

Comparing Jurisdictions and Investment Fund Structures

**UCITS, Professional Investors Funds
Regulated, Non-Regulated, Offshore, Onshore
Luxemburg, Malta, Ireland, Switzerland or the Cayman Islands**

Outline

- I. Main Topics**
- II. Questions a promotor should ask him/herself to select the most appropriate vehicle and jurisdiction**
- III. Current Trends (from our perspective)**
- IV. What's next**
- V. Summary of main features of Professional Investors Funds**
 - Malta
 - Luxemburg
 - Ireland
 - Switzerland
 - Cayman Islands
- VI. UCITS at a Glance**

I. Main Topics

- What are the issues to consider when setting up a collective investment fund?
- How to make a choice?
- What to look at and where to look at?

II. Questions a promotor should ask him/herself to select the most appropriate vehicle and jurisdiction

A fund is only successful if investors invests and remain invested

Two main issues to consider:

1. Regulatory issues
2. Marketing and psychological issues

Regulatory Questions:

- What investment strategy?
- What investment restrictions?
- Need of leverage?
- Leverage by borrowing, inherent leverage by derivatives?
- What is the size of the fund at launch?
- What is the size of the fund after one year?
- Where is the investment manager located?
- Retail – Non Retail?

- What is the minimum subscription amount?
- What is the redemption's frequency?
- Open-Ended or Close-ended?
- What is the liquidity of the fund and the NAV calculation's frequency?
- Where are the investors located?
- Is a EU-passport required?

Marketing and psychological issues

- What is the marketing strategy for the fund?
- What is the market trend?
- What does investors like to see?

Answers to these questions will give you the most appropriate vehicle and jurisdiction

Fund or managed accounts?

Main EU Fund Jurisdictions (Luxemburg, Malta, Ireland)

UCITS

Professional Investors Funds

Switzerland:

UCITS-Types

Other Fund for Traditional Investments

Alternative Funds

Either for retail or qualified investors

Cayman Islands:

Professional Investors Funds

III. Current Trends *(from our perspective)*

- UCITS and « Hedge Fund UCITS » in Luxembourg and Malta
- Professional Investors Funds in Malta
- Specialized Investment Funds in Luxembourg

IV. What's next

1. Summary of main features of Professional Investors Funds in:
 - Malta - PIF
 - Luxemburg – SIF
 - Switzerland - QIF
 - Ireland – PIF
 - Cayman Islands - SPC
2. Main Features of a UCITS

V. Summary of main features of Professional Investors Funds

A. Malta

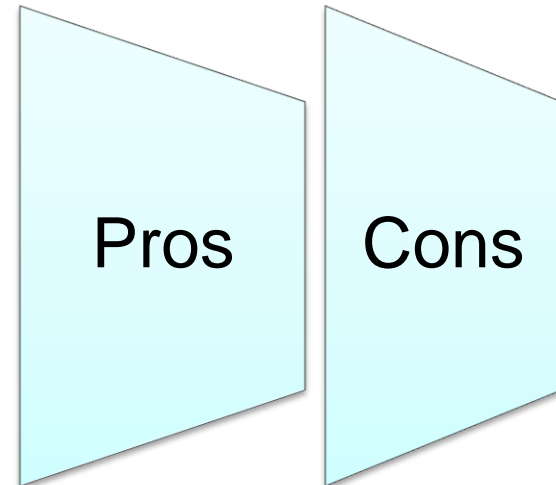
Financial Authority:	Malta Financial Services Authority
Structure:	INVCO (closed-ended funds); SICAV (open-ended funds); Unit Trust; Foundation; Common Contractual Fund; Limited Partnership
Approval within:	4 weeks (for PIF) to 10 weeks (for UCITS).
Corporate tax rate for a management company?	35%. However with reliefs, effective tax suffered post-refund and post-distribution should result in an effective rate 5% .

Min. Capital and license for a Manager:	EUR 125,000 – Category 2 license
Double taxation treaties with:	56 countries + (as of February 2010)
Redomiciliation possible:	Yes
Total number of Malta domiciled funds (UCITS & Non-UCITS):	more than 400 (end Sep 2009)*

* Source: MFSA

Main Features of a Professional Investors Funds in **Malta**

- Regulator
- Approval Process
- Eligible investors
- Minimum investments
- Structure of the fund
- Investment / borrowing restrictions
- Offering Document / Marketing Document
- Service Providers
- Reporting
- Taxation
- Fees and Expenses
- Application for Preliminary Indication of Acceptability
- Application Fee
- Annual Supervisory Fee



See Comparison table in annex. for details.

B. Luxemburg

Financial Authority:	<i>Commission de Surveillance du Secteur Financier (CSSF)</i>
Structure:	Investment Company (SICAV); Common Fund (FCP); Close-ended SICARs and SIFs
Approval within:	0 to 16 weeks (for UCITS)
Corporate tax rate for a management company?	28.59%

Min. Capital and license
for a Manager:

EUR 125,000 – License
required - law of 20 December
2002 concerning UCIs

Double taxation treaties with:

54+ countries

Redomiciliation possible:

Yes

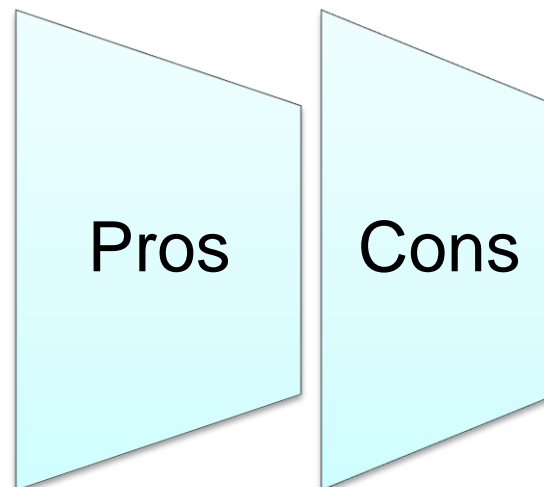
Total number of Lux domiciled funds
(UCITS & Non-UCITS):

3,371 (end 2008)*

* Source: CSSF

Main Features of a Specialized Investment Funds in Luxemburg

- Regulator
- Approval Process
- Eligible investors
- Minimum investments
- Structure of the fund
- Investment / borrowing restrictions
- Offering Document / Marketing Document
- Service Providers
- Reporting
- Taxation
- Fees and Expenses
- Application for Preliminary Indication of Acceptability
- Application Fee
- Annual Supervisory Fee



See table in annex. for details.

D. Ireland

Financial Authority:	Irish Financial Services Regulatory Authority
Structure:	Unit trusts; investment companies with variable capital; or common contractual funds
Approval within:	1 (for QIF) to 12 weeks (for UCITS) on average
Corporate tax rate for a management company?	12.5% on all corporate trading profits

Min. Capital and license
for a Manager:

EUR 125,000 or 3 months
expenditures whichever is
greater – License required
under MIFID.

Double taxation treaties with:

50 countries (as of May 2009)

Redomiciliation possible:

Yes

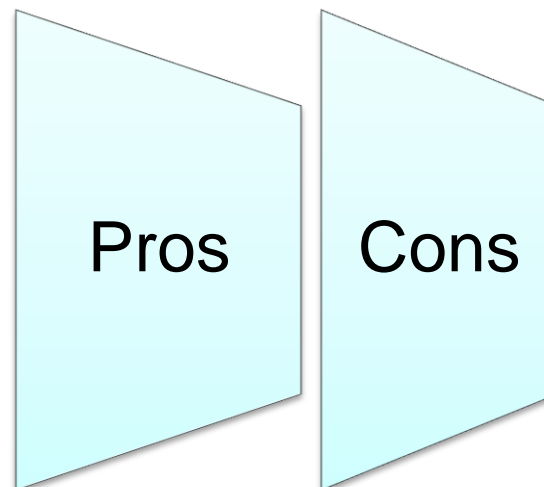
Total number of Irish
domiciled funds
(UCITS & Non-UCITS):

4,627 (end 2009)*

* Source: Irish Funds Industry Association (IFIA)

Main Features of a Professional Investor Funds in Ireland

- Regulator
- Approval Process
- Eligible investors
- Minimum investments
- Structure of the fund
- Investment / borrowing restrictions
- Offering Document / Marketing Document
- Service Providers
- Reporting
- Taxation
- Fees and Expenses
- Application for Preliminary Indication of Acceptability
- Application Fee
- Annual Supervisory Fee



See Comparison table in annex. for details.

E. Switzerland

Financial Authority:

Swiss Financial Market Supervisory Authority

Structure:

Investment companies with variable capital; common contractual funds; limited partnerships

Approval within:

0 to 10 weeks on average

Corporate tax rate for a management company?

From 15 to 25 % on all corporate trading profits depending on the Canton. If well structured the performance fee may be considered as capital gain and **tax exempted** for resident-managers.

Min. Capital and license
for a Manager:

No FINMA license required for
management of non-Swiss
funds. For Swiss Funds,
license required – min. capital
is CHF 200,000 plus $\frac{1}{4}$ of the
yearly expenditures

Double taxation treaties with:

75+ countries

Redomiciliation possible:

Yes

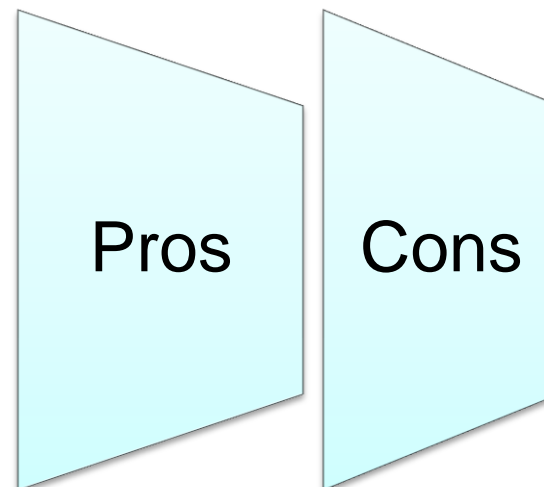
Total number of Swiss
domiciled funds:

1340 + (end 2009)*

*Source: FINMA

Main Features of a QIF in Switzerland

- Regulator
- Approval Process
- Eligible investors
- Minimum investments
- Structure of the fund
- Investment / borrowing restrictions
- Offering Document / Marketing Document
- Service Providers
- Reporting
- Taxation
- Fees and Expenses
- Application for Preliminary Indication of Acceptability
- Application Fee
- Annual Supervisory Fee



See Comparison table in annex. for details.

F. Cayman Islands

Financial Authority:	Cayman Islands Monetary Authority (“CIMA”)
Structure:	Any company, trust or partnership incorporated or established in the Cayman Islands, including: Exempted company; registered as SPC; registered as a LDC; Exempted limited partnership; Unit trust
Approval within:	1 (for registered funds) to 12 weeks (for licensed funds) on average
Corporate tax rate for a management company?	N/A

Min. Capital and license
for a Manager:

There are no capital requirements for an investment manager of a regulated fund unless if required to than approximately USD 122,000.

Double taxation treaties with:

14 Tax Information Exchange Agreements signed

Redomiciliation possible:

Yes

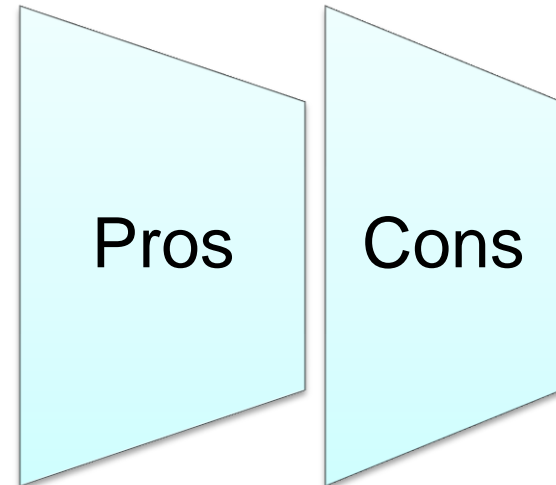
Total number of CY
domiciled funds:

Approx 9,000 (end 2009)*

* Source: CIMA

Main Features of a Registered Fund in **the Cayman Islands**

- Regulator
- Approval Process
- Eligible investors
- Minimum investments
- Structure of the fund
- Investment / borrowing restrictions
- Offering Document / Marketing Document
- Service Providers
- Reporting
- Taxation
- Fees and Expenses
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See table in annex. for details.

VI. UCITS at a Glance

A. What is a UCITS?

In simple terms, a UCITS is an investment vehicle through which European retail investors are able to pool their money which is then invested on a collective basis in accordance with the provisions and investment restrictions set-out in the UCITS Directives.

- ⇒ Collective Investment Scheme for Retail Investors
- ⇒ Highly Regulated
- ⇒ Low Leverage Investment Strategy
- ⇒ Supposed to be Safer

B. History of the UCITS Regime

UCITS I

December 1985, enactment of the Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (**UCITS I**)

UCITS I had the following objectives:

- To create a single and harmonized market for financial services and trade across Europe.
- To create a uniform and a greater degree of protection.
- To facilitate the EU-wide distribution of investment funds to retail investors.

UCITS II

- In the early 1990s, the EU sought to introduce a further Directive to regulate UCITS funds (UCITS II) with the aim of addressing the issues experienced in UCITS I.
- Unfortunately, efforts towards UCITS II only resulted in a draft directive as Member States failed to reach an agreement.

UCITS II => failed

UCITS III

The EU restarted its efforts in 1998, resulting in the passing of two new Directives in 2001, known as UCITS III:

1. Directive 2001/107/EC (the “**Management Directive**”)

The Management Directive introduced the “European Passport” for UCITS management companies and widened the scope of activities which UCITS were authorised to undertake. The Management Directive also introduced the concept of a simplified prospectus providing investors with key information about the UCITS in a clear, concise and easily understandable way.

2. Directive 2001/108/EC (the “**Product Directive**”).

The Product Directive allows UCITS funds to invest in a wider range of financial instruments than previously possible within a standard ‘long only’ fund structure. The Directive allowed for UCITS funds to be established as money market funds, derivatives funds, index-tracking funds and funds of funds. Prior to this Directive, the eligible assets which UCITS funds could invest in were limited to mostly equities and bonds.

Other amendments to the UCITS regime were brought about by:

- Directive 88/220/EEC (introducing mortgage bonds)
- Directive 95/26/EC (reinforcing prudential supervision)
- Directive 2000/64/EC (exchange of information with third countries)
- Directive 2004/39/EC (MiFID)
- Directive 2005/1/EC (Lamfalussy)
- Directive 2007/16/EC (Directive on Eligible Assets)
- Directive 2008/18/EC (implementing powers conferred on the Commission)

UCITS IV (to come 1st July 2011)

- **Key Investor Information (KII)**

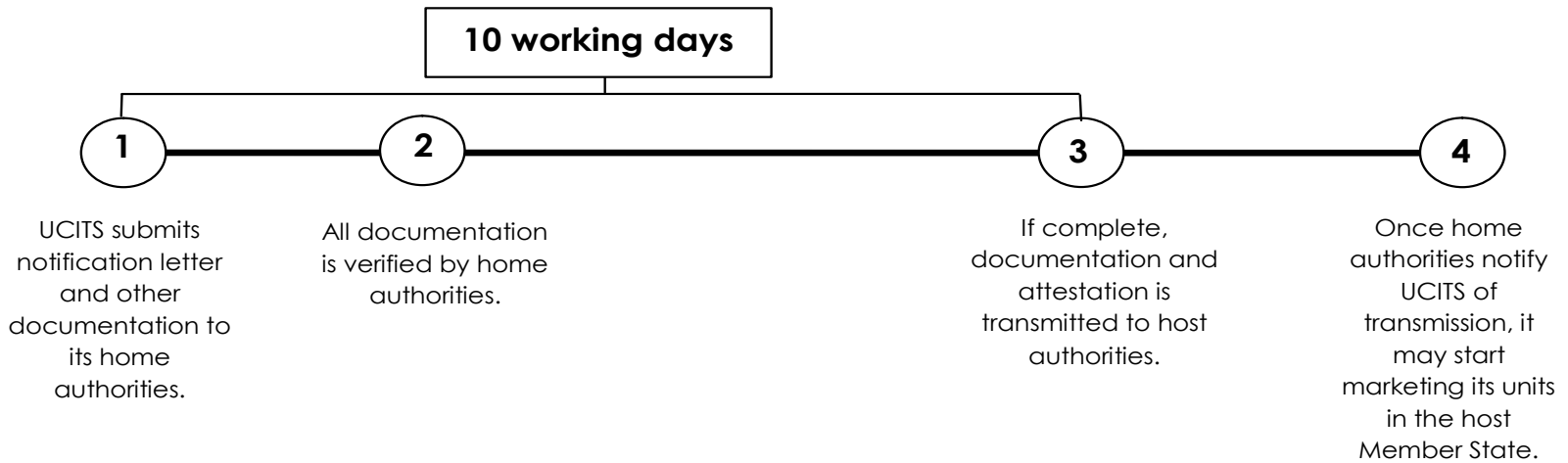
The simplified prospectus will be abolished and replaced by a short and standardized fact sheet containing KII which will be valid in all Member States.

- **Fund Mergers**

UCITS IV introduces a framework for the cross-border merger of funds.

- **Notification Procedure**

UCITS IV creates a streamlined notification process for the cross-border marketing of UCITS, doing away with current burdensome and time-consuming notification procedure.



- **Management Company Passport**

UCITS IV finally makes the cross-border management of UCITS possible. Under the new Directive, any management company which has been authorised by its home Member State may manage UCITS in other Member States, either through the establishment of a branch or the use of freedom to provide services, after having notified its home authorities and supplied the requisite information to home and host authorities as prescribed by the Directive.

- **Asset Pooling**

Under UCITS III, Master-Feeder structures were not permitted due to fund diversification rules. UCITS IV allows Master-Feeder arrangements whereby a feeder UCITS, or an investment compartment thereof (the "Feeder"), invests at least 85% of its assets in units of another UCITS or investment compartment thereof (the "Master").

C. Applicability of UCITS Directives

The UCITS Directives do not apply to the following Undertakings for Collective Investment (“UCIs”):

- Closed-ended UCIs;
- UCIs which raise capital without promoting the sale of their units to the public within the European Community or any part of it;
- Units of UCIs which, under the fund rules or the investment company's instruments of incorporation, may be sold only to the public in non-Member States; and
- Specific categories of UCIs prescribed by the regulations of Member States.

D. Key Features of a UCITS III

- Subject to notification process, can be marketed and sold anywhere within the EU.
- Its shares must be redeemable on the demand of the investor. Therefore, a UCITS fund must be open-ended.
- Must supply a full and simplified prospectus upon the demand of potential investors.
- Must operate on the principle of risk-spreading.
- May be constituted in contractual form (i.e. as common funds managed by management companies), trust law (i.e. as unit trusts) or in corporate form (i.e. as investment companies).

- They are subject to the authorisation requirements of their home Member State and a notification requirement to the host Member State.
- They may only invest in “eligible assets”.
- Must comply with the prescribed quantitative investment restrictions.
- Must publish a half yearly and a yearly report.
- Depositary must be located in the same Member State as the fund.
- UCITS management companies may carry on the activities for which they have been authorised in their Home Member State in another Member State either through the establishment of a local branch or under the freedom to provide services cross-border.

E. Authorization of UCITS

In order to commence operations, a UCITS fund must be authorized by the competent authorities of its home Member State. As stated earlier, a UCITS may be set-up as an investment company with variable capital, a common contractual fund, or a unit trust. In some jurisdictions (such as Malta) limited partnerships are also possible.

Investment Companies with Variable Capital

A UCITS fund may be structured as an investment company, which is only required to appoint a UCITS management company if it does not have a sufficient initial capital of at least EUR 300,000.

In this case, authorization will only be granted if the competent authorities have approved both the (1) investment company's instruments of incorporation and (2) the choice of depositary.

Unit Trusts and Common Funds

A unit trust and a common contractual fund must appoint an management company to manage the fund's portfolio. If the UCITS is set up in this form, then it shall be authorized only if the competent authorities of the home Member State have approved the (1) management company, (2) the fund rules and (3) the choice of depositary.

F. Investment Restrictions

- A UCITS fund cannot invest more than:
 - 5 % of its assets in transferable securities or money market instruments issued by the same body;
 - 20 % of its assets in deposits made with the same body.

- However, the 5% ceiling may be re-assessed depending on the nature of the issuer or the bond.

Cont...

- A UCITS may not acquire any shares carrying voting rights which would have an effect on the independence of the issuer. It may acquire no more than 10 % of the non-voting shares, debt securities or money market instruments of any single issuing body, or 25 % of the units of any single UCITS or other collective investment undertaking.
- However, the limit can be raised to 20%, or even 35% in exceptional circumstances, for investment in shares or debt securities issued by the same body when the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index.

- In addition, by way of derogation, UCITS may be authorised to invest up to 100% of their assets in different (a maximum of six) transferable securities or money market instruments issued or guaranteed by a public entity. It is assumed here that unit-holders have protection equivalent to that of unit-holders in UCITS complying with the general obligations imposed by the UCITS III Directives.
- Furthermore, a UCITS may, within certain limits, acquire the units of another UCITS or collective investment undertaking.

G. Eligible Assets

“Eligible assets” refer to those assets which are eligible for investment by UCITS funds in terms of Article 19 of the Directive 85/611/EEC.

Cont...

UCITS funds may invest in:

1. Transferable securities and money market instruments which are either admitted to an official listing on a stock exchange in a Member State or non-Member State or which are dealt on a market which is regulated, operating regularly, recognised and open to the public in a Member State or non-Member State;
2. Recently issued transferable securities which will be admitted to an official listing on a stock exchange or other market within a year. However, a UCITS may invest no more than 10 per cent of its assets in these securities.

Cont...

3. Money market instruments, other than those dealt in on a regulated market, except when the issuer or issuer of such instruments is itself regulated for the purpose of protecting investors and savings;
4. Units of another UCITS (UCITS Fund of Funds) subject to certain conditions;
5. Units of non-UCITS collective investment funds subject to an overall limit of 30% of the net assets of the UCITS;

Cont...

6. Deposits with credit institutions;
7. Financial derivatives instruments as part of the main investment objective of the fund as well as for efficient portfolio management purposes (provided that the underlying instruments are permitted investments);
8. A UCITS fund may not borrow money, grant loans or act as guarantor on behalf of third parties although it may borrow up to 10% of the net asset value of the fund on a temporary basis, for example to meet redemption requests.

Cont...

In 2007, to ensure a uniform application of Directive 85/611/EEC and to help Member States develop a common understanding as to whether a given asset category is eligible for a UCITS, the Eligible Assets Directive (2007/16/EC) was enacted. Sought to clarify and remove any uncertainty around the eligibility of a UCITS investing in certain financial instruments.

Cont...

The following highlights the key developments brought about by the Eligible Assets Directive in the categorisation of eligible assets for UCITS:

- closed-end funds are regarded as transferable securities provided that they are subject to certain corporate governance mechanisms;
- credit derivatives are regarded as eligible for a UCITS provided that they are in compliance with the criteria applicable to OTC derivatives ;
- derivatives on a single commodity remain forbidden; and

Cont...

- financial indices, whether or not comprised of eligible assets, can be considered as eligible financial indices once they are sufficiently diversified, represent an adequate benchmark for the market to which they refer and are published in an appropriate manner.

Thank you

In case of questions, please contact Dominique Lecocq at drl@lecocqassociate.com

Our experience

lecocqassociate provides legal advice on fund legal structure. We have experience in Swiss, Maltese, Luxembourg; Irish and Offshore funds. This presentation is for information purpose only; it is neither a legal advice nor an opinion. Please contact Dominique Lecocq for any questions drl@lecocqassociate.com.

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