



Malta as a Fund Jurisdiction

Until a few years ago, fund managers setting up a hedge fund would often choose an offshore jurisdiction, attracted by the light legislation and costs lower than those associated with Luxembourg or Ireland. This trend is slowly changing and most fund managers are now seeking to establish funds in EU countries. Malta's international reputation as a European fund domicile is growing quickly as the number of funds that choose to be set up in Malta accelerates.

Malta became a member of the European Union in 2004 and introduced the Euro as official currency in 2008. The official language is Maltese, but English is the most commonly used business language. Population is around 400,000. Malta enjoys the same time zone as mainland Europe and has excellent flight connections to most of the world. Malta's financial sector has been able to restructure and internationalize itself successfully in recent years as evidenced by the increase of reputable international financial intermediaries, such as HSBC and Deutsche Bank. Another of Malta's significant advantages is its tax regime, where funds are exempt from tax and can benefit from the more than 55 double tax treaties the island has, including one with China that will be ratified later this month.

In addition to the double taxation treaty between China and Malta, the Malta Financial Services Authority (MFSA) has signed two Memoranda of Understanding (MoU) with Chinese authorities: one with the China Banking Regulatory Commission (CBRC) and one with the People's Republic of China Securities Regulation Commission (CSRC).

The MoU with the CSRC will enable Malta as a fund jurisdiction to protect and promote the development of securities markets by providing a framework for co-operation, increased mutual understanding and the exchange of information, to the extent permitted by the laws and regulations in force in Malta and China. This will facilitate business for financial institutions from both Malta and China, doing business in either country.



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The MoU allows Chinese qualified domestic institutional investors to invest into Malta, on behalf of Chinese investors, in domiciled investment funds regulated by the MFSA. At the same time, MFSA licensed companies will be able to apply for Chinese qualified foreign institutional investor (QFII) status and invest directly in China's A share market, subject to certain foreign exchange flows and disclosure requirements.

Funds form the largest sector in the financial services industry in Malta, and the signing of the MoU places Malta's fund industry at the same level with the major fund domiciles, particularly in Europe. The country is now home to over 400 funds including over 300 alternative investment funds and a large number of UCITS funds.

The Collective Investment Scheme set up by the financial authorities covers the entire range of funds that can be set up in Malta, including retail funds (UCITS) and non-retail funds known as professional investor funds (PIFs).

Professional Investor Funds (PIF)

The legislation in Malta does not directly refer to hedge funds, but instead uses the term professional investor funds (PIF). PIFs are collective investment schemes specifically designed for experienced investors, and which benefit from a very flexible regulation.

The PIF framework is by far the most employed vehicle and can be used by hedge funds, funds of funds, private equity funds, venture capital funds, limited partnerships and for other alternative investment forms. A PIF can be set up as open-end (SICAV) or closed-end (INVCO) investment companies, and can be either stand-alone funds or have incorporated a number of segregated sub-funds or managed accounts. PIFs can be set up as three different types, experienced, qualifying and extraordinary, each with its own parameters, depending on the experience of the end investor.

Also, according to Malta legislation, a PIF does not need to appoint service providers that are based in Malta, a feature not found in other European fund jurisdictions. Furthermore, there are no investment restrictions and only limited restrictions on use of leverage. A PIF may be listed on the Malta Stock Exchange or any other recognized stock exchange.

UCITS Funds

Although Malta is often mentioned as a hedge fund domicile, UCITS are becoming more and more popular.

A Maltese-registered UCITS may be formed in a number of possible vehicles such as a SICAV or INVCO investment company, a trust, and even a partnership. EU membership in 2004 brought the European stamp of approval to Malta's financial legislation and it enabled passporting rights for Undertakings for Collective Investments in Transferrable Securities (UCITS) certified funds. Appropriately, certified funds can therefore be freely distributed and marketed in Malta and other EU jurisdictions.



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UCITS can currently be set up in Malta as self-managed funds or third-party managed, which affects where the UCITS licensed investment manager can be based. All other service providers, such as custodian and administrator, must be licensed and based in Malta.

Taxation

For taxation, funds are divided into two categories, either prescribed or non-prescribed. A fund is categorized as a prescribed fund if the value of the assets situated in Malta is at least 85%. If a fund does not meet this criterion, it is categorized as a non-prescribed fund.

Non-prescribed funds are not subject to tax in Malta, except on income derived from Maltese real estate, which is taxed at 35%. In the case of a prescribed fund, any investment income is subject to a different tax rate depending on the nature of the income.

Re-domiciliation

The recent financial turmoil has increased investors' awareness of risk and has therefore motivated fund managers to seek out well-regulated and reputable jurisdictions where the extent of regulatory oversight provides greater peace of mind to investors. This is why re-domiciliation to Malta is an attractive option.

Re-domiciliation is basically a change of nationality of a fund. It is not the dissolution of one fund and the establishment of a new one somewhere else. It is simply a fund moving from one legal system to another. The benefit of this is that the manager and his contract remain unaffected. Also the assets in the fund remain untouched and do not need to be transferred or adjusted. Perhaps most important is that investors remain registered and do not suffer any negative effects.

Amicorp Fund Services

Fund Setup

With our expertise in all types of funds and our understanding of the economic drivers of funds, Amicorp can help you structure your fund in a way that ensures successful operation and avoids pitfalls.

Once all parameters of the fund have been determined, we implement the fund structure on a turn-key basis, in close cooperation with top intermediaries in the jurisdiction of choice. We also assist in opening escrow accounts.

Fund Administration

When acting as the administrator of the fund, Amicorp can provide:

Fund Accounting Services

- Valuing the fund's investment portfolio based on the applicable accounting standards
- Calculating management fees, performance fees (carried interest) as well as distribution hierarchies ("waterfalls")
- Providing quarterly financial reporting
- Preparing annual financial statements and coordinating the audit thereof



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Investor Services

- Performing investor due diligence
- Maintaining shareholders or participants register
- Processing of all commitments, capital calls, distributions and transfers
- Managing the escrow account
- Keeping investors informed of the fund's progress on a regular basis
- Providing tax estimates to investors

Legal and Corporate Services

Amicorp keeps the fund in good standing and ensures compliance with local regulatory requirements:

- Providing the registered address and domiciliation
- Maintaining all principal corporate records and appropriate registers
- Reporting to local authorities
- Preparing board resolutions



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