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This guide has been prepared by Alter Domus S.à r.l. to provide general background information on Luxembourg both for investors wishing to establish a company in the Grand Duchy of Luxembourg and for those already operating on the local market.

What follows is an overview of the regulations applying to companies (often known as soparfi – sociétés de participation financière) from a legal, accounting and tax perspective. Also discussed in this context are vehicles introduced in the last five years. Included are the following:

• investment company in risk capital (SICAR),
• specialised investment fund (SIF),
• securitisation vehicle,
• private wealth investment vehicle (SPF).

The guide takes into account the main legal provisions in force as of 1st January, 2010.

Although the greatest care has been taken in preparing this guide, it is not intended as a complete study on all applicable legislation nor has it been written with a view to providing legal advice on any matter. Furthermore, the data furnished is subject to continuous change.

alterDomus*
INTRODUCTION TO MALTA

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HISTORY

Malta was inhabited even in prehistoric times, as evidenced by its numerous megalithic temples and other sites, which are among the oldest and finest free-standing buildings in existence. The Phoenicians were the first foreign people in recorded history to occupy the islands, followed by the Carthaginians. After the destruction of Carthage, Malta was absorbed into the Roman Empire. St. Paul the Apostle was shipwrecked on the islands in A.D. 60 and the country has been Christian ever since. In the later years of the Roman Empire, Malta formed part of the Byzantine Empire.

The Arab expansion reached Malta in A.D. 870. The country remained under Arab domination until 1090, when Count Roger of Normandy added Malta to his conquest of Sicily. Malta shared in the fortunes of Sicily until 1530, when, in an attempt to strengthen the southern frontiers of his domains against Islam, Charles V of Spain offered Malta to the Knights of St. John of Jerusalem, an international order of chivalry founded in the early years of the Crusades. For the next three centuries the destinies of Malta and the Knights of St. John were linked.

The Knights of St. John were driven out of Malta by Napoleon in 1798, and the French ruled for two years. Malta became a British Crown Colony in the early nineteenth century and remained so until September 21, 1964, when it became an independent sovereign state. In 1974 Malta was declared a republic. Malta is a member of the Commonwealth and of the United Nations. Soon after independence Malta was admitted to the Council of Europe.

In 1990 Malta applied for European Union membership. Accession negotiations were concluded in December 2002 and the accession treaty was signed in April 2003. Malta became an EU Member State in May 2004 and joined the Euro Area on January 1, 2008.

About 90% of Maltese are Roman Catholics. There are several other religious communities, both Christian and non-Christian, many of whom have their own places of worship.
INTRODUCTION TO MALTA

GENERAL

The Republic of Malta lies in the centre of the Mediterranean Sea, 100 kilometres (60 miles) south of Sicily and 300 kilometres (180 miles) north of the nearest point on the African coast.

The total area of the Republic of Malta, which comprises the island of Malta and its sister island, Gozo, is 316 square kilometres (122 square miles). Malta is the larger island, occupying 246 square kilometres (95 square miles). Gozo lies to the northwest, less than half an hour away by ferry. The topography of the islands is low-lying to the southeast and hilly toward the northwest.

At various points the shoreline is deeply indented, providing excellent natural harbours. Although it has some sandy beaches, the coast of Malta is predominantly rocky, including some spectacular hills. Valletta, the capital city, lies on a promontory between the two main harbours.

Malta has a mild climate. The hottest summer month is August, which has an average maximum temperature of 31°C (87°F). The coldest winter month is February, with an average minimum temperature of 9°C (49°F). The average annual rainfall is 520 millimetres (21 inches). There are about 300 days of sunshine each year. The population of the Maltese islands is approximately 413,000.

Malta is on Central European Time (CET), one hour ahead of Greenwich Mean Time (GMT) and six hours ahead of US Eastern Standard Time (EST).

POLITICAL ENVIRONMENT

Malta is a parliamentary democracy and enjoys a strong democratic tradition with high levels of voter participation. The head of state is the President, who is appointed by the House of Representatives and whose role is mainly ceremonial. The House of Representatives is elected by universal suffrage every five years. The Prime Minister is usually the leader of the party commanding the greatest measure of support in the House. Ministers are nominated to the Cabinet by the Prime Minister, who makes a selection from the elected members. Various local administrative matters are delegated by specific legislation to local councils.

Successive Maltese Governments have encouraged foreign investors to establish operations in Malta and have always adopted policies that favour an open economy and direct investment. In fact, Malta is one of the EU’s most open economies as a traditional trading nation reliant on import and export.
BUSINESS ENVIRONMENT

Malta is an attractive location for industrial investment. Its geographic location, modern infrastructure, adequate and flexible labour supply, and political stability are some of its key advantages.

The importance of the services sector in the Maltese economy has grown significantly in recent years. One of government’s key objectives remains to continue developing Malta into a centre for financial services with emphasis on insurance, administrative operations for investment services, software development fund management, e-commerce, call centres, international reservation systems and electronic exchanges. The financial services sector contributes about 12% of Malta’s GDP and the Government is committed to doubling its contribution by 2015. Tourism is another mainstay of the Maltese economy, contributing approximately 30% of GDP. The saturation point in the number of summer month visitors may possibly already have been reached, and the emphasis is on the diversification and improvement of tourist attractions. This trend is supported by the proliferation of new luxury hotels and conference facilities in recent years, the investment in the Grand Harbour cruise liner terminal project and large scale residential and commercial developments at Portomaso, Tigne’ Point, Manoel Island, and Cottonera.

The manufacturing industry is still strong and currently contributes approximately 17% of GDP. The government’s economic policy focuses on assisting the existing industrial players in increasingly tapping foreign markets and in restructuring their operations, whilst concurrently targeting new foreign direct investment in high technology, high quality, and export-oriented enterprises. Target sectors include electronics, pharmaceuticals, healthcare, plastics, rubber, engineering, and other similar relatively capital-intensive areas that generate a high value-add per employee. As a member of the EU, all products Malta exports to the EU have full tariff-free access. Malta also benefits from trade agreements with an extensive network of non-member countries and trading blocs.

LEGAL SYSTEM

The legal structure in Malta is based on the civil-law pattern of continental Europe, but most administrative, financial and fiscal legislation is based on British laws. There are three principal jurisdictions-civil (including commercial), criminal, and voluntary.

There is one Court of Appeal for all jurisdictions. The Constitutional Court, however, is the ultimate competent court for judgements on the conformity of laws and administrative action with the Constitution. There are a number of administrative tribunals from whose decision an appeal can be made (usually on a point of law only) to the Court of Appeal. Malta recognises the right of individual petition to the European Courts of Justice, and the European Convention on Human Rights forms part of Malta’s domestic law.

Judges are appointed by the government. They cannot be removed before retirement age, except for proved inability to exercise their functions properly and then only following a two-thirds vote in the House of Representatives.
ADVANTAGES OFFERED BY MALTA

Governmental and Regulatory Policies
The Maltese economy has grown rapidly and continuously in recent years, with GDP at constant prices growing at an average of approximately 2% per annum during the years 2001 – 2009. This is a direct result of reforms and policies undertaken by successive Governments geared at improving the business environment and attracting investment.

Malta has a strong, yet flexible single regulatory body, the Malta Financial Services Authority (MFSA), which is responsible for all licensed financial services activity on the islands. The regulations undertaken by the MFSA are structured in line with best practices in the field. All this makes Malta a leading force in the development of regulatory policy, and it is fully involved with OECD, the EU, and the Commonwealth in policy development.

Language
The official languages in Malta are English and Maltese. Practically all Maltese people are bilingual. Official documents, including laws, are issued in both English and Maltese. Legal documents may be drawn up in Maltese or in English. Most commercial and banking documents are drawn up in English, and most correspondence, official or otherwise, is in English. Maltese and English are taught at the primary school level. Subjects in the secondary school level include at least one other language, with Italian, French, and German being the most widespread.

Infrastructure and Communications
Malta has excellent flight connections, with regular flights to most European international airports as well as excellent connections to Middle Eastern and North African destinations.

Malta is also a major transhipment hub and Malta Freeport, which is recognised as a high profile transhipment hub, presently enjoys third place amongst all Mediterranean transhipment ports.

With a sophisticated ICT infrastructure that is well connected to the international network high broadband penetration, and a competitive market with the latest technologies, including VoIP, Malta is able to offer an excellent environment for business.

Attractive Operational Advantages And Business Amenities
Malta enjoys a modern and proficient banking system, further augmented by the presence of some of the major international banks. Malta also benefits from the presence of major international audit firms, including the Big Four.

Malta boasts a highly skilled and qualified workforce, mainly as a result of a good educational system and a sustained drive in recent years to further promote tertiary education.

Furthermore, operational costs are significantly lower than the EU 27 average. All this makes Malta an effective and cost efficient base for international business.
SECTION I

CORPORATE LAW
1. FUNDAMENTALS OF CORPORATE LAW

1.1. GENERAL FRAMEWORK

1.1.1. Companies Act, 1995

In Malta, companies are subject to the Companies Act, 1995 (the “Act”), which is broadly based on the UK model. The Act came into force on 1 January 1996 and replaced the Commercial Partnerships Ordinance of 1962, which had originally introduced modern company law principles into Maltese law.

The Act built on the existing rules and broad structures, improving and updating them to meet the needs of a more sophisticated and complex financial and commercial environment. It not only modernised and upgraded Maltese company law, but it also introduced the principles and standards established in the Company Law Harmonisation Directives of the European Union.

The Act provides the statutory basis for the regulation of commercial partnerships. A commercial partnership may be of the following kinds:

- a limited liability company, based on the English company model;
- a partnership ‘en nom collectif’, where the partners have unlimited liability for the debts of the partnership; or,
- a partnership ‘en commandite’ where at least one partner has unlimited liability for the debts of the partnership; this category is similar to the limited partnership existing in certain foreign countries.

All these forms acquire a distinct legal personality as soon as they are incorporated and registered under the Act. A foreign corporation that does business in Malta must register its branch under the Act and is referred to as an Overseas Company. The branch is not recognised as a separate entity and is not incorporated as such. The Act also recognises a joint venture (association en participation) but a joint venture is not required to be registered and is not vested with a distinct legal personality.

Furthermore, the Act also recognises and regulates corporate investment vehicles such as the SICAV, which is a limited liability company with variable share capital, and the INVCO which is an investment company with fixed-share capital. These two structures are useful corporate structures for collective investment vehicles.

There are no provisions requiring Maltese companies to have any minimum subscription by Maltese shareholders or to appoint Maltese directors. Except for very exceptional circumstances, no exchange control restrictions apply to the acquisition of shares by non-residents. Certain information may be required for statistical purposes.

1.1.2. Other Relevant Legislation

Incorporated Cell Companies Regulations Act

These regulations develop further the cellular concept, which provides for the establishment of a cell within the incorporated cell company itself. Refer to Section IV for further details.

Trust and Trustees Act

The legislation relating to Trusts and Trustees is streamlined and simplified, making Malta much more attractive to both international and domestic clients by offering robustness, but at the same time keeping a desirable level of flexibility.

Malta Merchant Shipping Act

Shipping companies, which, by default are regulated by the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, may elect to be regulated by the Companies Act.

Aircraft Registration Act

Malta is also strengthening its position towards becoming a successful base for aviation operations through the enactment of the Aircraft Registration Act in 2010. This, together with Malta’s accession to the Cape Town Convention, makes Malta an attractive jurisdiction for the registration of aircraft. Such advantages are further complemented by Malta’s geographic location, its EU and Euro Zone membership and its highly competitive licensing fees.

1.2. OVERVIEW OF THE MAIN COMPANY STRUCTURES

1.2.1. Limited Liability Company

A limited liability company (a company) is formed by means of capital divided into shares. The liability of the shareholders is limited to the amount, if any, unpaid on the shares held. This is the form of organisation favoured by large enterprises and usually preferred by foreign investors. A company may be incorporated either as a public company or as a private company.
1.2.1.1 Private Company

A company is a private company if its statute limits the number of its shareholders to 50, provides for restrictions on the transfer of shares, and prohibits any invitation to the public to subscribe for shares or debentures. The vast majority of companies in Malta are registered as private companies. A private company may further qualify as an exempt company if it restricts the number of debenture holders to 50 and prohibits the holding of any of its shares or debentures by another company that is not itself an exempt company and does not have a body corporate as director. A private and exempt company enjoys certain privileges as to the details of its published financial statements and has the right to give loans to its directors. A company must have at least two shareholders but a private and exempt company may be formed as a single member company. A private, exempt company may also have its sole director act as company secretary.

1.2.1.2 Public Company

A public company is defined by the Act simply as one which is not a private company and which must end with the words “public limited company” or their abbreviation “p.l.c.” In essence a public company must have an issued share capital of not less than the current minimum of €46,587.47, and at least 25% of the nominal value of each share taken up must be fully paid up at the incorporation stage. A public company must have at least two members. Public companies that are listed on the Malta Stock Exchange are subject to additional requirements and obligations as regulated by the Listing Rules.

1.2.2 Partnership en commandite

A partnership en commandite (limited partnership) has its obligations guaranteed by the unlimited and joint and several liability of one or more general partners and by the liability limited to the amount, if any, unpaid on the contribution of one or more limited partners. At least one of the general partners shall be either an individual or a body corporate having its obligations guaranteed by the unlimited, joint and several liabilities of one or more of its members. Its capital may or may not be divided into shares.

1.2.3 Trusts

The Trusts and Trustees Act opened the trust concept to residents and to assets situated in Malta.

A trust is deemed to exist whenever a person (i.e. the trustee) holds as owner or has vested in him property under an obligation to deal with that property for the benefit of other persons, called the beneficiaries (whether or not yet ascertained or in existence), or for a charitable purpose that is not for the benefit only of the trustee, or for both such aforesaid benefits. The law does not require trust deeds to be registered with any authority. However, as general rule persons resident or operating in Malta and receiving property on trust require authorization. The Civil Code and the Trusts and Trustees Act lay down a number of fiduciary duties that trustees owe to beneficiaries.

1.2.4 Incorporated Cell Companies (ICC)

This develops further the cellular concept of companies, which lend themselves to various scenarios where segregation of assets and shareholders is required. It is an attractive concept especially because each cell would have its own separate legal personality, and thus be independent from the performance of other cells within the structure. More details can be found in Section IV.
1.2.5. Foundations & Associations

The Civil Code (Amendment) (No.2) Act, Act XIII of 2007, provides for the setting up of foundations and associations.

A foundation is defined as an organisation constituted in writing whereby assets are entrusted to the administration of designated person/s either for the fulfilment of a specified purpose or for the benefit of a named person/s. A foundation is endowed with a legal personality and the assets of a foundation are kept distinct from the assets of its founder, administrators, or beneficiaries. A foundation may not be established to trade or carry on commercial activities even if the proceeds of such efforts are destined for social purposes.

An association is defined as an agreement between three or more persons to establish an organisation with defined aims or purposes to be achieved through the dedication of efforts and resources by such person and other persons who may join voluntarily. Associations are not bound by law to register as legal persons, though they may elect to do so. The provisions relating to foundations and associations came into force on 1 April 2008.

1.2.6. Joint Venture

The Companies Act recognises a form of joint venture under the rules on association en participation. The association comes into existence under an agreement whereby a person (the associating party) assigns to another person, for a valuable consideration, a portion of the profits and losses of a business or of one or more commercial transactions. In relation to third parties, the joint venture is deemed to belong to the associating party. No registration is required for this type of association and the association is not vested with a legal personality distinct from that of its members.

1.2.7. Branch Of A Foreign Company

A company incorporated outside of Malta that establishes a place of business in Malta must register with the Registrar as an overseas company by delivering the following:
- An authentic copy (translated into English or Maltese if the original is not in either of these languages) of the instrument of constitution
- Details of the directors and the secretary, if any
- The activities to be carried out through the branch
- The names and addresses of one or more persons resident in Malta authorised to represent the company in Malta and the extent of such authority.

Any changes after initial registration must likewise be registered. Detailed provisions are made to regulate the issue and circulation in Malta of prospectuses that offer for subscription debentures or shares of a company registered or incorporated, or to be registered or incorporated, outside Malta in a non-EU member State or in a non-EEA state. The company must state in which country it is registered or incorporated in all prospectuses issued in Malta and in all business letters and other trade documents. An overseas company is required to comply, as much as possible, with the rules on financial statements similar to those applicable to Maltese companies. Where the accounting requirements under the law of the foreign company vary from those of Maltese companies, the Registrar may accept the company’s accounts as long as full details are given as regards the operations in Malta.

1.2.8. Continuation / Redomiciliation of Companies

The Continuation of Companies Regulations allows a foreign body corporate of a nature similar to a company as known under Maltese laws to be continued in Malta without being wound up, i.e. move its corporate seat to Malta without being dissolved in the country or jurisdiction from which it is exiting. With effect from the date of the issue of a provisional certificate of registration (to be replaced subsequently by a final one), the company is subject to all rights and obligations under Maltese law. Continuation does not operate to create a new legal entity or affect the property of the company, which shall retain all its rights, assets and liabilities. The request for continuation will be accepted if continuation is permissible under the law of the company’s jurisdiction and the company’s constitutive documents and the foreign country is an approved jurisdiction. The foreign registry of a continuing company is deleted and the company is treated as if it had been incorporated in Malta. Similarly, a company registered under the Companies Act may request the deletion of its Maltese registry to be continued as a company incorporated in another company as long as the law of that country allows the procedure. Malta does not charge any tax on the mere exit of a company to be continued in a foreign jurisdiction nor does it charge tax on the mere continuation of a foreign company in Malta.
1.2.9. Sole Proprietorship

There are no particular requirements relating to the registration or organisation of a sole proprietor. The provisions of the Commercial Code as regards commercial records and bankruptcy apply to sole traders.

1.3. OVERVIEW OF THE FORMATION PROCEDURES

A company is constituted by virtue of a memorandum of association, which must, at a minimum, contain the following (whether the company is a public or a private company):
• Name of the company
• Its registered office in Malta
• Objects of the company, which cannot be described as trade in general
• Description of the authorised and of the issued share capital – where the share capital is divided into different classes of shares, a description of the rights attaching to the shares has to be given
• Particulars of the shareholders and their respective subscription
• The number of directors and the particulars of the first directors
• Particulars of the company secretary
• The manner in which the legal and judicial representation of the company is vested and exercised
• Terms and manner of issue and redemption of preference shares

The subscribers may also register, together with the memorandum, articles of association prescribing regulations for the company. The model regulations contained in the Companies Act apply to a company to the extent that they are not replaced by articles of association. The memorandum and articles of association are usually drawn up by accountants and/or lawyers. The company may adopt any name that is not already in use as long as it is not found objectionable by the Registrar of Companies. The name must include “public limited company” or “p.l.c.” for a public company and “limited” or “ltd” for a limited liability company. The Registrar may be asked to reserve a name or names for a company in formation.
Before registration, it is necessary to deposit the amount of the paid-up capital in a bank account titled “Company Name—Company in Formation.” The memorandum and articles of association must be delivered to the Registrar of Companies, who will then register the company and issue a certificate of registration. This will usually take a few days from the date when complete documentation is filed. Upon registration of the memorandum and articles of association, the company comes into existence and is capable of commencing business. The fee for the registration of a company ranges from a minimum of €245 to a maximum of €2,250, depending on the amount of the authorised capital. Annual fees for the filing of the company’s annual return range from €100 and €1,400, depending on the company’s authorised share capital. The memorandum and articles of association may be amended by the delivery of the relative shareholders’ resolution to the Registrar together with the full updated text.

When shares or debentures are issued by a public company, the application forms for shares or debentures must be accompanied by a prospectus that sets out detailed information. Commission Regulation (EC) No 809/2004 as regards information contained in prospectus as well as the format, incorporation by reference and publication of such prospectus as well as dissemination of advertisements is directly applicable.

Every officer signing a document on behalf of a commercial partnership or overseas company must state the capacity in which he is signing. A commercial partnership is obliged to disclose the details below in its business letters, order forms as well as Internet websites:

• Its name
• The type of commercial partnership
• Its registered office
• Its registration number
• Capital of such company, the reference shall include a mention of both the issued and paid up capital.
• A partnership en nom collectif and a partnership en commandite must also include the names of the partners with unlimited liability in all business letters and order forms.

1.4. TYPES OF SHARES AND CAPITAL REQUIREMENT

The share capital of a private company cannot be less than €1,165. When the share capital is the minimum authorised, it must be fully subscribed in the memorandum of association. When it is more than the legal minimum, at least €1,165 must be subscribed. Not less than 20% of the par value of each share subscribed must be paid upon the signing of the memorandum.

There are no statutory limits to the amount of the authorised share capital of a company, and no special permits are required to go beyond any given limit. Shares of no par value are not allowed, except in the case of investment companies with variable share capital (SICAVs), which are regulated by specific provisions in the law. Shares may be issued at a premium, and the proceeds of the premium must be placed in a share premium account. A company’s memorandum and articles of association may permit the company to purchase its own shares, but this is subject to certain limitations and conditions.

Shares may be of different classes, having different voting, dividend and other rights. All shares must be registered. A private company is not permitted to issue bearer shares. Ordinary shares are shares that participate in the profits of the company and are not restricted to a fixed dividend. Preference shares may be participating or non-participating, cumulative or non-cumulative, voting or non-voting. The company may be authorised by its memorandum or articles of association to issue redeemable preference shares. Redemption can be made only out of that part of the company’s profits that would otherwise be available for the payment of dividends or out of the proceeds of a fresh issue of shares made for the purpose of redemption. No redemption can be effected unless the shares have been fully paid up. If any premium is payable upon redemption, it must be provided out of the company’s profits or its share premium account.

1.5. DIVIDEND DISTRIBUTION

Dividends may be declared by the shareholders’ general meeting. Typically however, no dividend can exceed the amount recommended by the directors. Interim dividends may from time to time be paid by the directors in such amounts as appear to them to be justified by the profits of the company. Dividends can be paid only out of distributable profits as defined by the Maltese company law.
2. OTHER APPLICABLE LAWS

2.1. PROTECTION OF PERSONAL DATA

The Data Protection Act 2001 provides for the protection of individuals against the violation of their privacy by the processing of personal data and for matters connected therewith or ancillary thereto.

In this regard, some forms of companies are considered as “data controllers”, and therefore fall within the scope of the Data Protection Act. Data controllers have an obligation to notify the Data Protection Commissioner of any processing operations involving personal data. The Data Protection Commissioner must also be informed of any new, discontinued or amended processing operations.

The Data Protection Act sets out basic principles that need to be followed to ensure that personal data is appropriately handled.

2.2. ANTI MONEY LAUNDERING

The Prevention of Money Laundering Act, 1994 defines the crime of money laundering along the lines adopted in the European Union and makes it a criminal offence in Malta to utilise or to employ money derived from crime. The law lays down an extensive list of underlying offences on which a money-laundering act could be based. It reduces the possibility of the financial system being abused for the purposes of laundering funds derived from illicit activities. The offence may also be considered to have been committed by those who aid or abet money laundering.

Detailed regulations govern the duty of financial operators to know and identify clients, to keep proper records and to report suspicious transactions to the authorities. The competent authorities have issued guidelines elaborating and explaining the legal requirements in this regard for the benefit of their respective licensees.

2.3. SOCIAL SECURITY SYSTEM

The Social Security Act establishes rules for the national social security system. All employers are required to contribute to a compulsory national social security system. Contributions are generally equivalent to one-tenth of an employee’s gross salary up to a maximum of €32.91 per week. The employer is required to pay the full contribution on behalf of the employed person. The amount of any contribution paid by the employer on behalf of the employed person is deductible from the wages of that person.
1. FUNDAMENTALS OF ACCOUNTING LAW

1.1. FINANCIAL STATEMENTS – PREPARATION AND DISCLOSURE TO SHAREHOLDERS

The Companies Act and the Accountancy Profession Act make International Financial Reporting Standards as adopted by the European Union (“IFRSs as adopted by the EU”) the default accounting framework with which companies’ financial statements must comply.

Certain qualifying companies may however elect to adopt the Accountancy Profession (General Accounting Principles for Smaller Entities) Regulations, 2009 (“GAPSE”) as their accounting framework. Both quantitative as well as qualitative criteria must be met for a company to qualify for adoption of GAPSE. GAPSE can be adopted by companies that do not exceed any of the following three criteria:

• Balance sheet total: €17.5 million;
• Total revenue: €35 million (annualised for periods other than 12 months); and
• 250 employees.

GAPSE also cannot be adopted by companies if, amongst other items:

• A shareholder holding at least 20% of the entity’s shares has served notice on the company to prepare financial statements that comply with IFRSs as adopted by the EU;
• The entity’s securities are listed;
• The entity is a guarantor of the principal or interest on securities that are listed;
• The entity is a public company; or
• The entity holds a licence or other authorisation by the Malta Financial Services Authority.

The directors of every company are required to furnish the shareholders annually at a general meeting with a set of financial statements including a balance sheet and income statement, together with any other statement and accompanying notes as required in terms of IFRSs as adopted by the EU or, if applicable, as required in terms of GAPSE. The first general meeting for this purpose must be held not later than 18 months after registration of the company. Subsequently, such meetings must be held during each calendar year and not later than 15 months after the previous annual general meeting. The income statement must cover the period commencing with the date of registration in the case of the first set of financial statements of the company, and thereafter the period from the preceding financial statements. The balance sheet as of the date to which the income statement is made up must be signed by at least two directors or, in the event that the company only has one director, by the sole director.

The annual financial statements, together with the directors’ and the auditors’ reports, must be sent to the shareholders at least 14 days before the company’s general meeting.

The directors must submit the annual financial statements and the directors’ and the auditors’ reports for approval by the shareholders in general meeting as follows:

• Private company – within 10 months after the accounting year-end.
• Public company – within seven months after the accounting year-end.

1.2. FILING OF FINANCIAL STATEMENTS AND REPORTS

Companies are obliged to deliver to the Registrar a copy of the annual financial statements presented to the shareholders in the general meeting and of the directors’ and the auditors’ reports within 42 days from the end of the period for submitting annual financial statements to the general meeting. Abridged accounts may be drawn up by small companies, defined as companies that on their balance sheet date do not exceed the limits of two out of three of the following criteria:

• Total assets – €2.56 million
• Turnover – €5.12 million
• Average employment - 50.

From a company law perspective, small private exempt companies are allowed to publish abridged financial statements, which exclude the directors’ report, the income statement, and certain notes to the financial statements.
2. AUDIT AND CONTROL

2.1. COMPANY AND ACCOUNTING RECORDS TO BE KEPT

The Companies Act requires every company to keep proper accounting records for the following:
• All sums of money received and expended by the company, and details of the receipts and expenditure;
• All sales and purchases of goods by the company; and,
• The assets and liabilities of the company.

The accounting records, which must be available for inspection at all times by the directors, must be such as to explain the company’s transactions and facilitate the preparation of financial statements. The records of accounts are usually to be kept at the registered office of the company in Malta, but the directors are entitled to decide otherwise. If the accounts are kept at a place outside Malta, financial statements and returns must be sent to and kept at a place in Malta. These financial statements and returns must disclose with reasonable accuracy the financial position at intervals not exceeding six months and must enable preparation of the statement of financial position (balance sheet) and income statement in accordance with the law.

The accounting records of the company shall be kept for a period of 10 years.

The Companies Act also provides for the maintenance of the board minutes within the registered office of the company and shall be open to the inspection of any member of the company.

2.2. AUDITORS

Companies must appoint auditors at each annual general meeting to hold office until the next general meeting. The first auditors of the company are usually appointed by the directors, but thereafter the auditors are appointed by the company in general meeting. If no auditor is appointed at an annual general meeting, the court may be requested to make such an appointment by any of the directors or shareholders.

In order to qualify for appointment as auditor of a company, a person must:
(i) hold a warrant to act as accountant under the Accountancy Profession Act; and
(ii) hold an auditing practicing certificate as issued by the Accountancy Board.

Additionally in order to perform the audit of banks or companies engaged in the business of insurance, an auditor requires further authorisation from the Regulatory Authority. Certain persons are disqualified from appointment as auditor of a company, e.g. officers or employees of that company, persons employed by an officer or employee of that company etc.
SECTION III

BASIC PRINCIPLES OF TAXATION IN MALTA
1. MALTA TAX ADMINISTRATION

The principal taxes under Maltese law are:

• Income tax, which includes tax on income and on capital gains of individuals, companies and other entities
• Value Added Tax
• Duty on documents and other transfers (stamp duty), including tax on the inheritance of property and shares
• Customs duty
• Excise tax

The main sources of income tax legislation are the Income Tax Act ("ITA") and the Income Tax Management Act ("ITMA"). There are also several other subsidiary legislation under these laws that cater to rules on capital allowances, the final settlement system (FSS), provisional tax, fringe benefits and capital gains. Certain tax incentives are also available under the Business Promotion Act and the Malta Enterprise Act.

The collection and accounting of the various tax revenues broadly fall under the responsibility of the following:

• The Inland Revenue Department, for income tax and stamp duty;
• The Value Added Tax Department, for value added tax and eco contribution;
• The Customs Department, for customs duty and excise tax.

1.1. ANNUAL TAX RETURNS

In Malta, every registered taxpayer is required to file an annual income tax return, which must include a self-assessment.

Companies with a financial year ending on 31 December must file their return by the following 30 September. Other companies must file their tax return by the end of the ninth month after their accounting date, or by 31 March following the accounting date, whichever is later. The tax return due date for individuals and other taxpayers is 30 June.

1.2. DEFINITION OF "RESIDENCE"

A Malta resident and domiciled company is subject to the tax in Malta on its worldwide profits, with credit granted for most overseas taxes. Profits include taxable income and capital gains. A company incorporated in Malta is considered both ordinarily resident and domiciled in Malta. A company incorporated but not both ordinarily resident and domiciled in Malta is subject to tax in Malta in respect of Malta-source taxable profits or gains and, to a limited extent in respect of foreign-source chargeable income (not gains) to the extent such income is remitted to Malta. A company that is neither resident nor domiciled in Malta is not chargeable for tax in Malta except in respect of Malta-source taxable income and gains.
1.3 DETERMINATION OF TAXABLE INCOME

A company’s total taxable income derived in a given fiscal year is equivalent to the aggregate amount of income remaining after allowable exemptions and deductions available under the ITA. In practice, the profit shown in the company’s financial statements drawn up for that year (in accordance with IFRS) would form the basis on which taxable income is computed and, accordingly, the taxable basis, subject to specific adjustments as required and imposed by the relevant tax rules.

Items of taxable income are enumerated in the ITA and include, in particular, business and trading profits, dividends, premiums, interest, discounts, rents, royalties and gains realized pursuant to the disposal of taxable assets.

A Malta resident company or a registered branch of a non-resident company is required to keep and allocate distributable profits to five alternative tax accounts, namely:
1. The final tax account: It should include certain items of income normally subject to final tax;
2. The immovable property account: It should include profits deriving directly or indirectly from immovable property situated in Malta;
3. The foreign income account: It should include foreign source passive income and gains and/or arms’ length income attributable to a permanent establishment (PE) or branch situated outside Malta;
4. The Maltese taxed account: It should include profits that are neither included in the final tax account, nor the immovable property account, nor the foreign income account; and
5. The untaxed account: It should include profits that are not allocated to other taxed accounts. The untaxed account is a “balancing account”, containing the difference between the total of the other four tax accounts and the balance of the company’s profit and loss account.

By virtue of Malta’s full imputation system, tax paid by a company on the profits out of which dividends are distributed is imputed against the tax due by the recipient shareholder (as a refundable tax credit) on said dividends. Furthermore, a shareholder in receipt of dividends distributed by a company out of profits allocated to its Maltese taxed account or its foreign income account would, by application of Malta’s refundable tax credit system, be entitled to claim a refund on the tax paid on the profits consisting of passive interest or royalties out of which the relevant dividend was paid out. The refund is further reduced to two-thirds of the Malta tax paid on the profits from which the relevant dividend was distributed if such profits were allocated to the distributing company’s foreign income account and the company claimed double taxation relief in respect thereof.

The combined overall Malta effective tax rate applicable on income or gains qualifying for Malta’s imputation and refundable tax credit system derived by a company and subsequently distributed to its non-resident shareholders should consequently range from 0% to 10%.
2. CORPORATE TAXATION

2.1. DIRECT TAXES

2.1.1. Income Tax

Malta does not apply a separate system of corporation tax, making a company chargeable for income tax in Malta in much the same way as an individual, albeit at the flat rate of 35% (the top marginal rate applicable in respect of individuals). However due to the application of the full imputation system and the Malta tax payment and refund system, the effective corporate tax rate in Malta may be reduced to approximately 5%.

Limited liability companies and partnerships en commandite, the capital of which is divided into shares, are corporate taxable persons for income tax purposes. Partnerships en nom collectif or partnerships en commandite, the capital of which is not divided into shares, are transparent for tax purposes. As a result, the income is attributable to the partner and taxed in their hands.

Malta applies a full imputation system to relieve the economic double taxation otherwise arising on the taxation of dividends received by shareholders from distributions made from the taxed retained earnings of companies. The full imputation system results in a significantly reduced combined overall Malta effective tax rate applicable in respect of chargeable income or gains.

Furthermore, certain types of incomes such as qualifying dividends, capital gains and royalties are wholly exempt from tax under the ITA. In addition, income accruing to certain categories of persons is wholly exempt from tax under the ITA. In this respect, the income (other than income from immovable property situated in Malta) of a collective investment scheme that has at least 15% of the value of its assets situated outside Malta is exempt from tax in Malta.

Special tax regimes may be available for inter alia, petroleum profits, profits derived from the business of insurance, shipping and aircraft profits and such other profits derived from certain target industries in terms as covered by the Malta Enterprise Act.

Dividends and gains derived by a Malta resident company or a registered branch of a non-resident company from a participating holding or from the disposal of such holding are both exempt from Malta tax by application of Malta’s participation exemption regime. As a result, the combined overall Malta effective tax rate applicable to such income and gains is nil. A participating holding exists, inter alia, when a Malta company holds directly at least 10% of the equity shares of a non-resident company. The exemption may not apply to income received from a foreign participating holding resident in a non-EU member state where its income is subject to local tax at a rate lower than 15%, or if 50% or more of the participating holding’s income is derived from passive interest or royalties.

2.1.2. Capital Gains Tax

Capital gains realized by a person pursuant to the transfer or deemed transfer of a taxable asset are taxable under the ITA. ITA give an exhaustive list of taxable assets as follows: immovable property, securities, business goodwill, business permits, copyrights, patents, trademarks, trade names, and the beneficial interest in a trust that holds one of the aforementioned taxable assets. Taxable capital gains are essentially computed by the deduction of the cost of acquisition of the transferred asset from the consideration received or deemed received upon the transfer thereof. A capital loss is computed in the same manner as a capital gain.

Taxable capital gains realized by companies are aggregated to the other income and are taxed accordingly at a flat rate of 35%. However, a reduced rate of 12% applies to the highest of the consideration received or the market value of transferred immovable property situated in Malta.

A participation exemption is available to capital gains realized on the disposal of a participating holding. Additionally, an exemption from tax on capital gains is available, inter alia, upon an intergroup transfer of taxable assets, transfer of taxable assets upon a restructuring of holdings (e.g. mergers, demergers, amalgamations and reorganisations) within a group of companies, a transfer of securities listed on the Malta stock exchange or a transfer by a non-resident person (i.e. a person that is not owned and controlled by, directly or indirectly, or acting on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta) of securities in a Malta company, the assets of which do not consist of immovable property situated in Malta or rights over such property. Persons not ordinarily resident and domiciled in Malta are exempt from Malta tax on capital gains having a foreign source.

Additionally, persons transferring their residency and/or domicile to Malta and companies resulting from a merger are entitled (but not obliged) to claim a step-up in the tax base cost of assets situated outside Malta without any adverse Malta tax consequences provided they were not resident or domiciled in Malta before their transfer of residence and/or costs to Malta. For Malta tax purposes, such persons may at the time of the shift of residence/domicile to Malta or the merger opt to revalue the assets from historic costs to fair market value. The revaluation will apply, inter
2.1.3. Branch Profits Tax (Foreign Company)

There is no levying of branch remittance tax in Malta. Typically the income of a branch is taxed in the hands of the foreign company at the standard company rate and subject to the normal rules. As a non-resident tax payer, the foreign company will be taxed only on income arising in Malta, that is, on the income of the branch. Following double tax treaties rules, the income of the branch is determined as if it were a separate entity dealing at arm’s length with the foreign company.

2.1.4. Double Taxation Relief

In Malta the tax payable by companies may be reduced by a claim for relief of foreign tax paid or deemed paid, as the case may be. Such relief from double taxation is contemplated within the ITA and available through the application of unilateral relief, treaty relief or flat rate foreign tax credit. A list of all the double tax treaties currently in force is available in Appendix 1.

2.1.5. Other Local Taxes

In Malta there is no wealth or similar tax on capital.

2.2. WITHHOLDING TAXES

2.2.1. Withholding Tax: Dividends

In general, Malta does not levy withholding tax on dividend payments. However, a company distributing a dividend out of profits allocated to its untaxed account must withhold tax at a rate of 15% on the dividend if it is distributed to:
(i) an individual resident in Malta; or
(ii) a non-resident person who is owned and controlled by, directly or indirectly, or who acts on behalf of, an individual who is ordinarily resident and domiciled in Malta; or
(iii) a trustee where the trust beneficiaries are persons referred to in (i) or (ii).

2.2.2. Withholding Tax: Interest and Royalties

Typically, there is no withholding tax on interest paid to non-residents. Tax is only withheld, at the rate of 35%, on interest or royalties paid to:
(i) non-residents owned and controlled by, directly or indirectly, or acting on behalf of an individual who are ordinarily resident and domiciled in Malta; and
(ii) non-residents engaged in a trade or business in Malta through a Permanent Establishment situated herein to which the debt or royalty claim is effectively connected.

2.3. INDIRECT TAXES

2.3.1. Value Added Tax (VAT)

VAT is levied, with certain exceptions, on the supply of goods and services in Malta, the intra-community acquisition of goods in Malta by VAT-registered persons, and the import of goods into Malta from outside the EU. The standard rate is 18% and a reduced rate of 5% applies to certain supplies, such as electricity, confectionery, medical accessories, and printed matter.

2.3.2. Customs Duty

Goods brought into Malta from outside the EU and released into free circulation in Malta are subject to customs duty at the relevant rates in accordance with the EC Common Customs Tariff and based on an international harmonized classification system. The EC has preferential trade agreements with certain countries that result in the rates being reduced or eliminated. Various procedures (customs duty suspension regimes) are available when goods are imported for processing and re-exported, while outward processing and re-imported into the EU. No customs duty is due in connection with the movement of goods between EU member states.

2.3.3. Excise Taxes

Excise duties are imposed on particular classes of goods, namely, alcohol, tobacco, energy products, and mobile telephony. In certain cases, excise duty may be relieved or refunded (e.g. when goods are exported). A registration tax (excise duty) is payable on the registration of motor vehicles, at rates that vary according to the prescribed category of motor vehicle.
2.3.4. Duty On Documents And Other Transfers

Duty is chargeable pursuant to the provisions of the duty on Documents and Transfers Act and is generally levied on documents evidencing transfers of immovable property or marketable securities. A document is subject to duty if it is executed in Malta or, in certain circumstances, if it is executed outside Malta and is used in Malta.

Exemptions from duty would be applicable in respect of certain transfers, including the transfer of securities listed on the Malta Stock Exchange, intra-group transfers and transfers of securities in or by a company that has, or intends to have, business interests to the extent of more than 90% outside Malta.

2.3.5. Other Indirect Taxes

The inheritance of immovable property situated in Malta and of securities in Maltese companies is subject to stamp duty but otherwise there is no succession or estate tax.

3. PERSONAL TAXATION

Malta does not operate a separate system of taxation for individuals and corporate entities. As such, individuals, in a similar manner to corporate entities, are taxed under the ITA and the Income Management Tax Act. Employed individuals (including self-employed) must pay social security contributions. There is no net wealth tax, real estate tax or inheritance and gift taxes, but individuals are subject to a capital gains tax and stamp duty.

3.1. RESIDENCY

The Malta tax treatment of individuals depends on his/her tax residence status in Malta, and more specifically, whether a person is resident, ordinarily resident and/or domiciled in Malta. Where an individual is ordinarily resident and domiciled in Malta, that person is subject to income tax in Malta on worldwide income and taxable gains. Where an individual resident in Malta is either not ordinarily resident or not domiciled in Malta, that person is taxable on income and taxable gains arising in Malta and on foreign income (but not foreign capital gains) that is received in Malta. An individual who temporarily resides in Malta and who is not of Maltese origin is not domiciled in Malta for tax purposes. Individuals are resident in Malta if they permanently reside in Malta. Individuals who temporarily reside in Malta and who are not of Maltese origin are not domiciled in Malta for tax purposes.

3.2. TAXABLE INCOME AND RATES

Malta has a progressive income tax rate for individuals and the fiscal year is equivalent to the calendar year. Income tax is also imposed on capital gains, for which different rates on certain transfers might apply. A 15% withholding tax is imposed on certain types of investment income (e.g. bank interest paid to Maltese residents) and on profits distributed to a resident individual shareholder out of untaxed income. The recipient of the investment income has the option to receive the income without deduction of tax and to declare the investment income in the tax return. The shareholder can opt to declare the dividends in the tax return, so that the dividends are taxed at the ordinary rates and a credit for the withholding tax is granted.

The latest tax rates are: 0% on taxable income up to €8,500; 15% on the tranche from €8,501 to €14,500; 25% on the tranche from €14,501 to €19,500; and 35% on the tranche above €19,501.
3.3. DETERMINATION OF TAXABLE INCOME

Taxable income is defined in the same way as for businesses. The total taxable income is the aggregate amount of the income of a person (after allowed exemptions and allowed deductions) including gains or profits derived from a trade or business, profession or vocation, employment of office, dividends, interest or discounts, pensions, annuities or annual payments, rents royalties, premiums and any other profits arising from property and taxable capital gains. Employment income includes fringe benefits, such as the provision of assets (e.g. accommodation) and benefits for using a car. Directors’ income is taxed as employment income. Payments with respect of the termination of employment are not taxable as they do not constitute compensation for services rendered. Gifts of a personal nature and capital sums received in respect of commutation of pension, retirement or death gratuity are not taxable.

Individuals may only deduct expenses from business income incurred wholly and exclusively in the production of the income derived, including payments of interest, rents, repairs and renewals, bad debts, sales promotion expenditure, patent expenditure spread over the life of the patent, capital expenditure on intellectual property rights spread equally over three years and certain pre-trading expenditure. In general, individuals may not deduct expenses related to income from capital (except certain expenses from rental income on immovable property that does not constitute a business) or employment.

As noted above, Malta operates a full imputation system for residents and non-residents, under which tax paid by a company in Malta can be credited at the level of the shareholder on distribution of dividends. The tax credit is equivalent to the tax paid by the company on the profits from which the dividends are distributed. Excess imputation tax credits are refundable where the individual shareholder is liable to tax in Malta at a rate that is lower than the company rate of tax.

The following types of relief from double taxation of foreign-source income are provided for individuals: treaty relief and unilateral relief.

Non-resident individuals are subject to Maltese’s income tax on their income and capital gains arising in Malta at the following rates: 0% on taxable income up to €700; 20% on the tranche from €701 to €3,100; 30% on the tranche from €3,101 to €7,800; and 35% on the income over €7,800.

A 25% tax must be deducted at source if taxable income, other than dividends, interest and royalties that are not subject to withholding tax in Malta, is paid to a non-resident individual. This tax must be paid to the Inland Revenue within 30 days and is fully credited to the non-resident taxpayer.

Non-residents are exempt from tax in Malta on interest and royalties only if they are not connected to a Permanent Establishment of the non resident in Malta.

3.4. SPECIAL EXPATRIATE TAX REGIME

An expatriate individual that is resident in Malta is taxable on income and chargeable gains arising in Malta and on foreign income (but not foreign capital gains) received in Malta. If a tax treaty is in force, the provisions of the treaty would apply, and therefore, income from employment is taxable in Malta if any one of the following three conditions is satisfied:

(i) The employee is present in Malta for a period or periods exceeding in the aggregate 183 days during any 12-month period/ calendar year; or
(ii) The remuneration is paid by, or on behalf of, an employer who is resident of Malta; or
(iii) The remuneration is borne by the employer’s Permanent Establishment or fixed place of business in Malta.

If there is no tax treaty in force, the individual is considered to be resident in Malta if he is present in Malta for more than 183 days in the tax year. Non-residents are not taxable on income remittances but are taxable at non-resident tax rates on all local-source income. A special Permanent Residence Permit is granted upon request if certain conditions are satisfied and gives right to be taxed at a flat rate of 15% on income received in or remitted to Malta, subject to a minimum tax liability of €4,193.

3.5. CAPITAL TAXES

Gains on the transfer of capital assets are aggregated with an individual’s other income, with the total income and capital gains charged to income tax at the applicable rate. Transfer of immovable property situated in Malta is taxed at a flat rate of 12% on the higher of the market value or the consideration received for the transfer less brokerage fees. However, if the immovable property is transferred within seven years from the last transfer, the taxpayer may choose to have the transfer taxed under the normal system (i.e. taxed at the applicable marginal rate on the gain) or at the flat rate of 12% of the sales value of the sold assets. Immovable property owned and occupied for at least three years as the transferees’ own residence immediately after the transfer and disposed of within 12 months of vacating the premises is not subject to capital gains tax for individuals. Otherwise, the same capital gains rules apply as for business.

There is neither net wealth tax nor real estate tax. Transfers of immovable property, marketable securities and certain specified documents are subject to stamp duty.
SECTION IV

SPECIFIC INVESTMENT VEHICLES IN MALTA
1. COLLECTIVE INVESTMENT SCHEMES

1.1. GENERAL OVERVIEW

Malta is increasingly being seen as a suitable jurisdiction for the establishment of funds investing in the emerging and established markets. This is mainly attributed to the fact that Malta is particularly well situated as a regional headquarters or distribution for funds and other related services. Investors established in Malta can avail themselves of the numerous advantages that Malta offers, such as political and economic stability, developed financial services and legal frameworks, an efficient stock exchange, a range of double tax treaties, unilateral relief, competitive cost structures, and a detailed and flexible regulatory regime.

Over recent years the fund industry has grown significantly and a number of reputable international organisations have already established operations in Malta and formed Collective Investment Schemes (CISs) based in Malta.

In Malta, CISs can be formed either as an Undertaking for Collective Investments in Transferable Securities (UCITS) or in the case of a preference for a less regulated vehicle, as a Professional Investor Fund (PIF).

1.2. REGULATORY FRAMEWORK

Collective Investment Schemes are governed by the Investment Services Act. It provides the statutory basis for the licensing and regulation of persons providing investment services or operating a CIS, including UCITS Schemes and PIFs in or from Malta. Related legislation that also needs to be considered in conjunction with the Investment Services Act are the following:

• Companies Act
• Trusts and Trustees Act
• Prevention of Money Laundering Act
• Prevention of Financial Market Abuse Act
• Financial Markets Act
• Special Funds Regulation Act
• Securitisation Act

The Investment Services Act defines a CIS as a scheme or arrangement that has its object, or as one of its objects, the collective investment of capital acquired by means of an offer of units for subscription, sale, or exchange. Moreover such a scheme is also required to operate according to the principle of risk spreading and must satisfy one of the following conditions:

1. The contributions of the participants and the profits or income, out of which payments are to be made to them, and pooled; or
2. At the request of the holders, units are or are to be re-purchased or redeemed out of the assets of the Scheme or arrangement, continuously or in blocks at short intervals; or
3. Units are, or have been or will be issued continuously or in blocks at short intervals.

Schemes that do not satisfy the principle of risk spreading may also qualify as CISs provided that they are offered to a specified class of investors.

As stated earlier, investors have two main routes of setting up a CIS in Malta. One is through the UCITS regulatory framework, where one would therefore be subject to the requirements as laid out by the UCITS directive, or, through the Professional Investor Fund regime, which is a less regulated option.

A Professional Investor Fund (PIF) is a type of collective investment scheme promoted to more experienced investors. A PIF is usually set up as an open-ended or closed-ended investment company (SICAV or INVCO), a limited partnership, or unit trust.

PIFs can be set up in three different categories:

• Experienced investor funds
• Qualifying investor funds
• Extraordinary investor funds

PIFs targeting experienced investors are subject to a minimum investment amount of €10,000 and to certain investment, borrowing and leverage restrictions, since direct borrowing for investment purposes and leverage via the use of derivatives is restricted to 100% of NAV.

PIFs targeting qualifying investors are subject to a minimum investment amount of €75,000 and €750,000 for extraordinary investors. Neither is subject to any investment, borrowing, or leverage restrictions. Where the main objective of a PIF is investing in immovable property, certain restrictions on leverage may apply in respect of Experienced Investor Funds and open-ended Qualifying Investor Funds. With flexibility in the investment, borrowing and leverage limits, PIFs targeting qualifying and extraordinary investors may follow a multitude of investment strategies.

The dealing frequency and liquidity arrangements within the PIF are also set by the promoters of the PIF. There are no specific MFSA requirements.

The minimum investment threshold applies to each individual investor. In the case of an umbrella fund comprising a number of sub-funds the respective thresholds are applied applicable on a “per scheme” basis rather than on a “per sub-fund basis”, thereby enabling the investor to spread the investment requirement across the various sub-funds.

A PIF may appoint any service provider as it may deem necessary, although PIFs promoted to experienced investors must appoint a custodian. The service providers of a PIF may include,
amongst others, a manager, administrator, investment advisor and/or a custodian/prime broker. The service providers appointed by a PIF need to be licensed or approved by the Malta Financial Services Authority, if they are operating in or from Malta. Any service provider that is located outside Malta and that provides services to PIFs in Malta must likewise be approved by the said Authority.

It is not necessary for the manager, administrator, custodian, or any other appointed service provider to be based in Malta. However, where the service providers are all based outside Malta and no local resident director has been appointed, a judicial representative needs to be appointed.

1.3 TAXATION

For tax purposes, a fund or a sub-fund of a collective investment scheme may be classified as a prescribed or a non-prescribed fund. A fund in a locally based scheme is classified as a prescribed fund if the value of the assets situated in Malta is at least 85% of the value of the total assets. Other licensed funds, including all funds in overseas based schemes, are classified as non-prescribed funds.

All income of collective investment schemes is exempt from tax in Malta except for the withholding tax applicable to local investment income in the case of prescribed funds. Thus local investment income (excluding dividends) derived by prescribed funds is subject to a final withholding tax. The withholding tax rate is 15% in the case of bank interest and 10% in the case of other investment income. No tax is withheld on investment income received by non-prescribed funds.

In the case of a prescribed fund, no tax is payable by non-resident investors when they dispose of their investment or when they receive a dividend out of such profits. Non-residents receiving dividends out of a non-prescribed fund suffer no withholding tax on such income and are also exempt from tax on capital gains.

Furthermore, there is no duty on documents on share issues or transfers and no tax on the net asset value of the scheme, in the case of collective investment schemes.
The main difference between an ICC and a segregated multi-fund company structure lies in their legal status. An ICC, and each of its incorporated cells, are each separate legal personalities. Conversely, in a segregated multi-fund company structure, the SICAV and its sub-funds together represent one legal entity (i.e. sub-funds do not have separate legal personality).

The lack of sub-funds’ separate legal personality in a segregated multi-fund company structure creates complexities, for example, when it comes to sub-funds transacting in their own name and with other sub-funds of the segregated multi-fund company.

Such complexities are eliminated by the separate legal personality of incorporated cells in an ICC structure.

An ICC does not have the power to transact on behalf of any of its incorporated cells, and vice versa.

The ICC and each cell shall submit a separate Annual Return. Financial statements of an ICC shall not be consolidated with the incorporated cells, unless the incorporated cell is a subsidiary of the ICC. The Directors’ report of an ICC shall also include the names and registration numbers of all its incorporated cells.

Subject to the applicable provisions of the Regulations, an incorporated cell can be:
• Transformed into non-cellular companies;
• Relocated to another ICC;
• Expelled;
• Continued as a body corporate in another jurisdiction; or,
• Struck-off.

An ICC that has been dissolved and wound up shall not be struck off unless each of its incorporated cells have gone through one of the exit options above.

The ICC structure, like the segregated multi-fund company structure, offers a risk management vehicle to potential investors, with varying interests, to participate in one structure, with the potential cost leverage and other advantages associated with it. Malta is the only full EU member state to have both these vehicles in place, adding to its attractiveness as a SICAV domicile. The differences between the two vehicles, major amongst which is the legal status of the cells, may render one structure more attractive than the other to the potential investor.
IT’S PEOPLE WHO MAKE THE DIFFERENCE
# APPENDIX I

## DOUBLE TAX TREATIES

### TREATIES CURRENTLY IN FORCE

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<tr>
<th>Slovenia</th>
<th>South Africa</th>
<th>Spain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaysia</td>
<td>Sweden</td>
<td>Switzerland</td>
</tr>
<tr>
<td>Montenegro</td>
<td>Syria</td>
<td>Tunisia</td>
</tr>
<tr>
<td>Morocco</td>
<td>United Arab Emirates</td>
<td>U.K.</td>
</tr>
<tr>
<td>Netherlands</td>
<td>U.S.A.</td>
<td>U.S.A.</td>
</tr>
</tbody>
</table>

### TREATIES SIGNED BUT NOT IN FORCE

- Bahrain
- Uruguay