

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**GUIDELINES TO REDOMICILIATION OF OFFSHORE FUNDS
TO MALTA**

Guidelines to Redomiciliation of Offshore Funds to Malta

Malta has legislative provisions (*Companies Act, Continuation of Companies Regulations 2002 - L.N 344 of 2002 as amended*, <http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/386/05.pdf>), regulating both inward and outward continuation of companies.

With respect to the continuation of a foreign collective investment scheme, reference should also be made to Article 31 of the Investment Services Act, 1994. The following are the steps to be followed with respect to the redomiciliation of a professional investor fund:

- a) an application for a Collective Investment Scheme licence under the Investment Services Act, 1994 is first submitted to the Authority;
- b) the application should be accompanied by the relevant documentation (listed in the annex to the application form). Such documentation should be submitted in draft form for the Authority's review and should be drafted on the basis of the Scheme post-redomiciliation, ie. referring to the Scheme as a Malta based scheme and to the Board members and service providers to be servicing the Scheme once this is redomiciled;
- c) the Registrar of Companies should also be approached at this stage with respect to the proposed redomiciliation;
- d) relevant due diligence enquiries would be undertaken by the Authority including with any existing regulator of the overseas scheme;
- e) the Authority would vet the draft documentation provided (including the draft proposed Memorandum & Articles of Association and the Offering Memorandum) and communicate its comments to the promoter;
- f) the proposed structure and the documentation to be used by the Scheme would need to be in line with the requirements specified in the Investment Services Rules for Professional Investor Funds;
- g) the Authority would proceed to issue its in principle decision following resolution of any main issues arising with respect to the scheme, the documentation provided, and also following receipt of sufficient and satisfactory replies to the MFSA's due diligence enquiries;
- h) following communication of the 'in principle' decision and assuming this is an 'in principle approval', (which would list the pre-licensing outstanding issues), the promoters would proceed to finalise the relevant documentation required by the MFSA ('Authorisations Unit') and the Registrar of Companies;
- i) the Authorisations Unit would liaise with the Registrar of Companies accordingly. Subject to satisfactory resolution of all the applicable requirements communicated by the Authorisations Unit and Registrar of Companies, the Scheme would be licensed on the same date it is redomiciled to Malta.

Other specific documentation that is ordinarily requested by the Authorisations Unit with respect to a redomiciliation includes the following:

- i. recent copies of the audited financial statements of the scheme;
- ii. a copy of the (pre-redomiciliation) existing Memorandum & Articles of Association (with details of the current directors) and Offering Memorandum;
- iii. a signed resolution from the existing Board of Directors of the scheme confirming:
 - the Directors' intention to re-domicile the Scheme to Malta; to apply for a CIS Licence in favour of the Scheme; and authorising the relevant persons authorised to sign the application form on behalf of the company and to effect the necessary changes relating to the re-domiciliation including the changes to the company as per the proposed final version of the Offering Memorandum and the Memorandum & Articles of Association applicable to the scheme following re-domiciliation;
 - that there are no regulatory issues relating to the said re-domiciliation and no pending litigation or disputes and that the Directors are not aware of any potential litigation or disputes.
- iv. if there is a change in the composition of the Board of Directors, the MFSA would also ordinarily be provided with a signed Board of Directors' resolution from the new Board of the Scheme (upon redomiciliation) confirming inter alia that:
 - the Directors endorse the application for a Collective Investment Scheme Licence in favour of the Scheme;
 - the Directors of the Scheme have reviewed the final revised version of the Offering Memorandum and assume responsibility thereof.

Kindly note that this information is provided as a general guidance. It should not be interpreted as legal advice and does not aim to replicate the requirements specified in the applicable regulations or rules which should always be referred to. Additional requirements may also apply.