits out of which the dividends are paid), the general tax refund system which was also approved by the European Commission in late 2006, and of its extensive double taxation treaty network, including all EU Member states.

## Full Imputation System

Malta offers a highly efficient fiscal regime which avoids double taxation on taxed company profits distributed as dividends.

A full imputation system applies to the taxation of dividends, whereby the tax paid by the company is imputed as a credit to the shareholder receiving the dividend. Following the distribution of a dividend, shareholders are also entitled to claim a tax refund of six-sevenths (6/7ths) of the relevant tax paid in respect of trading income (effective tax rate totals 5%) and five-sevenths (5/7ths) of the relevant tax paid in the case of passive interest and royalties (effective tax rate totals 10%). The refund is reduced to two-thirds where the distributing company claims double-taxation relief.



## Participation Exemption

In cases where the profits distributed are derived from a participating holding, the refund increases to 100%. A participation holding is defined as a shareholding by a Maltese company in a non-resident company or a qualifying body of persons and where it:

- Has at least 10% of the equity shares in the non-resident company; or
- Is an equity shareholder in the non-resident company and is entitled to purchase the balance of the equity shares of the non-resident company
- Is an equity shareholder in the non-resident company and is entitled to either sit on the Board or appoint a person on the Board of that subsidiary as a director; or
- Is an equity shareholder which invests a minimum in the non-resident company of €1.164.000 (or the equivalent in a foreign currency) and such investment is held for a minimum interrupted period of 183 days; or
- Holds the shares in the non-resident company for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade.

## Taxation on Funds in Malta

The Maltese tax system for AIFs is highly beneficial for both investment fund and investor. The tax treatment of AIFs depends on the classification of the fund. Maltese legislation distinguishes between prescribed funds and non-prescribed, which distinction, is important to establish whether and how tax is to be charged on investment income, capital gains and dividend contributions.

- **Prescribed Funds:** Investment funds incorporated in Malta and have over 85% value of assets which are situated in Malta. Such AIFs are subject to a withholding tax of 10% which is imposed in interest, discounts or premiums earned on Maltese government stocks or bonds, and bonds issued by listed companies as well as investment income payable by corporate entities. Bank interest is taxed at 15% whilst income from immovable property situated in Malta is subject to tax at the normal rate of 35%.
- **Non-Prescribed Funds:** A fund which does not qualify as a prescribed fund, which has more than 15% of assets situated outside Malta. The income and gains which is derived by a non-prescribed fund is exempt from Malta tax. (except for profits and capital gains relating to immovable property situated in Malta which is taxed at the normal rate of 35%).

### Taxation of the fund

	Investment income (other than bank interest income)	Bank interest income	Income from Immovable Property situated in Malta	Other income of fund
<b>Prescribed Fund</b>	10% final withholding tax	15% final withholding tax	35%	Exempt from tax in Malta
<b>Non-Prescribed fund</b>	Exempt from tax in Malta	Exempt from tax in Malta	35%	Exempt from tax in Malta





## Taxation on individuals

The incidence of tax will depend on the type of transfer whether the fund is prescribed or non-prescribed, and the tax residence of the investor. Since the withholding tax on prescribed funds is charged at fund level, any capital gains made by investors from the redemption, cancellation or liquidation of securities in listed funds are not subject to further tax in the hands of the investor. In the case of non-prescribed funds, since most of the income is exempt from tax, distributions are taxed at the rate of 15% only when made to resident individuals.

Non-Residents are not subject to tax in Malta, whether by way of withholding or otherwise on the distribution of fund's income, whether in the form of dividends, interest and liquidation or on capital gains.

## Tax treatment for highly-qualified Expatriate Professionals

Malta has introduced a new tax incentive scheme in 2011, as therefore amended in 2015, targeting highly-qualified expatriate individuals. Individuals having their domicile outside of Malta and who are employed in senior positions with a company that is licensed or recognized by the MFSA to conduct financial business in or from Malta, can benefit from a flat personal income tax rate of 15% on income up to €5m. Any income over €5m will not be subject to tax in Malta.

In order to qualify for this tax incentive, the employee must earn a minimum of €75,000 per year amongst other criteria.

## Other Important Tax Matters

- **Subject to certain conditions, capital gains realized on transfers or redemption of units by non-resident investors, irrespective of whether the funds are prescribed or not, are exempt from Maltese tax.**
- **No VAT is charged on the supplies made by a fund manager or fund administrator if the services are specific and essential to the core activity of the fund.**
- **Supplies by funds are exempt without credit, thus any VAT charged on the fund by other service providers (i.e. auditors, lawyers) will be sunk cost to the fund.**
- **Malta has 74 double tax treaties, 2 signed, still not in force.**
- **There are no transfer pricing rules in Malta.**
- **The transfer of shares in a resident company by a non-resident is exempt from tax, provided there are no interests in immovable property situated in Malta.**
- **There are no thin capitalization rules in Malta**
- **Malta does not impose any withholding taxes on interest, royalties, dividends and proceeds from liquidation.**



# Typical Use of Investment Fund Vehicles

## Real Estate fund

A real Estate Fund invests either directly or indirectly through SPVs in real estate assets. Such Fund structures usually feature a lock-up period in excess of 5 years under which the investors cannot redeem shares from the fund. Such funds are attractive to investors who wish to obtain real estate exposure without buying individual assets.

## Shipping Fund

Shipping Funds invest in vessels mainly through the use of SPVs and/or invest in Forward Freight Agreements (FFAs) or other shipping derivatives. Such funds usually have a lock-up period in excess of 5 years where their investors cannot redeem their shares in the fund. The fund however, may allow distributions to investors as its discretion.

## Citizenship Fund

Citizenship funds are set up with the intention to invest in eligible assets as prescribed by the current legislation to enable its investors benefit from such regimes. Subject to relevant authority's approval the investors may obtain the citizenship of the jurisdiction concerned.

## Private Equity Fund

A private equity (PE) fund invest primarily in non-listed private companies with the intention of administering a LBO or a MBO. PE funds can vary significantly and can be closed or open-ended, usually with lock-up periods (5-10 years and aim to deliver high IRRs due to higher risk.

## Loan Origination Fund

Loan origination funds are set up with the intention to provide credit or acting as a primary lender to borrowers such as small – medium enterprises.

## European Long-Term Investment Fund (ELTIF)

ELTIF is pan-European regime for AIFs that channel money capital towards companies and projects in Europe that need long-term capital.

## European Venture Capital Funds (ELTIF)

EUVECA regulation covers a subcategory of alternative investment schemes that focus on start-ups and early stage companies. Venture capital investment is an important source of long-term financing to young and innovative companies.

## Sovereign Wealth Funds (SWFs)

SWFs raise money from country's reserves which are invested accordingly to benefit the county's economy and its citizens.



## Appendix A

### Qualifying Investor:

- Invest minimum of €100,000 (or equivalent) in the AIF, and
- declare in writing to the AIFM and the AIF that they are aware and accept the risks associated with the proposed investment,

Or satisfy at least one of the following criteria:

- A body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or in each case, the currency equivalent thereof
- An unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent thereof
- A trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent thereof
- An individual whose net worth or joint net worth with that of the person's spouse, exceeds EUR 750,000 or the currency equivalent thereof
- A senior employee or director of a service provider to the Scheme

### Experienced Investor:

- A person who has relevant work experience having at least worked in the financial sector for one year in a professional position or a person who has been active in these types of investments; or
- 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, to which the Scheme/ Sub-Fund in question relates; or
- A person who has made investments amounting to EUR100,000 or USD100,000 during the past 2 years at an average frequency of 3 per quarter; or
- Any other appropriate justification

### Extraordinary Investor:

- A body corporate, which has net assets in excess of EUR7.5 million or USD7.5 million or which is part of a group which has net assets in excess of EUR7.5 million or USD7.5 million
- An unincorporated body of persons or association which has net assets in excess of EUR7.5 million or USD7.5 million
- A trust where the net value of the trust's assets is in excess of EUR7.5 million or USD7.5million
- An individual whose net worth or joint net worth with that person's spouse or civil partner, exceeds EUR7.5 million or USD7.5 million
- A senior employee or director of service providers to the Scheme
- 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

### Retail Investor

- Person not classified as professional Investor

### Professional Investor

- Person having the experience, knowledge and expertise to make own investment decisions and properly assess the risks involved
- Entities authorised or regulated to operate in the financial markets
- Large undertakings satisfying at least two of the following criteria: balance sheet total €20m; net turnover €40m; own funds €20m
- National and regional governments, public bodies that manage public debts, Central Banks, international and supranational institutions (e.g., World Bank)



## Our Services

Centaur Trust can offer investors a One Stop Shop solution, with regards to the establishment, investment and ongoing administration of funds. Our Services include among others:

- **Setting Up and Licensing** – Preparation and submission of an application package to MFSA to obtain a license, including advice on the best way to set up the fund with regards to staffing, organizational structure and costs.
- **Legal and Compliance Services** – Establishment of the Legal Entity, ongoing legal support and compliance regarding the activities, agreements and structuring of the fund and any subsidiary entities.
- **Fund Administration services** – Transfer Agency, Fund Accounting and Net Asset Value Valuation
- **Fiduciary Services** – Provision of fiduciary services to the fund, its subsidiaries and its unit holders including
- **Secretarial Services**
- **Directorship Services**

In order to provide our clients with all the necessary services under one roof, Centaur Trust works closely with a select number of partners, such as Depositaries, AIFMs, tax advisors and audit & legal service providers, so as to provide a complete solution and the assurance that the delivery of all the various services and functions will be seamless and at the same high standard that all Centaur Trust clients have come to expect.

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