

## Practitioners Update

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### IFSP's PMLFT Guidance Notes nearing completion

Malta's anti-money laundering regime has been in place since 1994, with the first incarnation of the Prevention of Money Laundering Act, and has evolved since then to keep up with constantly developing international standards. The latest amendments, put into effect through the Prevention of Money Laundering and Funding of Terrorism Regulations of 2008, follow closely the EU's Third Money Laundering Directive.

It is a complex piece of legislation, chasing a moving target. It places a lot of responsibility on practitioners to recognize and report suspicious financial activity to the authorities, and requires service providers to build up a real knowledge of their customers.

Members and, indeed, other practitioners may find working directly from the text of the law or the directive a little daunting. In its new form, the anti-money laundering regime recognizes that blocking 100% of attempts to use the financial system to launder money or provide financing to crime or terrorism is impossible. Attempts to achieve this could, in fact, prove counterproductive. The rules and security would be so costly and onerous that normal financial business would be impossible.

In line with trends in European regulation in other areas, the Third Money Laundering Directive seeks to control these costs by adopting a risk-based approach, as opposed to one that is rules-based. The principle is deceptively simple: apply the degree of control and verification appropriate to the level of threat of money laundering posed by a client or client segment, transaction type or type of service offered. This way, the majority of effort will be concentrated on the segments that really need attention, and will not be expended needlessly on low risk areas – thus keeping the burden of compliance down to acceptable levels.

The principle may be simple. Unfortunately, putting it into practice is a little more difficult. It requires practitioners and their firms to have robust systems in place to assess the risk of money laundering and terrorist financing that their clients present, measured against objective criteria. It really does shift a lot of responsibility onto the practitioner, who could do with a guiding hand to help implement the requirements imposed.

This is the role of the PMLFT Guidance Notes prepared by the IFSP sub-committee headed by Juanita Bencini. The Guidance Notes take the raw regulations and translate them into practical guidance for concrete action, while taking the time to explain the principles behind the requirements.

The draft version of the Guidance Notes has already been circulated to members. That draft is also going through a vetting process by the Financial Intelligence Analysis Unit (FIAU), the body established to implement the regulations, ensure compliance and receive suspicious transaction reports (STRs in the PMLFT jargon).

This vetting process is now close to completion. The end result, the fruit of a lot of hard work by the IFSP's PMLFT sub-committee members, will be a document with the imprimatur of the FIAU on it. The IFSP is proud to be the first association to have drafted Guidance Notes for its Members, reflecting the new Regulations and the Third Money Laundering Directive. The Guidance Notes are likely to become a benchmark for good practice, and the model for any other sector specific guidance documents that may follow.

The IFSP's PMLFT Guidance Notes in their final version will be presented to practitioners during the *Keeping Abreast of Developments: the IFSP at the forefront of change* seminar on 7 May 2010. You are urged to attend to find out more about this area that will directly impact your business!

### Keeping Abreast of Developments

*In tax, anti-money laundering and aircraft registration*

*Full day seminar on 7 May 2010 from 09:00 at Golden Sands*

Contact us on [events@ifsp.org.mt](mailto:events@ifsp.org.mt) to register

Comments, suggestions  
and criticism welcome!  
Email us on [info@ifsp.org.mt](mailto:info@ifsp.org.mt)

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# International Tax

The IFSP has made recommendations on seven new tax treaties over the course of the last year, feeding in to the Maltese government's negotiating position. Beyond this, it has also given its input to the negotiations on a new protocol to the existing Malta/Poland tax treaty.

The recommendations are the work of the IFSP's Tax and Unregulated Business sub-committee, currently chaired by Chris Curmi. The authorities have turned to the IFSP for input before beginning negotiations on every new tax treaty being considered.

These recommendations were made on the basis also of a comparative study which IFSP undertook into the tax treaty network of the relevant foreign jurisdiction, with the objective that the features of the treaty under negotiation with Malta are placed in a relatively favourable, or at least, comparable level.

Malta now has close to 60 DTAs (double taxation agreements) in place with countries from all five continents with the exception of the South American continent although negotiations are underway with a number of South American countries and, in 2010, the IFSP presented its recommendations in respect of treaty negotiations with Brazil, Peru and Uruguay. Other treaties are in the pipeline with countries from other continents.

The Tax and Unregulated Business sub-committee has also been involved in a lot more than just new DTAs, however important these are to international business. Issues to do with taxation in its many forms keep raising their head, and the IFSP has instrumental in intervening and, discussing the issues with the authorities, making recommendations and communicating with its members.

In most cases, the outcome has been communicated to members via memoranda, first by email and then made available on the IFSP website. Three memoranda have been issued so far since the last

IFSP Annual General Meeting, covering eleven separate issues between them.

The first of the series, issued on 17 July 2009, covers a variety of procedural pitfalls that may be encountered by members when submitting tax refund claims to the ITU on behalf of clients; anyone who needs to revisit the circular can download it from the IFSP website at this link:

<http://www.ifsp.org.mt/Uploads/090717%20Tax%20SC%20Memo%20-%20Certain%20ITU%20procedures.pdf>

The last, issued in early January, covers signatures on tax refund forms and tax residency certificates. It may be downloaded from the IFSP website at this address:

[http://www.ifsp.org.mt/Uploads/100104\\_IFSP%20Circular\\_Signatories%20of%20Refund%20Claims+Residence%20Cert%20doc.pdf](http://www.ifsp.org.mt/Uploads/100104_IFSP%20Circular_Signatories%20of%20Refund%20Claims+Residence%20Cert%20doc.pdf)

Tax is a constantly changing terrain and the IFSP together with the authorities have been at the forefront in agreeing on amendments to the international tax provisions of Malta tax law in response to these changes.

For an update on the latest developments plus the chance to discuss the implication of the amendments, the IFSP is organizing a full day seminar on Friday, 7 May 2010. Look for the details further down in this newsletter. ■

*If you've mislaid your password or user name, just call the Secretariat for a reminder*

## IFSP full-day seminar on 7 May to be held at Golden Sands

*On Friday, 7 May 2010 the IFSP will be presenting to members and, indeed, to anyone else with an interest in the areas, its understanding of the way Malta's tax environment is changing and the way it sees practitioners putting anti-money laundering regulations into effect.*

***Keeping Abreast of Developments: the IFSP at the forefront of change*** will be held at the Radisson Blu Golden Sands at Ghajn Tuffieħa.

The Hon Tonio Fenech, Minister of Finance will kick off the full-day seminar at 09:00, followed by three sessions dedicated to tax. Mr. Chris Curmi will be going through the legislative Bill, the Budget Implementation Act, that puts the measures announced in the 2010 Budget Speech into effect, highlighting its impact on international business in particular, and looking at the measures proposed by the IFSP.

Dr. Neville Gatt will deal with another aspect of the draft Budget Implementation Act, one that could impact a broad range of business. He will be examining the anti-abuse measures built into the Bill. Robert Attard will take the final tax session, covering recent double taxation agreements entered into by Malta.

The morning programme will close with a panel/Q&A session, during which participants will have the opportunity to air problems and difficulties, bringing their concerns to the attention of the IFSP and other members. The session will be led by a panel of leading practitioners, all experts in their fields and all ready to provide answers and guidance where possible, and take criticism on board as needed.

The bulk of the afternoon sessions will be dedicated to anti-money laundering and prevention of terrorist financing regulations, and in particular their impact upon Maltese practitioners. Members of the team that has produced the IFSP's Guidance Note on the Prevention of Money Laundering and Financing of Terrorism (PMLFT for convenience's sake) will outline the responsibilities the regulations impose on practitioners.

Juanita Bencini will introduce the IFSP Guidance Notes, while Dr Manfred Galdes,

Director of the Financial Intelligence Analysis Unit (FIAU), the body responsible for implementing the regulations, will be putting the Guidance Notes into the broader context of the law and the regulations as a whole.

This section of the seminar will close with a session dedicated to what practitioners may expect during a compliance visit.

The seminar will close with a session dedicated to Malta's new Aircraft Registration Act, presented by Dr Max Ganado.

The new rules and regulations seek to extend the success of the Malta flag for ship registration, and presents a very interesting new area of business.

***Keeping Abreast of Developments: the IFSP at the forefront of change*** promises to be a very interesting day, bringing issues that will affect every practitioner in Malta.

Registration costs €70 for members (non-members pay €100), which buys you lunch as well as your participation.

Contact Lizianne Gauci at the IFSP Secretariat (email: [events@ifsp.org.mt](mailto:events@ifsp.org.mt); phone: 2569 6312) to for more information or to register. ■

# Dealing with misconceptions

Seminar lays out common basis for response to negative perceptions of Malta

Some 50 people attended the first of IFSP's events for 2010, a seminar dealing with Combating Negative Perceptions of Malta on 22 January 2010. The seminar, held at the MFSA's newly refurbished Conference Hall, took the form of a series of model questions and answers.

Taking a leaf out of the pages of the World Wide Web, the seminar was essentially an off-line FAQ (frequently asked questions). Based upon actual questions and queries received from overseas investors looking to Malta as a potential domicile to invest and seek services in, the 22 questions were divided into two groups: the first 16 on Malta as a financial services centre and the final six on anti-money laundering regulations and practice.

Prof Joe Bannister, Chairman of the MFSA, prepared and delivered the model answers to the first set. He covered a diverse range of issues, from the level of staff preparation and the availability of international banking services to the Maltese legal system.

He followed the prepared text, expanding upon it to go into greater detail where necessary and when prompted by the lively discussion that followed.

Ms Juanita Bencini from KPMG, who chairs the IFSP sub-committee working on Guidance Notes on Malta's anti-money laundering regulations, handled the second set of questions. Here she was not talking about the methods and procedures to be followed to comply with the regulations, but looking at their basis and the way they are embedded within international best practice in the area.

The aim of the seminar was to provide participants with a common framework from which to respond to queries by potential overseas investors. Malta is, after all, a small country at the periphery of Europe, and is not as well known as other, longer established and larger financial centres.

Providing practitioners with a common basis on which to base their individual responses to common queries should first, ensure greater consistency and thus reduce any confusion that may be caused by divergent answers; and second, make the process of attracting new business to Malta easier to the benefit of all Maltese practitioners and of the economy as a whole.

Following the success of this first FAQ session, the IFSP will be looking to further topics to cover in consultation with the MFSA. ■



IFSP President Andrew Manduca, Juanita Bencini and MFSA Chairman Joseph Bannister addressing participants

## Trusts and Trustees Act revisited

Malta's trust laws, enacted in 2004, are now coming up to six years of age. The time has come to revisit them, improving them and fine-tuning the provisions in the light of experience so far. The IFSP has taken the lead in this. A sub-committee led by Dr Juanita Brockdorff has produced a very substantial document proposing changes the industry as a whole would like to see. That document has been submitted to the MFSA, where it is expected to feed into a new body set up specifically to amend the Trusts and Trustees Act and related practices and legislation.

In preparing the submission, the IFSP reached out beyond the limits of its own membership. The sub-committee invited other industry players to its meetings, to put their particular point of view forward. The list included the Notarial Council, the trustee units of Malta's two largest domestic banks, STEP Malta and many other practitioners working in the field of trusts.

Beyond this outreach, the sub-committee also consulted all the authorised trustees, to tap into their wealth of experience and to understand better how the law could be recast maximize the potential of trusts.

The final result is a document that represents a fully thought-out, rigorously argued industry consensus view, which takes into account the different perspectives on trusts held by lawyers, accountants, notaries and others.

This is a new departure for industry consultations, which should streamline the drafting process and make it more efficient and thus faster. The IFSP, drawing its membership from the ranks of all professions and sub-sectors within the broader financial services, is uniquely placed to carry out cross-disciplinary exercises of this sort. ■

## Trusts in court

With 70 people turning up for the IFSP's Trust in Court seminar on 4 February at the MFSA conference room, it is clear that interest in trusts – and especially in the way trusts actually work in practice – remains strong.

Taking the lead from *Maltese Cases and Materials on Trusts & Related Topics*, published by the IFSP and edited by a team led by Dr Max Ganado, the seminar looked at the way Maltese courts have handled trust-related issues. This gives practitioners guidance on the sorts of uses a trust can be put to, and the way it can be constructed.

Dr Annalise Micallef, a notary with Micallef and Associates, opened the proceedings at 16:30 with an overview of 10 cases in which the court had to distinguish between assets held by a person or organization as beneficial owner, and assets held in trust or under some other fiduciary capacity. The importance of this distinction is clear.

She was followed by Dr Ann Marie Agius, from the Bank of Valletta's Trustee Services Unit. She took an in-depth look at one particular issue, the creation of a special needs trust. Based upon recent experience, this was of particular interest, demonstrating the value of the court in helping determine the way the trust was structured.

Dr Max Ganado rounded off the seminar, examining six cases. The issues highlighted included the use of the court to confirm the validity of an oral trust, and issues of confidentiality: who should know what about the arrangements of a trust, and when?

The IFSP's next trust-related event was the Foundation Certificate in Trusts Law and Management, which started in mid-April. ■



## AIFM Directive: Critical weeks ahead

The next few weeks will be critical in resolving the deadlock on the controversial proposed EU directive on Alternative Investment Fund Managers (AIFM) as the United States mount more pressure on the European Commission to drop the proposed 'passport' requirements for non-EU funds and managers.

Dr. Joseph Ghio & Dr. Nicolai Xuereb,  
*Fenech & Fenech Advocates*

The draft Directive, proposed with lightning speed in the wake of the financial turmoil of late 2008, has come very close to being bogged in the cross-fire between diametrically opposed lobby groups, Member States and an increasingly displeased US. Progress on the draft, adopted by the Commission just a year ago, stalled when it was taken off the agenda of a meeting of European finance ministers held on the 16 March 2010 following a last minute intervention by British Prime Minister Gordon Brown amidst continuing heated debate.

One of the most controversial proposals being debated is that funds managed in the EU but domiciled outside can only be distributed in the EU if they are given a 'passport'. For the fund to be passported in a Member State the foreign regulator of the fund would be required to supply the EU regulator with certain information, the domicile of the fund would need to allow EU funds to be sold there, must have anti-money laundering rules and have an acceptable tax agreement with that Member State.

The current draft of the Directive also requires funds both domiciled and managed outside the EU to meet even higher standards to be able to 'passport' into the EU by showing that their home jurisdiction has equivalent regulation to the EU. For US Treasury Secretary Tim Geithner the draft Directive is a throwback to protectionism and many fear that such an approach could provoke reprisals by the US, an important market for EU based funds.

Writing on 5 April 2010 to the finance ministers of the UK, Germany, France and Spain,

Geithner stressed the importance of maintaining "a level playing field". Expressing grave concern about the discriminatory effect which the proposed AIFM Directive would have on non-EU firms by denying continued access to the EU market, Geithner called for more detailed discussions with the EU. More vocal lobbying by the US Government could easily lead to further delays in the adoption of the Directive in one form or another.

Michel Barnier, the new EU Commissioner for the Internal Market and Services, responsible for the draft Directive, defended the EU's proposals by saying these addressed G20 concerns on leverage and transparency in the financial system. While Barnier conceded he is keen to work closely with the US regulators to develop "converging and robust" regulatory standards, he bluntly told reporters that he does not take orders from Washington. Whether the AIFM Directive will stand in the way of closer trans-Atlantic regulatory development remains to be seen.

In the meantime there are other controversial issues which have not yet been resolved including the requirement for EU-based funds to use EU locally based custodians and depositaries, new rules on remuneration, limits on borrowing by funds and disclosure obligations.

It would seem the draft AIFM Directive cannot stay out of controversy, particularly with recent comments made in London by Jean-Paul Gauzès, the European parliament rapporteur on the Directive. Sharp criticism was levelled against his remarks that Europe should become a "fortress" and that he would not be sad if two or three thousand jobs in the City are lost because of the Directive.

The EU Parliament's Economics and Monetary Affairs (Econ) committee was scheduled to vote on its version of the AIFM Directive on the 12 April 2010, but following pressure from some MEPs and lobbying groups, the date for a vote by Econ has been moved back to the 27 April 2010. According to the EU decision making process, a preliminary vote was to be taken by the EU Parliament's legal committee, Juri, on 30 March 2010. After that was rescheduled to 19 April 2010, Econ, which requires Juri's endorsement, was forced to follow suit. The move means that the G20 finance ministers are now likely to discuss the latest draft Directive at a meeting on 23 April 2010 prior to the vote at Econ, postponed to the 27 April 2010. ■

## Another fruitful year

The IFSP's Annual General Meeting will be held on Thursday, 20 May 2010. This will be an opportunity for members to meet the outgoing Council and learn what the Institute has been doing for the past year. It is also an opportunity for members to influence the direction to be taken for 2010/2011 and possibly beyond.

The AGM signals the end of a packed year of work for the current Council, and the opportunity to thank IFSP members who have given up valuable time to serve the Institute. Without that effort, none of the IFSP's achievements would have been possible.

It is also time for members who want to be a more integral part of the work of the IFSP to consider putting their names forward for election to the Council for the coming year.

A more detailed notice will be circulated later on, including a more formal call for nominations to the council. ■

## Foundation course in Trusts Law and Management

The eighth IFSP Foundation Certificate in Trusts Law and Management course kicked off on Monday, 14 April 2010. Demand for the course remains strong, but there are still a few places available should you, or anyone at your organisation wish to follow it.

The use of trusts is growing fast, both in the number of people turning to them and the variety of uses they are being put to. In this environment, a recognised skill set is what distinguishes a fully prepared practitioner.

The IFSP Foundation Certificate in Trusts Law and Management is recognised by the Society of Trust and Estate Practitioners (STEP) as equivalent to the first stage in its internationally recognised qualification. STEP is the largest industry association in this specialised field, with members and recognition on all five continents and in most countries around the world. The IFSP course content is also acknowledged by the

MFSA, thereby lending further weight to certificate holders working in the field of trusts.

The four opening sessions are being given by Profs. Gerwyn Griffiths, Professor in Equity and the Law of Property at the University of Glamorgan, Wales. Profs. Griffiths will focus on general principles, answering questions about the nature and history of trusts and their place in the modern world.

A list of highly experienced practitioners will apply that groundwork to the Maltese context, tying it to Maltese legislation and practice, with the final modules on the international aspect of trusts and of companies.

For further information, or to register for a place on this year's programme, call the IFSP Secretariat on 2569 6356 or send an email to [lpiccinino@ifsp.org.mt](mailto:lpiccinino@ifsp.org.mt). ■