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he amount of regulation the market is being asked to absorb following the financial crisis is no mean feat. Enhanced market surveillance, higher capital requirements, advancing transparency measures, new supervisory authorities – the list seems endless. However, deep down we would all agree that if we manage to mitigate the shocks that hit the market from time to time we would have a fairer market, and one that is better able to sustain investor confidence in the longer term.

From the beginning of this year, the Malta Financial Services Authority (MFSA) has become an integral part of the European System of Financial Supervision (ESFS). The advantage of being a single regulator allows us to participate fully in the proceedings of the new European Supervisory Authorities (ESAs) who, in conjunction with the Member State authorities, will regulate banking, insurance, pensions and securities activities and financial markets. Membership of the new European Systemic Risk Board (ESRB) should in turn allow the MFSA to monitor the wider picture more closely and provide valuable insights to help it work with operators on averting potential threats from external sources.

Nevertheless, there is more to it than that. It is the responsibility of all stakeholders, (legislators, regulators, operators and investors alike) to ensure that the implementation of new regulation does not dampen the chances of a sustained economic recovery but is entirely focused on reinvigorating the market. On their part, regulators must ensure that their actions are proportionate, constructive and innovation-friendly – proportionate in the sense of avoiding red tape and over-regulation, constructive in the sense of looking at regulation not just as a risk-control system but also as an infrastructure on which products are built, and innovation-friendly in the sense of not being afraid to propose legislation that opens up new market opportunities.

The MFSA has always believed in proportionality and will continue to strongly advocate this philosophy in working with its counterparts to eliminate gaps in regulation with the minimum possible administrative impact.

The MFSA will also do its best to ensure that EU legislation will continue to be implemented in a timely and constructive manner. To this end, it is working hard on the early implementation of the Ucits IV Directive and has also set up a working group to prepare for the implementation of the AIFM Directive. Conscious of the fact that availability and choice of global custody providers are key to the successful implementation of these directives, the MFSA has also been working to ensure wider capacity and choice in this area, a strategy that is yielding the desired results.

LAST SEPTEMBER, MALTA WAS ranked 11th in financial market development in the World Economic Forum’s Competitiveness Index 2010-2011, which also underlined the importance of the financial services industry as a leading innovator in the Maltese economy. Indeed, outreach and innovation continue to be the mainstays in the MFSA’s development agenda. Important initiatives taken last year included the launch of guidelines for the redomiciliation of offshore funds to Malta, the publication of the guidance note on Sharia funds, the understanding reached with HMRC on QROPS recognition, the Memoranda of Understanding signed with the Chinese securities and banking authorities and a similar understanding on the recognition of Malta-domiciled funds with the Monetary Authority of Singapore.

We are now looking ahead to another year and another round of fresh initiatives, starting with the roll-out of improved regulations for limited partnership structures, new incorporated cell company legislation for funds and new regulations on the establishment of contractual funds, which will now also be able to make use of regulated special investment vehicles.

I wish you all a successful year!

Joe V Bannister
chairman, Malta Financial Services Authority
TICKING ALL THE RIGHT BOXES
Laragh Cassar of Camilleri Preziosi discusses Malta as a base for private equity funds and how the Malta financial services authority offers a sufficient regulatory overview.

THE CASE FOR MALTA
Mario Psaila of Calamatta Cuschieri Fund Services examines Malta’s changing role over time, and looks at the reasons for its current success as a growing financial hub.

LARAGH CASSAR OF CAMILLERI PREZIOSI DISCUSSES MALTA AS A BASE FOR PRIVATE EQUITY FUNDS AND HOW THE MALTA FINANCIAL SERVICES AUTHORITY OFFERS A SUFFICIENT REGULATORY OVERVIEW

THE MALTA OPTION IS ‘IN-THE-MONEY’
Dr Andrew J Zammit of Zammit & Associates Advocates explains how Malta has grown as a financial jurisdiction after the financial crisis.

A FEASIBLE ALTERNATIVE
Demot S. L. Butler of Custom House asks the all important question, is the Maltese PIF a more attractive hedge fund vehicle than the ubiquitous UCits fund?

RE-DOMICILIATION ROUNDTABLE
Dr David Grisciti leads a roundtable of his colleagues at David Grisciti & Associates to discuss re-domiciliation of investment funds to Malta.

ASSET MANAGEMENT
THE EU ADVANTAGE
Paul Mifsud of Sparkasse Bank Malta talks to HFMWeek about how the big advantage point of being an EU member offers Malta the opportunity to proceed as a successful fund domicile.

CLOSING ENDED FUNDS: THE MALTESE PERSPECTIVE
Simon Tortell of Simon Tortell and Associates makes the case for closed-ended funds, an option that in his opinion needs some attention in the Maltese finance space.

THE MALTA DIMENSION
Kenneth Farrugia of Bank of Valletta summarises the benefits the AIFM Directive and the planned EU Passport for Alternative Investment Funds offer to managers looking at Malta as a base.

A GROWING MARKET FOR PRIVATE EQUITY PIFs
Richard Ambery of Ganado & Associates outlines the potential advantages for private equity funds looking to set up investment vehicles in Malta.

FROM STRENGTH TO STRENGTH
Charles Azzopardi of HSBC tells the story of Malta’s ascendancy to its position as a premier EU fund domicile and outlines the investment options open to those setting up on the island.

A COLLECTIVE CHOICE
Dominique Lecocq of Lecocqassociate considers the best jurisdiction for your hedge funds: Malta, Luxembourg or the Cayman Islands?

A SMART CHOICE IN A NEW ERA
John Paul Zammit of Mamo TCV Advocates highlights the challenges the AIFM Directive will pose to the European fund management space.

AN EARLY PIONEER STANDING TALL
Andrew Frankish of IDS talks about how, through the Knights of Malta funds platform and the Lions of Africa, Malta has broadened its options for funds.
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n structuring the setting up of funds in Malta, advisors and promoters spend substantial time discussing the most appropriate vehicle to be used. This discussion generally revolves around what options the legislative framework provides, the expectation of potential investors, the type and location of the underlying investments, the methodology utilised to realise a return on the investment as well as the location and regulatory status of the fund and its service providers.

Traditionally, investment funds set up in Malta have used the investment company with variable share capital vehicle and, to a large extent, these structures continue to be commonly used. This is primarily due to the fact that advisors, regulators and competent authorities are accustomed to the nature and permutations of such a vehicle. The investment company, while providing a suitable structure for most types of funds, might not always be the most appropriate or commonly used vehicle from an international perspective. For instance, in jurisdictions traditionally known to attract private equity funds, such as the UK and the US, the structure used to date is the limited partnership, a structure which has its grounds in the historical evolution of private equity funds generally.

The limited partnership is, and has been for a while, an available structure for the fund community in Malta. The Maltese Companies Act regulates, among other matters, the use of limited liability companies (including investment companies with variable or fixed share capital) and limited partnerships. Until recently, however, the use of limited partnerships in the context of funds was restricted to limited partnerships the capital of which is divided into shares. Nevertheless, pursuant to recent amendments to the Companies Act, limited partnerships that do not divide their capital into shares may now be used as a fund vehicle. Through such amendments, limited partnerships are largely brought in line with the legislative framework already applicable to investment companies with variable share capital.

A limited partnership under Maltese law operates under the partnership name and has its obligations guaranteed by the unlimited and joint 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. It is not permissible for the limited partner to perform any act of administration or transact on behalf of the limited partnership except by virtue of a power of attorney specific to an act or transaction, the contravention of which exposes the limited partner to expulsion and to unlimited liability.

MULTI-CLASS AND MULTI-FUND PARTNERSHIPS
Within the particular context of fund structures, limited partnerships may also be constituted as multi-class partnerships or multi-fund partnerships. In the latter case, the capital is, or is capable of being, divided into different classes of units or shares being offered as different units or shares not constituting sub-funds. On the other hand, it is also possible for a limited partnership to be constituted as a multi-fund partnership where the different units or shares constitute distinct sub-funds of the partnership. In each case, the units may be issued with different currencies. As is the case with multi-fund investment companies, the sub-funds of a limited partnership are allocated assets and liabilities which are distinct from other assets and liabilities allocated to other sub-funds. The fact that the assets and liabilities of each sub-fund are deemed, by operation of the law and the deed of partnership, to have separate and distinct patrimonies amongst them is often crucial to potential investors in order to ensure that their investment is adequately ring-fenced. Furthermore, the recent amendments to the Companies Act have also sought to ease the operational aspects of a limited partnership, with a view to creating a level playing field with investment companies.

While amendments to the Maltese Companies Act...
were required to make the Maltese limited partnership vehicle more attractive to the fund community, the regulatory regime of funds already contemplated the use of limited partnerships for funds, including private equity funds. The most appropriate form of licensing regime available in Malta for private equity funds is the professional investor fund (PIF) targeting extraordinary investors. The regulatory framework seeks to ensure a sufficient level of regulatory overview by the Malta Financial Services Authority (MFSA) without impinging upon the flexibility that each specific fund may require to suit the needs of the professional investor community. The minimum amount of investment required in this fund is €750,000 or $750,000 and each investor is required to certify that he or she has the necessary level of experience to be considered an extraordinary investor. The appointment of a general partner of a PIF must be approved by the MFSA. However, if a general partner is already regulated in a recognised jurisdiction, the due diligence carried out in his respect is reduced substantially. The rules require a general partner to be either a person which is locally licensed as a fund management company, a person resident outside Malta who is of sufficient standing and repute and who provides fund management services, any other entity of sufficient standing and repute as approved by the MFSA, or any other individual who satisfies the fit and proper test. In the latter two cases, the MFSA requires that an acceptable fund manager be also appointed.

The PIF for extraordinary investors does not have any regulatory imposed restrictions on its investments, its borrowing or leverage powers and are not required to appoint a custodian or prime broker provided proper arrangements for the safekeeping of its assets are maintained by the fund. Such types of PIFs are generally subject to a faster licensing process and benefit from reduced disclosure requirements. The promotion of such funds may be made only to extraordinary investors. However, if active promotion of the same is to be made using mass media, the advertisements are to state that the fund is only available to persons that qualify as extraordinary investors rather than the general public.

A SOLID OFFERING
Malta’s success in the fund community has been evidenced largely as a result of the middle-tier PIF, that is PIFs targeting qualifying investors who have a lower amount of minimum investment but who benefit from a higher level of regulation, albeit substantially less than a retail fund. To my mind, Malta ticks all the right boxes and ought to offer an adequate set up and licensing regime to private equity funds.
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Over the millennia, Malta has adapted its role according to the prevailing mood of the time. It has evolved over the years from a trading post during the Phoenician period, to a stronghold of the Knights of St John, and, via a military garrison in later years, into its modern day incarnation as a tourist destination. While tourism still makes up 35% of the country’s GDP, great efforts have been made recently to further develop and establish Malta as a European financial centre to be reckoned with. These efforts are indeed bearing fruit, with Malta being ranked the 21st financial centre in Europe according to The Global Financial Centres Index published in September 2010.

Malta had close economic links with Europe for many decades and these were strengthened when it joined the EU in 2004. Being a member of the EU has helped Malta weather the financial storms of 2008-09, mainly due to it joining the Eurozone in January 2008, which in turn removed any concerns from investors within the EU regarding currency fluctuations. The effects of the financial crisis of 2008-09 have not been as severe as in other countries, mainly because most of the Maltese banks’ funding is sourced from local investors and is not heavily leveraged, while the banks themselves practice a more traditional form of lending based on classic credit principles.

Financial services make up about 12% of the country’s GDP and the authorities aim to increase this share to 25% by 2015. The enactment of new legislation, which has brought the country in line with EU directives in recent years, has laid the foundations for making this vision a reality. The exemption from tax on income (on non-prescribed funds) and capital gains is an attractive feature of the local financial regime. Malta has double taxation treaties with over 53 countries. English and Maltese are the official languages, but Italian is also widely spoken, followed by French and German. It is often mentioned, but bears repeating, that institutions like the Malta Financial Services Authority (MFSA) are highly approachable and meetings can be set up promptly. In fact, this ‘can do’ attitude permeates the whole of the financial services industry in Malta.

The MFSA is the regulator of financial services and supervises duties formerly handled by the Central Bank, the Malta Stock Exchange and the Company Registry. It is a successor to the Malta Financial Services Centre, which in turn superseded the Malta International Business Authority as the principal driver in setting up the present financial services sector. The process of setting up a fund in Malta may take up between 6 and 8 weeks, of which about 7 working days are required to obtain the licence from the MFSA. The average cost of regulatory fees is about €3000 ($4121) on authorisation and about €2000 ($2747) annually. The costs of setting up a business in Malta are low compared to other financial centres.

The quality of life is on par with other EU countries. Malta was last week (January 2010) ranked the third-best country in the world to live in by International Living magazine, an American publication which promotes the idea of living abroad.

The fund administration business is serviced by around 15 key companies in Malta. Calamatta Cuschieri Fund Services (CCFS) is a 100% subsidiary of Calamatta Cuschieri & Co which operates under a category 3 licence and is a founding member of the Malta Stock Exchange, as well as a pioneer in investment broking in Malta. In the light of increasing interest from foreign fund managers looking to re-domicile existing funds in Malta, or launch new funds to take advantage of the low tax regime, the parent company decided to launch its own fund administration business. CCFS can handle a variety of fund administration-related services, including accounting, Nav calculation, transfer agency, compliance and company secretarial services. Funds registered in Malta are not obliged...
to have a locally based administrator (and the same applies for fund managers and custodians) but about half of them opt to do so. This is a certificate of confidence in the quality of service of the local providers.

**TYPES OF FUNDS**

Funds can be set up under the following types of legal structure:

- Investment Companies with variable/open ended (Sicav) or fixed/close ended (Invco) share capital;
- Limited partnerships;
- Unit trusts; and
- Contractual funds.

Most funds set up in Malta fall under the Sicav structure. Collective investment schemes can be licensed as either retail funds (Ucits and non-Ucits) or professional investment funds (PIFs), which are an ideal vehicle for hedge funds, funds of funds, property funds and private equity funds. PIFs are not intended to be marketed to the general public and therefore they tend to have fewer restrictions and their conditions are more flexible. PIFs can also be authorised in three categories, depending on the experience and sophistication of the investor and the level of the required protection:

- Experienced investor funds;
- Qualifying investor funds; and
- Extraordinary investor funds.

A professional investment fund for experienced or qualifying investors is required to publish an offering document (a prospectus is optional) with the information detailed in the regulations. A professional investor fund for extraordinary investors, however, may publish a marketing document or an offering document with the specified information.

A fund in Malta is defined as ‘prescribed’ if more than 85% of the assets are situated in Malta, and ‘non-prescribed’ if otherwise. Non-resident investors of non-prescribed funds are not charged any withholding tax on dividend income, while the funds themselves are not charged tax on investment income.

Malta’s success as a competitive financial centre relies on key areas: the taxation regime, including the double taxation treaties; the economic and business freedom of the country; government support for the financial services industry; transparency and predictability of regulations and reputation and facility of communication. In addition, these factors are underpinned by an experienced and qualified workforce. All of the big four accounting firms are represented, as well as a host of second-tier firms. There are also about 55 legal firms, most of whom have connections with London-based firms.

As the fund business in Malta grows, international fund administrators have shown an interest in linking up with local operators as a low-cost option to setting up their own unit. Without a doubt, the combination of foreign players’ international expertise and Maltese operators’ local know-how will result in cost savings which may be passed on to the client.
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THE MALTA OPTION IS ‘IN-THE-MONEY’

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Fund managers don’t like surprises. It is this aversion to anything unknown that has caused the more ‘traditional’ financial centres like London, Luxembourg, Ireland and Switzerland, as financial centres toward which fund managers have gravitated and established themselves over the past 20-odd years, to boom. However there is nothing quite like a financial crisis and increased tax burdens in many of these European financial centres to provoke fresh thinking and new solutions to address these challenges.

Enter Malta: an island sovereign state situated just 93 kilometers south of Italy, a full Member State of the European Union since 2004 and part of the Eurozone since 2008. The island’s ambitions to establish itself as a leading financial centre of excellence find their origin in the early 1990s, at which time volumes of financial legislation were enacted to build what is now the backbone of a modern, forward-looking and robust legal system which is fully compliant with EU Directives and Regulations. Indeed as an EU Member State, Malta actively participates at every level of the EU’s institutions to contribute towards the on-going development of the European legislative and regulatory landscape and ensure that the island’s booming financial services sector is permitted to grow within a legal framework intended to create opportunity, rather than stifle it.

The Malta Financial Services Authority (MFSA) is the single super-regulator of all financial services and was formally established in 2001; effectively merging the regulatory and supervisory functions formerly conducted by the Malta Financial Services Centre, the Central Bank of Malta and the Malta Stock Exchange. Its regulatory remit spans across the financial sector including banking, investment services, hedge fund regulation and insurance. The Registry of Companies and the Listing Authority are also housed within the MFSA premises, bringing all the key regulatory organs under one roof, thereby improving communication between them.

THE TURNING POINT
Malta’s EU membership in 2004 has been the single most significant milestone in placing the jurisdiction on the same ‘map’ as other major European financial centres, namely London, Ireland and Luxembourg. On the basis of this development, stakeholders seeking the benefits of EU harmonisation in the financial services field were able to look at the Maltese option which, when considered in the light of the island’s attractive fiscal framework, a network of almost 60 double taxation agreements, availability of the highest standards of professional support and personnel, and the fact that all business is carried out in English, collectively provide an offering which cannot be discounted or discarded before serious consideration.

Then there are the lifestyle-related considerations, including the warm climate and the low crime rate, which make it a very safe place to live. Furthermore, the island’s strong work ethic provides managers and other employers with a pleasant surprise, contrasting sharply with the stereotypical idea of Mediterranean attitudes towards work. Of course much of this work ethic is attributed to the legacy of Malta’s 164 years under British rule, between 1800 and 1964.

TIME TO STRIKE
All of these factors have caused Malta to gain ground as the jurisdiction of choice for fund managers and it looks like this trend will continue to pick up momentum in the years to come. Whilst EU-wide growth figures in the fourth quarter of 2010 failed to meet the expected performance levels and the whole of Europe currently sits on the verge of a much speculated ‘double dip’ recession, Malta has experienced a real economic boom, with a tangible increase in the number of fund managers deciding to move their operations to Malta in 2010.

According to MFSA figures there were 48 fund managers licensed in Malta in November 2010 and indications suggest that the number of fund management licences issued in 2010 is likely to be exceeded in 2011. This growth potential is further galvanised by the fact that some of the heavyweight service providers are beginning to establish
a degree of presence on the island: Deutsche Bank has been licensed to act as a custodian in December 2010 and there is much talk of the possibility that BNY Mellon and State Street will follow suit imminently. The demand for more Malta-based custodians is evidently on the increase and it is inevitable that the upward curve in Malta-registered funds will provide further opportunities for players in this space.

It is not only the quantity of Malta-licensed managers that have increased but also the quality of such applicants which has been notable. Quality is indeed the thrust of the island’s current efforts across the financial services industry and whilst the MFSA applies a very welcome ‘open door policy’ providing licensees and prospective licensees quick and easy access to the regulators, the rigorousness of the Authority’s compliance visits ensures that licensees maintain the highest standards of practice in conducting their business from Malta. The emphasis on quality also permeates: the working relationships developed with professional advisors entrusted to structure, implement and support the regulated entities; the high levels of educated personnel available from amongst the islands 400,000 inhabitants; and the increasing number of experienced expats moving to Malta from other financial services centres.

Interestingly, in a recently published survey (International Fund Investment: The future of manager migration, fund servicing and domiciliation in the Mediterranean: The alternative to Ireland & Luxembourg?, October 2010), circulated amongst UK-based fund managers focusing on alternative jurisdictions to Ireland and Luxembourg for fund-management, fund servicing and fund domiciliation, Malta fared as the best known Mediterranean fund domicile, with managers looking to use Malta either as a base for their funds or as a place to open an office, or both.

With specific reference to manager migration, 62% of the managers interviewed indicated that they may move their operations out of the UK and, of those, 23% indicated that the move would be made by the end of 2012. The reasons for relocation were unsurprising, making specific reference to increased taxation, AIFM Directive pressures, proximity to investors and remuneration-related pressures, as the main motivators, in that order of priority.

In the context of this trend, Malta’s proposal to introduce a flat personal tax rate of 15% on income to attract foreign specialised workers couldn’t come at a better time to help attract significant new talent to fill specialised positions in the industry. This development is expected to be implemented in the first half of 2011 and is awaited with much anxiety by stakeholders. Unofficial indications also suggest that income in excess of €5m will be exempt from Maltese tax, however all of these details will only be certain once the relative legislative instruments are implemented and given the force of law.

The message from all of this seems adequately clear: Malta is open for business and the time has never been riper for fund managers to strike. This island state has sufficiently proven that it possesses all the critical components required to secure itself as a centre of excellence for financial services within the EU.
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DERMOT S. L. BUTLER OF CUSTOM HOUSE ASKS THE ALL IMPORTANT QUESTION, IS THE MALTESE PIF A MORE ATTRACTIVE HEDGE FUND VEHICLE THAN THE UBQUITOUS UCITS FUND?

In the context of 'offshore' or what is today better described as 'non-domestic' fund and financial services centres in Europe, Malta is a relatively recent entrant to the market. For many years, Luxembourg ruled this particular roost, particularly in the context of money market and long-only SICAVs (Euro-speak for a mutual fund). It was the former that attracted the now famous (or rather, infamous) Belgian dentist, who slipped across the border from Belgium into Luxembourg and made his cash (and tax efficient) deposit into a Luxembourg money market fund.

Why the Belgian dentist was picked on, instead of a German GP or French pharmacist, I will never know. Be that as it may, Luxembourg was, for many years, fairly smug (and justifiably so) in its lead position. It tended to ignore Dublin in the late 80s and early 90s, as the upstart centre that was promoting both the Irish Stock Exchange listed fund and the hedge fund.

It was about five years ago that Luxembourg woke up to Dublin's lead in the hedge fund area and introduced the SIF, or Specialised Investment Fund. The 'SIF', which was ideally suited for hedge and other alternative investment funds, including real estate, private equity and private funds for family offices. Since the introduction of the SIF, over a thousand SIFs have been launched, with probably close to 50% being existing funds that were reorganised and the balance being a new product. In the meantime, Ireland had been promoting, somewhat successfully, its own sophisticated or professional investor fund – the 'QIF' (Qualifying Investor Fund) – when Malta entered the market and introduced its PIF, or 'Professional Investor Fund'. There is, in all honesty, little difference between the SIF, QIF and PIF (which I am going to collectively describe as the 'IF'), except perhaps cost. They are all products of EU member states and, therefore, subject to both domestic and EU regulation. In today's market environment, this factor is, in itself, an attraction.

In the past couple of years, there has been a trend – particularly in the context of money market and long-only UCITS (Mutual fund). With regard to UCITS, the MFSA has given a formal commitment that it will respond to an application within seven days of its submission, providing all external parties are based and regulated in recognised jurisdictions. In 2007, the MFSA took this concept further by introducing a new category of PIF aimed at 'Extraordinary Investors', giving a formal commitment. The MFSA gave a formal commitment to respond to applications for an Extraordinary Investor PIF within three days, again, pro-
viding the service providers were based and regulated in recognised jurisdictions. There are particular definitions and financial qualifications for the Experienced Investor, the Qualifying Investor or the Extraordinary Investor, which I can personally supply on request.

- There are no investment restrictions on PIFs targeting Qualifying or Extraordinary Investors, but an Experienced Investor PIF may not leverage its position by more than 100% of its net asset value.

- As mentioned above, service providers must be established and regulated in a ‘Recognised Jurisdiction’, which include EU and EEA member states, signatories to a Multilateral or Bilateral MoU with the MFSA and signatories to a Bilateral MoU with the MFSA.

- It is interesting to note that none of the service providers to a PIF are required to be based in Malta and the MFSA may accept a service provider which is not established or regulated in a recognised jurisdiction, but is a subsidiary of a firm that is.

- Where all service providers are based outside Malta, then the PIF must appoint either a local resident director, general partner or trustee, or a local representative.

The application procedure is fairly straightforward, but it is important to note that, as with almost any regulatory authority, the efficiency of the application will be impaired if it is submitted without all the other documentation required, including: a near-final draft of the offering document, memorandum, articles and other constitutional documents; appropriate board resolution sand details, including personal questionnaires for the Directors of the fund and the service providers; and details of the local representative, as required/applicable.

- The structure of a PIF can be very flexible. Indeed a PIF can be established, under Maltese law, either as an open-ended or closed-ended fund, which can be a SICAV, or any other legal corporate entity, unit trust or limited partnership. The SICAV is probably the most popular structure for hedge funds and it can be structured to include Master Feeder funds and umbrella funds with each sub-fund having fully segregated portfolios, which eliminates what I call the ‘Amaranth Syndrome’ – for example cross-collateral risk.

- Finally, it should be noted that, as already stated, the cost of establishing and running a straightforward Maltese PIF is usually noticeably lower than a SIF or QIF and is a very attractive vehicle for the international investment manager wishing to market their funds into Europe.

The last question that some readers may ask is why Malta? Who knows about it? This was a very valid question five years ago, but Malta’s profile and name recognition has improved exponentially since then. In fact, I recently read that more managers have ‘emigrated’ from the UK and non-EU countries into Malta than have moved into Luxembourg, Dublin or even Switzerland. For UK managers, it is likely that this decision was based on the draconian tax imposed upon hedge fund managers by the Darling-Brown coalition and which has not been repealed yet by Mr. Cameron (and this is unlikely to happen for several years, given his delicate political status). However, the move by managers from other jurisdictions outside Europe into Malta has been a conscious decision to establish a presence within the EU, and more have chosen Malta than anywhere else. That, I suggest, answers the name recognition question. Today, managers are very sensitive to investors’ concerns about matters such as jurisdiction, and both the financial and political stability of that jurisdiction and this trend has shown that Malta has gone a long way to meeting those concerns.

The source of the information in this article is based on reports received from various lawyers but should not be relied on as legal advice by any reader.
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Eyes see opportunity
where minds comprehend
Several factors have contributed to rendering Malta an interesting fund jurisdiction for managers seeking to re-domicile their offshore and even their onshore fund structures to an EU jurisdiction,” says David Griscti, founder and lead partner of David Griscti & Associates, a leading law firm in investment services practice. He adds: “Malta’s EU membership and political-financial stability, its legal and regulatory framework and approach, excellent service provider levels, as well as international financial and regulatory developments, have all converged to enhance the island’s standing as a reliable and efficient fund jurisdiction in the EU.”

Omar Zerafa, a legal Associate at the firm, feels that the Maltese regulator (MFSA) anticipated the current trend of re-domiciliations from offshore jurisdictions. “By embarking on a process, way back in 1994, to restructure the Maltese legal regime, the regulator successfully created a flexible yet robust regime that can easily accommodate all internationally known investment fund structures, whether they are established as new funds in Malta or are being re-domiciled to Malta,” says Dr. Zerafa.

“A KEY ISSUE TO consider, when initiating a re-domiciliation process, is the similarity or otherwise to Maltese corporate fund structures of the foreign body corporate requesting re-domiciliation,” says Alexia Busuttil, manager (investment services) at the firm. Clint Benetti, a legal associate at the firm, says that the process of re-domiciliation involves two processes, as the company would need to apply with the Maltese Registrar of Companies to be registered as ‘continuing’ into Malta, while concurrently lodging an application for a Collective Investment Scheme License with the MFSA. “Submission of these applications is preceded by a preliminary process where-in the constitutive and fund documents are reviewed and amended to meet the requirements of Maltese Law. These, together with various declarations and confirmations are submitted to the Registry of Companies and the MFSA for final approval,” says Dr. Benetti.

According to Alexia Busuttil, manager (investment services) at the firm, some of the requirements for re-domiciliation include:
• the fund seeking re-domiciliation to Malta must be incorporated in an approved jurisdiction; 
• continuation of a fund must be allowed under the laws of the foreign jurisdiction and by the statute of the fund; 
• foreign funds seeking continuation in Malta would be subject to Collective Investment Scheme licence conditions, and other local rules and regulations applicable in Malta; 
• a number of documents and confirmations would need to be presented to the Registry of Companies and the MFSA.

Among these, the foreign fund must provide evidence that it has given formal notice to the competent Authority of the foreign country of its intention of continuing into Malta, and that there are no open or anticipated proceedings for any breach of the laws of the jurisdiction of origin.

CLINT BENNETTI, a legal Associate at the firm, adds that following a review of documents submitted, the Registrar of Companies will issue a Provisional Certificate of Continuation. The fund licence will be issued concurrently by the MFSA. Once proof of de-registration in the foreign country is re-
ceived the Registrar will issue a final Certificate of Continuation. “At this stage the company will be deemed to be registered in Malta under the Maltese Companies Act,” says Dr. Bennetti. David Griscti, lead partner at the firm, adds that the licensing process runs parallel to that of continuation; however, the Maltese fund licence may be issued as early as the date of issue of the Provisional Certificate of Continuation, so commencement of fund operations in Malta need not wait till the issue of the final Certificate of Continuation.

DISCUSSING THE BENEFITS of re-domiciling to Malta, Omar Zerafa, a legal Associate at the firm, feels that EU membership was key. “Malta’s accession gives investment funds licensed in Malta, including those continued into Malta, the benefits inherent in the EU’s increasingly single market approach,” says Dr. Zerafa. “Moreover, the Maltese legal system is very dynamic, allowing several options for those seeking the re-domestication of retail and professional investor funds to Malta, and the Maltese regulator encourages a strong relationship with fund promoters and works hand-in-hand with the parties involved to ensure a smooth transition,” concludes Dr. Zerafa.

MARK BUSUTTIL, MANAGER investment services at the firm, offers his views on those areas that, in his opinion, fund promoters focus on prior to selecting Malta as the fund’s new tax domicile. “When looking at Malta as a possible jurisdiction, fund promoters examine the tax consequences for the fund, the investors, the fund manager and, where applicable, the taxation of dividends and income earned from investments in other jurisdictions. The fact that the fund, if non-prescribed, is exempt from tax, coupled with the possibility of using special purpose vehicles under the fund structure, and accordingly gaining access to Malta’s wide double tax treaty network, is normally sufficient to accommodate the fund’s tax efficiency targets,” says Busuttil. He adds that fund managers also tend to avail themselves of Malta’s full imputation tax system contemplated under Malta’s Income Tax Act and Income Tax Management Act, should they also decide to re-domicile to Malta or indeed set up a new Malta licensed Fund Management Company.

Mark Busuttil adds that there are other areas which promoters typically look at before initiating the re-domestication process, the most relevant being issues relating to audited financial statements. “The local Investment Services Act requires re-domiciled funds to present the last set of audited financial statements prior to the issuance of the provisional certificate of continuation and the collective investment scheme licence for the re-domiciled fund,” says Busuttil. He adds that as an ongoing obligation the fund must present audited financial statements within four months from the financial year-end. “Moreover, local company law requirements stipulate that international financial reporting standards should be adopted as a basis for the preparation of audited financial statements of a collective investment scheme licensed in Malta, and this is an aspect that needs to be properly analysed by fund promoters looking to re-domicile their funds into Malta,” concludes Busuttil.

DAVID GRISCTI, FOUNDER and lead partner of the firm, feels that Malta is well placed and well prepared to actively participate in the current trend favouring re-domiciliations to EU member states. “We have the jurisdictional and professional tools in place to handle this business,” says Dr. Griscti. He adds that the firm he leads was one of the pioneers in Malta’s development as an international fund jurisdiction, and is today one of the leading firms in the field, thanks to a dedicated, multi-disciplinary, professional team. “In the field of re-domestications, but in general in the investment fund and fund management sectors, David Griscti & Associates has significant experience, having advised and assisted a large number of premier international clients to re-domicile their funds to Malta, or indeed establish new investment funds or fund management companies in Malta,” concludes Dr. Griscti.

“MOREOVER, THE MALTESE LEGAL SYSTEM IS VERY DYNAMIC, ALLOWING SEVERAL OPTIONS FOR THOSE SEEKING THE RE-DOMICILIATION OF RETAIL AND PROFESSIONAL INVESTOR FUNDS TO MALTA”
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THE EU ADVANTAGE

PAUL MIFUSD OF SPARKASSE BANK MALTA TALKS TO HFMWEEK ABOUT HOW THE BIG ADVANTAGE POINT OF BEING AN EU MEMBER OFFERS MALTA THE OPPORTUNITY TO PROCEED AS A SUCCESSFUL FUND DOMICILE.

The growth of the hedge fund industry in Malta is fuelling demand for the provision of custody services in the jurisdiction, with the MFSA recently commenting that the future development of the financial services sector in Malta was reliant on the availability of these services.

HFM Week speaks to Paul Mifsud of Sparkasse Bank Malta about the development of custody services in the jurisdiction and the funds sector as a whole.

HFM Week (HFM): How are efforts being made to improve custody services in Malta? Are there any major catalysts in the industry at present which will enhance the standard of custody services currently available across the country?

Paul Mifsud (PM): There are currently four major players in the custody market in Malta, Sparkasse bank being one of them. All the larger banks will of course have ties with their parent companies, each of which will have a global footprint, allowing the bank’s currently present in Malta access to what we refer to as ‘global custody’. In order to further improve the choice of custody services available, Malta is trying to attract more bank’s to be able to provide this service locally, and the existing banks are pooling the resources available to them from their parent companies to offer international and global clout. The increase in business from the hedge fund industry has in turn driven the demand to achieve efficiency and quality of service. Business has also become increasingly onerous, mainly because we are also seeing Malta pitching for Ucits structures which demand higher levels of regulation and compliance. People in the business understand the high degree of expertise required to provide custody services, and the enhanced standards of service being provided on Malta.

HFM: What are the benefits of keeping Ucits and other onshore structures in Malta? Looking forward, how do you expect this to benefit custody services in Malta in the future?

PM: A Ucits structure could be set-up in any European jurisdiction, but we feel that Malta is a unique proposition in terms of language and speed to market. The regulator is also very efficient in vetting paperwork and has a very pro-business attitude, and of course there are also tax benefits available to structures that are registered in Malta at the moment. One of the major benefits, and a contributing factor to the growth of custody services in Malta, is that both the Ucits III and IV directives as well as the AIFMD Directive require the appointment of a local custodian or a depository where the fund is domiciled. As a result, we feel that regulation is very much on our side.

HFM: What is the future for Malta as a domicile? Do you foresee any developments on the horizon for the coming year, for example, with regard to regulation in the region?

PM: Malta has always been very proactive and nimble in adopting regulations and directives that have been agreed to at EU level. In fact, Malta was one of the first countries to fully implement the Markets in Financial Instruments Directive (MiFID) when it was launched, and I believe Malta will remain a key player in the financial services sector in the years to come. Admittedly we have not been in the business long enough for us to have had any blow-outs, so from a reputational point of view we are still completely unscathed and untarnished. As the business grows it will be inevitable that you have a couple of mishaps, but for the time being we have not had any. Moving forward, the government and parliament has actually classed the financial services industry in Malta to be one of the pillars of the economy, aiming to derive 25% of GDP over the next couple of years from this sector. With this kind of support, it is inevitable that the financial services sector in Malta will continue to make massive strides forward.

HFM: How can hedge fund managers benefit from setting up their funds in Malta, as a domicile which is a
member of the EU? How do you expect this to continue in the future?

PM: The EU is a major contributing factor to the success of Malta and its financial services sector, despite the fact that the EU is under a lot of pressure at the moment with the sovereign debt crisis. Overall, however, our participation within the EU as a fully fledged member has helped us with what I would term ‘equality of recognition’; that is to say you are part of a group, you adhere to certain directives, certain legislation, regulations and so on. I find it very difficult to see how Malta would have succeeded without having been a member of the EU. It is also a major selling point for the jurisdiction, a manager can passport his service from Malta to any other EU country, for example. I believe the fact that we are part of the EU is one of our main assets.

HF: Over the next three years, what do you believe will be the major trends for fund services in Malta, and how will Sparkasse align itself to meet these challenges?

PM: One of the biggest challenges that we will eventually face will be that of human resources. Also, as the industry becomes increasingly focused on compliance and regulation, I believe the industry will need to re-assess its risk management policies and the human resources involved in these sectors. The legislation and the directives are constantly changing, and as a result banks and larger institutions will have to beef up their own internal legal departments, because the amount of legal work thrown at the banking industry today is almost unreal. In Malta, there may be further challenges in terms of logistics, office space and so forth. On the positive side, there will be surplus demand rather than a surplus supply of services locally. In the next three to four years, we should see the industry continuing to boom. Malta tends to benefit from the misfortunes of others, and we have picked up quite a lot of new business as a result of the failings of other jurisdictions.
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The Maltese Investment Services Act, Chapter 370 of the Laws of Malta, provides for the licensing of both open-ended and closed-ended collective investment schemes. The open-ended scheme is certainly more popular, but the closed-ended investment fund also offers a number of advantages. It is therefore pertinent to consider these advantages, together with the different legal forms available under Maltese law which may be used to structure a closed-ended fund and the possibility of passporting the prospectus of a closed-ended fund in terms of the EU Prospectus Directive (Council Directive 2003/71/EC).

A closed-ended fund offers greater flexibility in the selection of investment instruments to be invested in the fund. Such flexibility is achieved by reason of the limited redemptions which characterise closed-ended funds and which therefore allow fund managers to concentrate on the portfolio structuring rather than the fund’s liquidity position. Closed-ended funds have a lower expense ratio when compared to open-ended funds and also offer the possibility of an additional return. In fact, units of a closed-ended fund are ordinarily traded on an exchange, whereby the share price often varies from the fund’s net asset value.

A closed-ended fund licensed as a collective investment scheme by the Malta Financial Services Authority (MFSA) may acquire the form of an investment company, a partnership in commandite or limited partnership, a unit trust or a contractual fund. The INVCO or investment company with fixed share capital. Two of the these requirements provide that the INVCO must be a public company, and that the business of an INVCO consists either of:

(a) investing in funds mainly in securities with the aim of spreading risk and giving members of the company the benefit of the result of the management of its funds; or

(b) acting and operating as a retirement fund within the meaning of articles 2 and 4 of the Special Funds (Regulation) Act, Chapter 450 of the Laws of Malta.

The other requirements contemplated by Article 194(6) of the Companies Act refer to the investment company’s holdings, the distribution of capital profits and the retention of income derived from securities.

Another vehicle available under Maltese law which can be used to structure a closed-ended fund is the partnership in commandite or limited partnership. The provisions of the Companies Act, coupled with the Regulations for Partnerships en Commandite or Limited Partnerships (Part I of the Tenth Schedule of the Companies Act) establish the legal framework of this investment vehicle. The recent amendments to the limited partnerships regulations will also result in an increased flexibility of this investment vehicle and seek to establish a level playing field between the limited partnership and the SICAV.

Other legal structures which may be utilised are the unit trust and the contractual fund. It is also important to note that the local regulatory framework does not prohibit the use of a SICAV structure in the context of a closed-ended fund, despite such a structure being modelled to fulfil the role of an open-ended fund. This has led to a practical development, whereby features ordinarily associated with a closed-ended fund, such as a lock-in period for investors, have been entrenched into a SICAV structure to develop a hybrid closed-ended fund.

**CLOSED-ENDED FUNDS: THE MALTESE PERSPECTIVE**

**SIMON TORTELL** OF SIMON TORTELL AND ASSOCIATES MAKES THE CASE FOR CLOSED-ENDED FUNDS, AN OPTION THAT IN HIS OPINION NEEDS SOME ATTENTION IN THE MALTESE FINANCE SPACE.

Dr. Simon Tortell was a founding partner of the firm Grech Vella Tortell & Hyzler Advocates before setting up Simon Tortell and Associates in 2009. He has over 20 years of experience, mainly in the fields of investment funds, financial services, corporate law, and trusts and acts for various local and international clients.
hybrid investment vehicle may prima facie seem to offer greater flexibility and access to a better structured and more developed Sicav regime but is certainly not the ideal situation. In fact, a closed-ended fund structured as a Sicav does not benefit from the passporting rights available in terms of the Prospectus Directive.

Indeed, Article 1(2)(a) establishes that the Prospectus Directive is applicable to units issued by collective investment undertakings of a closed-ended type. This Directive has two main purposes:

(a) it creates common disclosure standards for public issues of securities throughout the EU, and
(b) it harmonises the requirements relative to the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.

The exercise of passporting rights by a closed-ended scheme established under Maltese law is set out very clearly in Regulation 9 of the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations. Regulation 9(1) provides that where a Malta-based closed-ended scheme whose prospectus and supplements thereto have been drawn up in accordance with the Prospectus Directive wishes to offer units to the public, in one or more host Member States or EEA States, the MFSA shall, at the request of the scheme or the person responsible for the drawing up of the prospectus, provide the European regulatory authority of the host Member State or EEA State with a certificate of approval attesting that the prospectus and its supplements have been drawn up in compliance with the Prospectus Directive. The time frames within which the certificate of approval is issued are short in order to make the passporting process as efficient and attractive as possible.

CALL FOR ACTION

It is clear that the Maltese closed-ended fund regime offers a number of opportunities which have, however, failed to replicate the success of open-ended funds due to the lack of a well-structured regulatory regime.

“IT IS CLEAR THAT THE MALTESE CLOSED-ENDED FUND REGIME OFFERS A NUMBER OF OPPORTUNITIES WHICH HAVE, HOWEVER, FAILED TO REPLICATE THE SUCCESS OF OPEN-ENDED FUNDS DUE TO THE LACK OF A WELL-STRUCTURED REGULATORY REGIME”

consolidation of the regulatory provisions relating to closed-ended funds in the Maltese Investment Services Rule Book, the drafting of specific rules applicable to this type of collective investment schemes together with the promotion of the passporting rights available under the Prospectus Directive are certainly areas which should be explored by the MFSA in order to add further momentum to the Maltese closed-ended fund regime.

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Kenneth Farrugia of Bank of Valletta summarises the benefits the AIFM Directive and the planned EU passport for alternative investment funds offers to managers looking at Malta as a base.

The European Parliament vote on November 11 to approve the EU’s Directive on Alternative Investment Fund Managers (AIFM) brought to fruition over a year and a half of lobbying and unending debates, which have in many instances ended acrimoniously. This development was very much welcomed by the funds industry in Malta as it will surely contribute to its continued growth. So far, this growth was spearheaded by the registration in Malta of various Professional Investor Funds falling under the Professional Investor Funds (PIF) regulatory framework introduced by the Malta Financial Services Authority, Malta’s single regulatory body, in the year 2000. The PIF framework, which consists of three fund typologies, is in effect a highly comprehensive and flexible framework which allows for the setting up in Malta of various fund strategies which, among others, includes alternative investment funds, private equity, venture capital as well as real estate funds. Currently there are over 400 investment funds registered in Malta, primarily consisting of PIFs with the additional inclusion of UCits III schemes as well as retail non-UCits funds. The regulatory framework is supported with an equally comprehensive legal framework allowing such funds to be set up as Sicavs, Limited Partnerships, Trusts and Contractual Funds.

Harmonising the market

The new Directive is very much underpinned by the need to have in place a homogenous and highly regulated framework across all the European Union. The introduction of this Directive will invariably bring with it the proper management of systemic risk in the hedge fund space through the monitoring and management of both macro and micro prudential risks. This new Directive poses various implications on fund managers and professional investor funds depending on their country of domicile; such as whether they are EU based or otherwise in the case of a fund based in the EU managed by a non-EU fund manager and vice versa. In fact, as from 2013 the Directive as revised will enable EU-based hedge fund managers to freely passport their EU based funds to professional investors throughout the EU, this very much mirroring the freedom of passporting of UCits funds to retail investors across all EU member states.

In addition, from 2015 EU managers managing funds domiciled in non-EU jurisdictions, as well as non-EU managers, will be able to passport their funds to Europe. Non-EU managers will, of course, need to be domiciled in what is termed as a designated ‘member state of reference’. This status will require the compliance of non-EU fund domiciles with various requirements in areas such as regulatory co-operation, anti-money laundering and terrorist financing measures, as well as the necessary arrangements to be in place facilitating tax information with EU member states.

It is highly likely that non-EU based fund managers will find it easier to establish their funds in mainland Europe rather than trying to comprehend the intricacies behind the determination of whether the offshore jurisdiction meets the criteria of the EU. For example, if a non-EU fund manager were to offer a fund based in an offshore jurisdiction to EU investors, the non-EU manager will need to ensure compliance with the AIFM Directive and will consequently be subject to the oversight of ‘a member state of reference’. Moreover, the aforementioned conditions would need to be in place between the offshore jurisdiction and every EU market into which the manager might wish to market his fund. On the other hand, if the fund is based say in Malta, Malta being the member state of reference, the aforementioned conditions would not apply. To access investors in multiple EU markets, the manager would simply have to submit a notification file to the Malta Financial Services Authority (MFSA) and if all the necessary terms are in place, the fund may be sold to investors within a maximum 20-day period. This
procedure in essence matches the UCITS passport and is set to introduce an AIFM passport for alternative investment funds.

The implications of this Directive for Malta are such that the market for the setting up of EU funds is expected to grow significantly, driven by the likely presence of an increased number of funds seeking EU status. Malta is a relatively new domicile compared to the established EU jurisdictions, the sustained rate of growth of the funds industry over the past five years, the increased presence of asset management companies establishing their operations in Malta, as well as the presence of a comprehensive regulatory framework for PIFs augurs well for the continued growth of the industry. Moreover, the presence of a single regulator, which is deemed to be accessible and responsive by the industry itself, further strengthens Malta’s position in this regard.

**UNIQUE BENEFITS**

The choice of Malta as a fund and fund management domicile also presents a number of unique benefits for those fund managers either considering to set-up or re-domicile their fund/s to Malta or re-locating their fund management operation to Malta. Spearheading these factors are the cost competitive set-up and ongoing operational costs of establishing a fund or fund management company in Malta. Equally important is the presence of a highly skilled workforce, which is driven by the presence of an educational system where university degree programmes are not only free of charge but the Government of Malta literally pays a stipend to students seeking to pursue tertiary education. It is also pertinent to point out that insofar as the re-domiciliation of funds or fund management companies are concerned, in 2002, the Maltese parliament enacted the Continuation of Companies Act, a tried and tested legal framework catering for the re-domiciliation of companies (or funds) to or from Malta. In this sphere, Malta has already experienced the re-domiciliation (to Malta) of a number of alternative investment fund platforms, some of which have been restructured to UCITS and are now passporting to various EU jurisdictions.

Moreover, the fast growing developments of the industry have brought with them the formation of an industry cluster today consisting of not only the setting up in Malta of various alternative investment funds, but also the presence of global custody services providers such as those provided by Bank of Valletta through JP Morgan, HSBC as well as Deutsche Bank.

On the fund servicing side, Valletta Fund Services (VFS) has established itself as Malta’s largest fund servicing organisation currently servicing various fund managers based in the EU and non-EU countries. VFS currently provides fund services to 92 investment funds consisting primarily of alternative investment funds but also including UCITS schemes as well as retail non-UCITS. VFS is also providing fund administration services to funds domiciled in the Channel Islands and Cayman Islands.

Moreover, as VFS is a fully owned subsidiary of Bank of Valletta, Malta’s largest banking group, our value proposition is not solely restricted to the provision of a comprehensive range of fund administration services, but our service offering also extends to the provision of banking, custody and brokerage services through the parent company. VFS also has experience in the re-domiciliation of funds to Malta, the restructuring of such funds to UCITS schemes as well as the passporting of UCITS funds to other EU jurisdictions.

On a final note, as with all new Directives, the AIFM Directive will invariably bring its challenges to the international funds industry. However, I am fairly confident that the benefits will outweigh the challenges and if the UCITS Directive is anything to go by, the EU alternative investment funds industry is set to experience strong growth traction.
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A GROWING MARKET FOR PRIVATE EQUITY PIFs

RICHARD AMBERY OF GANADO & ASSOCIATES OUTLINES THE POTENTIAL ADVANTAGES FOR PRIVATE EQUITY FUNDS LOOKING TO SET UP INVESTMENT VEHICLES IN MALTA

The rise in popularity of Malta as a jurisdiction for the establishment of hedge fund investment vehicles has been widely reported, including in the pages of HFMWeek. However, Malta has not been favoured to anything like the same degree by those seeking to establish private equity funds. While there is no intended tax or regulatory bias against collective investment schemes investing in the equity of non-public enterprises, there has historically been a tension between the strong preference of investors for limited partnership vehicles and the relative novelty of that form of business association to Maltese law and practice.

Nonetheless, we have begun to see private equity sponsors recognise that Malta’s advantages in cost, a flexible and responsive EU regulator and an extensive network of double taxation agreements play to the sector’s operational priorities. Pioneers used limited partnership structures established under the laws of an overseas jurisdiction, typically England & Wales.

This route does, however, add considerable complexity to the licensing and registration process. Accordingly, the programme of legislative reform launched last year, which will allow for a familiar form of private equity vehicle established under local law, should be welcomed by managers, advisors and regulators alike.

Richard Ambery

Richard Ambery is a partner in the investment funds and services group of Ganado & Associates, Malta’s leading international law firm. He advises on investment fund formation and redomiciliation as well as the establishment and licensing of fund managers. Richard is registered as an English solicitor in Malta.

It seems that the preference of private equity fund investors for limited partnership vehicles is as old, and therefore as established, as the industry. Indeed, many of the secondary market private equity funds formed of late are limited in their acquisition of units in limited partnerships. It is easy to see why the limited partnership has become the standard vehicle for fund investment in private equity and venture capital. In the majority of common-law jurisdictions, limited partnerships do not have legal personality separate from that of their partners and therefore it has been straightforward to establish their transparency for tax, that is to say that tax authorities will look through the vehicle to its investors with regard to taxation of income the vehicle receives on its investments.

In this way, the risk of tax leakage in the fund’s jurisdiction is avoided. At the same time, limited partnerships can be established in jurisdictions benefitting from double taxation agreements, allowing for income on investments overseas to be paid to them free, or with a reduced rate, of withholding tax.

Moreover, limited partnerships compare favourably with companies in terms of establishing the rights and obligations of investors and managers and investors among themselves – in the case of an incorporated body, these matters are mostly subject to statutory prescription as opposed to freely contracted for in a limited partnership agreement. Better still, this flexibility does not preclude limited liability for passive investors. Use of limited partnerships may also simplify consolidation for accounting issues at the level of a private equity investment.

The Investment Services Rules for Professional Investor Funds promulgated by the Malta Financial Services Authority under the Investment Services Act [Chap.370 Laws of Malta] clearly contemplate the licensing of collective investment schemes established as limited partnerships. Accordingly, the MFSA’s requirements in relation to limited partnership agreements establishing licensed funds are invariably analogous to those for a Sicav’s Memorandum and Articles of Association.

Likewise, the Companies Act [Cap.386 Laws of Malta] allows for the formation of partnerships en commandite, or limited partnerships with the liability of partners not engaged in the administration or business of the partnership limited to the amount, if any, unpaid on their capital contribution.

However, the primary obstacle to forming private equity funds as Maltese limited partnerships under original legislation was the requirement of Article 51 of the Companies Act that at least one of the general partners is either an individual or body corporate that has its obligations guaranteed by the unlimited, joint and several liability of one or more of its members. While Maltese law does not provide for the formation of unlimited li-
ability companies, private equity fund managers quite understandably prefer the general partner vehicles that they own to be established with limited liability.

The Companies Act was reformed in 2004 to allow limited partnerships established as collective investment schemes to be exempt from, among other things, the requirement that at least one general partner is either an individual or a body corporate with unlimited liability (see: article 66A and Tenth Schedule to the Companies Act [Cap.386 Laws of Malta]).

A Professional Investor Fund (such as Abbey Capital Fund) established as a limited partnership, registered with the Registrar of Companies and licensed by the MFSA was created immediately following this change in law. Related amendments also allowed for the creation of limited partnership sub-funds each representing a separate patrimony under Maltese law. However, this unfortunately did not provoke a rush to form private equity and venture capital funds in Malta.

The chief limitation of the legislation as amended in 2004 was that its application was restricted to limited partnerships, the capital of which is divided into shares (see: Article 66A(1) Companies Act [Cap.386 Laws of Malta]).

The predilection of private equity fund investors for limited partnerships appears to extend to the holding of units or other interests constituted by the contract governing the partnership, rather than shares or other instruments akin to securities.

CLEARLY, INVESTORS SEEK to benefit from established patterns of tax and regulatory treatment in their home jurisdiction as well as market custom in holding units rather than shares. For this reason, practitioners advising on the establishment of Maltese private equity funds have recommended that the limited partnership be formed in an overseas jurisdiction. English registered limited partnerships have been used for potential fund vehicles as they have in the Channel Islands.

Nevertheless, utilising a firm formed overseas might not be the optimal solution. Investors will require registration of the vehicle in Malta to bolster its position as a beneficiary under applicable double taxation agreement provisions. By the same token, provisions of the Maltese Civil Code require the partnership’s registration in its jurisdiction of formation. Furthermore, the English Limited Partnerships Act 1907 (as amended) for example, requires that on registration at least one of the general partners be established in England or Wales. This has been resolved by establishing an English limited partnership with two general partners, both limited liability companies, one English and the other Maltese.

Following registration in England, the firm is entered on the Public Register in Malta as a foreign organisation with or without legal personality under the laws by which it is established (see Article 2. of Schedule 2 Cap.16 Laws of Malta). Difficulties arise in registering foreign limited partnerships as ‘overseas corporate entities’ under the Maltese Companies Act if the entity does not have legal personality.

Happily, in the wake of lobbying by the finance community and legal and accountancy professions in Malta and on the action of the MFSA, the Tenth Schedule to the Companies Act was amended in December 2010 to widen the application of its provisions to collective investment schemes established as limited partnerships whose capital is divided into units.

The term ‘units’ is broadly defined and the legislation now contemplates the acquisition of capital in the firm by way of an offer of units. Consequently, the expectation is that this will now open the door to private equity funds established as limited partnerships in Malta.

If the formation of private equity PIFs in Malta has become relatively plain sailing, some minor navigational challenges remain. The unchartered nature of amended legislation leaves open some technical questions relating to the detail of annual returns on changes in capital, the application of accounting principles to audited financial statements, liabilities of the company secretary of the general partner and the extent to which certain provisions of the limited partnership agreement can be set out in by-laws and therefore kept off the register. Nevertheless, it is hoped that with sound professional advice clients will steer past these issues.
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From Strength to Strength

Charles Azzopardi of HSBC tells the story of Malta’s ascendancy to its position as a premier EU fund domicile and outlines the investment options open to those setting up on the island.

Malta’s position as a funds jurisdiction has grown in stature as more alternative investment fund managers are choosing the island as their domicile of choice. Judging by the pattern in the number of funds domiciled and the ever-increasing pipeline business being experienced by the various local service providers, Malta continues to be seen as a credible alternative fund jurisdiction within Europe, one with onshore credentials.

One can highlight the turning point as being Malta’s accession to the EU in 2004, which has further broadened Malta’s international dimension in the fund industry. From that point, the industry recorded significant growth and became truly international, registering more than a seven-fold increase in the value of assets and a continual inflow in registration of funds.

So what is it that makes Malta so attractive? What is bringing fund managers to our shores?

The island offers political and economical stability. It has emerged from the global financial crisis virtually unscathed and, in spite of the economic downturn, was one of the best-performing EU countries with above-plan GDP growth in 2010. Malta was one of two EU countries that managed to reduce its deficit in 2009. Despite the global recession, the financial services industry in Malta grew by 22% last year, and employment in the sector rose to almost the 7,000 mark.

Another important consideration is the reputation of the jurisdiction as well as the integrity and robustness of the legal, statutory and regulatory framework. Malta’s regime fits the bill and is proving ever more appealing to fund managers who are looking to move from an offshore to an EU onshore jurisdiction.

Malta’s regime fits the bill and is proving ever more appealing to fund managers who are looking to move from an offshore to an EU onshore jurisdiction.

MALTA’S REGIME FITS THE BILL AND IS PROVING EVER MORE APPEALING TO FUND MANAGERS WHO ARE LOOKING TO MOVE FROM AN OFFSHORE TO AN EU ONSHORE JURISDICTION

HSBC

Malta’s tax-efficient structures. Office space is offered at relatively low rents, and employee emoluments are very cost competitive, especially when compared to other EU jurisdictions.

Setting Up

A fund manager looking to set up a fund in Malta would need to distinguish between two types of investment fund structures:

- Retail funds: these can either be UCITS funds or non-UCITS retail funds;

Charles Azzopardi is the managing director and head of HSBC Securities Services (Malta). During his career, Azzopardi worked in the investments division of the HSBC Bank Malta as a dealer in money and capital markets, foreign exchange and ultimately was responsible for managing the bank’s foreign investments portfolio. He is also vice chairman to the Malta Funds Industry Association.
• Professional investor funds (PIF): there are three categories of PIFs, namely experienced, qualifying and extraordinary investor funds.

The retail funds are understandably subject to a stricter regulatory regime than PIFs and the custodian has regulatory and fiduciary obligations which involve the monitoring of compliance with investment restrictions and the verification ofNAV.

On the other hand, given that the PIFs are marketed to high-net-worth individuals and institutional investors, there is a lower degree of oversight in respect of any investment and borrowing restrictions of the fund. In fact, it is only in the case of experienced investor funds that the custodian has the regulatory obligation to monitor compliance of investment restrictions.

SEcurities services
Whether it is a UCits or a professional investor fund, HSBC Bank Malta Group is well placed to offer all the services required by a fund promoter. At HSBC, we see our relationship with the fund manager as a long-term partnership and maintain ongoing dialogue with our clients, as we strive to achieve clients’ expectations.

In essence, HSBC Securities Services (Malta) provides a comprehensive range of services which include accounting and valuations, investor records processing, corporate management services and statutory reporting. We also assist and provide guidance on the launch process of a fund, in liaison with legal advisors, and review the constitutional documents of the fund, seeking to ensure a seamless launch within a short time-span.

HSBC Bank Malta provides banking relationship and custody services to funds. Clients benefit from the HSBC global custody network, which currently operates in 92 markets in Asia Pacific, the Middle East, Europe, Africa and North and South America, and possesses one of the largest proprietary sub-custody networks, being present in 40 countries (as at 30 June 2010). Additionally, any fund using the HSBC Group has peace of mind that it is being serviced by a custodian with one of the strongest balance sheets in the securities services industry.

Technology And Resources
The ongoing investment in technology and human resources is central to HSBC Group Malta’s strategy. On the technology front, HSBC Malta uses a number of the HSBC Group-approved systems for its custody and fund administration operations. It also provides its fund clients with a web-based delivery platform, HSBCnet, which offers online access and a comprehensive suite of flexible financial solutions. HSBC attaches considerable importance to compliance monitoring and regularly reviews and upgrades its systems to ensure it meets regulatory requirements.

From a human resources perspective, HSBC Malta adopts HR strategies to train, motivate and retain the best talent. With a view to the development of its staff, HSBC Malta embarked upon a programme to provide training of its staff in one of the group’s main fund centres in Europe.

HSBC Malta is a leading player in the funds sector in Malta and is committed to playing a pivotal role in the development of the Maltese financial services sector. HSBC’s fund clientele can benefit from the local knowledge, expertise and global footprint of one of the leading securities services providers worldwide.

HSBC has not only found Malta to be a good country in which to do business, but also a country where the potential exists to expand operations and to diversify into new areas. Malta offers a compelling package and HSBC is convinced that Malta has a very bright future.

MALTA HAS EMERGED FROM THE GLOBAL FINANCIAL CRISIS VIRTUALLY UNSCATHERD AND, IN SPITE OF THE ECONOMIC DOWNTURN, WAS ONE OF THE BEST-PERFORMING EU COUNTRIES WITH ABOVE-PLAN GDP GROWTH IN 2010

"
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A COLLECTIVE CHOICE

DOMINIQUE LECOCQ OF LECOCQASSOCIATE CONSIDERS THE BEST JURISDICTION FOR YOUR HEDGE FUNDS?
MALTA, LUXEMBOURG OR THE CAYMAN ISLANDS

Each jurisdiction has its own unique attractions for a fund manager contemplating the launch of a fund. While Luxembourg and the Cayman Islands are traditionally attractive options due to their long standing track record in the fund business, Malta has in the past year proved to be an advantageous option for new collective investment schemes. Its rising know-how in the fund business is increasingly apparent.

This article seeks to provide an outline of the differences between Maltese Professional Investor Funds, Luxembourg Specialised Investor Funds, and Cayman Funds.

STRUCTURE AND CAPITAL CONTRIBUTION AT INCEPTION
A Malta Professional Investor Fund (PIF) can be incorporated as an investment company with variable share capital (Sicav), an investment company with fixed share capital, a limited partnership, a unit trust or a contractual mutual fund. There is no requisite minimum capital to inject by the manager/promoter and no notary is required for incorporation.

A Luxembourg Specialised Investment Fund (SIF) can be structured as a contractual mutual fund or a corporate Sicav. The Sicav may be a joint-stock company (JSC), a limited liability company (LLC), a partnership limited by shares or a cooperative company. Should the Sicav be a LLC the manager/promoter will have to pay a minimum capital of €12,500 and if it is structured as a JSC, €31,000 at incorporation.

A Cayman Fund is very similar to a PIF in terms of structure: no minimum capital and no notary are required for incorporation.

In Luxembourg all shares (including investor shares) are voting shares. This is legally mandatory. In Malta and in the Cayman Islands, investor shares are usually non-voting.

MINIMUM INVESTMENT PER INVESTOR
Malta offers three different categories of PIF:

(i) a PIF for Experienced Investors, which requires a minimum investment and holding of €10,000 per investor;
(ii) a PIF for Qualifying Investors, requiring €75,000 per investor; and
(iii) a PIF for Extraordinary Investors, requiring €750,000 per investor.

Luxembourg offers one category of SIF which requires a minimum investment and holding of €125,000 per investor or less if the investor receives a certificate by a financial institution certifying the adequacy of experience in high-risk investments. Based on experience, however, banks are reluctant to issue such certificates. A Cayman Fund requires a minimum investment of $100,000 per investor.

WHILE LUXEMBOURG AND THE CAYMAN ISLANDS ARE TRADITIONALLY ATTRACTIVE OPTIONS DUE TO THEIR LONG STANDING TRACK RECORD IN THE FUND BUSINESS, MALTA HAS PROVED TO BE AN ADVANTAGEOUS OPTION FOR NEW COLLECTIVE INVESTMENT SCHEMES

ELIGIBLE ASSETS AND INVESTMENT RESTRICTIONS
The Maltese PIF opens up an extremely broad investment universe. No mandatory investment restrictions apply to PIFs targeting qualifying or extraordinary investors. These two categories of PIF offer great investment flexibility.

PIFs targeting experienced investors are however subject to some investment restrictions. In summary, a PIF for experienced investors may invest up to 20% of its total assets in securities, and up to 30% of its assets in money market instruments, from the same issuer. These limits may be increased to levels of 100%, 35% and 30% of its total assets depending on the creditworthiness of the issuer. Investments in deposits held with a single body are capped at 35%. Direct borrowing for investment purposes and leverage via the use of derivatives is restricted to 100% of the net asset value. Some other specific rules apply.

In Luxembourg, the law of 13 February 2007 provides that a SIF must invest in assets ‘in order to spread the investment risks.’ In principle, a SIF cannot invest more than 30% of its net assets in similar securities issued by the same issuer unless the issuer is subject to equivalent diversification rules or is an OECD Member State or one of its public
institutions. Short selling, derivatives and OTC transactions are subject to similar risk spreading rules. No restrictions apply to Cayman Funds.

**SERVICE PROVIDERS**

While a Luxembourg SIF requires the appointment of a local administrator, a local custodian and a CSSF-approved auditor, PIFs and Cayman Funds are much more flexible. In both cases, the PIF and the Cayman Fund can appoint foreign administrators and custodians. A PIF for qualifying investors and a PIF for extraordinary investors do not need to appoint a custodian per se. The board of directors of the fund is responsible for making proper custody arrangements. In this respect, the fund can directly appoint a prime broker and only use a banker to operate the cash account (subscription and redemption account) of the fund. This is very beneficial for specific strategies and has a positive impact on the total expense ratio of the fund. With the enactment of the AIFM directive, these provisions of the law may be subject to amendment.

**LICENSING AND RUNNING COSTS**

To issue the licence, the Maltese regulator charges €1,500 for an umbrella fund and €1,000 per sub-fund. In Luxembourg, the CSSF charges €5,000 to license an umbrella SIF. The Cayman Islands regulator’s fees amount to $3,659.

It is difficult to assess differences between banking, custodian and administration fees between jurisdictions as PIFs and Cayman Funds can appoint service providers abroad. However, audit fees are by and large most cost effective in Malta. While for a plain vanilla hedge fund, a big-four audit fee in Luxembourg would range between €15,000-25,000, and in the Cayman Islands between $15,000-25,000, the equivalent audit in Malta would range between €5,000-7,000.

**TIMELINE AND REGULATORY OVERVIEW**

Based on our experience, in terms of licensing timeline, CIMA in the Cayman Islands takes approximately 10 business days to license a fund as of filing. CIMA does not comment on the fund documentation. The CSSF in Luxembourg takes 4 to 6 weeks depending on the structure, the strategy, and the manager. A case-officer is delegated to analyse the risk and viability of the strategy and to understand the entire scheme. While the manager does not need to be a licensed entity to manage a SIF, the CSSF will try to evaluate its experience in investment management. The CSSF will also review the experience of the directors of the scheme. The directors of a SIF must be of sufficiently good repute and have sufficient experience in relation to the strategy of the fund.

The MFSA in Malta does a full review of the fund documentation and a complete due diligence (fit and proper test) on the manager if it is not already a regulated entity. It also runs due diligence checks on the directors and holders of founder shares. This due diligence includes a background and experience check. The licensing of a PIF by the MFSA would usually take 2 months. This timeline may be shorter if all players in the fund are already MFSA-approved persons.

**MARKETING AND RE-DOMICILIATION**

The choice between those three jurisdictions is also dependent on what investors would like to see. While Luxembourg boasts of strong branding, the Cayman Islands have suffered a severe blow as a result of the financial crises and the Madoff Ponzi scheme. Since 2009 we have seen a number of managers re-domiciling their Caribbean funds to the EU. Malta has won a significant share in the business, in no small part thanks to its PIF legislation and structure. It is possible to re-domicile a foreign fund in Malta while keeping the same service providers. Also, Malta applies IFRS accounting standards as is the case in the Cayman Islands. A fund re-domiciling in Luxembourg must appoint local service providers. Most Luxembourg funds are also subject to Lux-GAAP accounting standards.

Each jurisdiction has its strengths and weaknesses. It is therefore important to conduct a careful evaluation of the following issues as some jurisdictions might offer a better solution, depending on the particular circumstances of the case: what investment strategy is sought to be employed? What investment restrictions? What level of leverage (by credit or inherent by derivatives)? What amount of assets? Where is the investment manager located? Is the manager regulated? Is the fund sought to be retail or non retail? What minimum subscription amounts are envisaged? What redemption frequency? Is the scheme to be open-ended or close-ended? What liquidity is required for the fund and what frequency of calculation of the Net Asset Value? Where are the prospective investors located? ■
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A SMART CHOICE IN A NEW ERA

JOHN PAUL ZAMMIT OF MAMO TCV ADVOCATES HIGHLIGHTS THE CHALLENGES THE AIFM DIRECTIVE WILL POSE TO THE EUROPEAN FUND MANAGEMENT SPACE

In the years to come, Malta will be sailing through the challenges and opportunities ensuing from the Directive on Alternative Investment Fund Managers. The AIFM Directive (the Directive) is highly relevant to Malta, which has firmly established itself on the map as a well-regulated domicile of choice for Alternative Investment Funds (AIFs), particularly due to the success of its Professional Investors Funds (PIFs) regime. While it is still to be seen how the Directive will work in practice, it is by and large expected to create new opportunities rather than pose serious threats for Malta as a domicile for AIFs and their managers.

THE IMPACT OF THE DIRECTIVE

To the alternative investment fund industry at least, one thing is now clear: its future will be significantly affected and scrutinised by the rigorous and invasive regime imposed by the Directive. Yet, while the industry is trying to organise itself in view of the effects of the said regime, this being only the initial stage of the Directive’s implementation journey, much of these effects remain unclear, in particular in view of the various implementing measures that are yet to be put forward. Malta, however, is expected to ensure a swift and efficient response to the still-blurred implications and challenges of the Directive. As opposed to the situation in a number of offshore domiciles in particular, non-Ucits retail funds and non-retail PIFs are already subject to specific regulation and supervision by the Malta Financial Services Authority (MFSA). Fund management companies operating in or from Malta are also regulated and supervised by the MFSA in a manner similar to investment firms providing investment management services covered by MiFID. The robust but flexible regulatory regime applicable to the alternative investment industry has in fact contributed towards Malta’s hard-won establishment as a financial services centre and a prime onshore fund domicile, and has also allowed both the MFSA, local practitioners and service providers to acquire the expertise and experience necessary to function and grow in a regulated environment. This in itself should give managers comfort to choose Malta as a base for their activities, without thereby losing the brighter side of it – maximum flexibility (to the extent allowed by the Directive).

THE EU PASSPORT FOR EU AND NON-EU MANAGERS

As from early 2013 the Directive will provide EU managers (qualifying as Alternative Investment Fund Managers (AIFMs), managing EU AIFs with the right to exercise their passport rights throughout the EU, that is, to provide services relying on the authorisation obtained in its home member state without requiring another authorisation in the host member state(s). Eventually, in 2015, it should also enable EU managers managing non-EU AIFs and non-EU managers managing EU AIFs or non-EU AIFs to benefit from the third country EU passport (co-existing with the national private placement regimes for a further transitional period of three years). The EU passport available to the manager, in relation to the management and marketing of AIFs, will allow managers to choose more freely where to establish themselves and the AIF they manage, thereby enabling them to concentrate their fund management and marketing activities reaching across or involving various European jurisdictions within one EU member state (and benefit from the cost savings this will naturally bring about). Among the EU domiciles of choice, Malta should be at the forefront in view of the above-mentioned advantages and those which will be discussed below.

At this stage, it seems that the options available to the managers would depend on whether either or both the manager and the AIF is/are based within or outside the EU. In so far as EU managers wishing to tap the European market are concerned, these will be provided with a strong incentive to set up or relocate their AIFs in or to the EU, in that they will be able to manage and market...
EU AIFs throughout the EU as from the Directive’s transposition date, which is expected to be early 2013 – that is, two full years before the other managers. To the extent that they intend to market within the EU, EU managers of non-EU AIFs may be facing various obstacles before they will be able to benefit from the third country EU passport as from 2015. Besides the manager being required to comply with the Directive generally, its ability to market non-EU AIFs under the third country EU passport will depend on whether its home member states satisfy a number of conditions. For instance, appropriate cooperation arrangements must be in place between the relevant competent/ supervisory authorities, and the home member state must have signed an agreement with the relevant third country which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention and ensures an effective exchange of information in tax matters.

Furthermore, the third country where the AIF is established must not be listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on anti-money laundering and terrorist financing and must have such tax agreements in place as aforesaid, with the EU member states where the AIF will be marketed. Most importantly, the introduction of the third country EU passport itself (and the phasing-out of the national private placement regimes in 2008) will ultimately depend upon the outcome of the European Securities and Markets Authority (ESMA) report and the European Commission’s positive decision on the matter. On this basis, an EU Manager seeking certainty may prefer setting up an EU AIF rather than a non-EU AIF or relocating its non-AIFs to an EU jurisdiction (which permits, like Malta, inward redomiciliation of funds).

The case of non-EU Managers managing and/or marketing EU AIFs and/or non-EU AIFs may prove to be even more problematic in that, besides the obstacles mentioned in relation to EU managers of non-EU AIFs and certain additional conditions that may apply for the manager to obtain AIFMD authorisation, it will also be necessary to establish equivalence particularly with those third countries where managers are typically established, to allow for the straightforward application of the ‘equivalence test’ in cases where the manager wishes to be exempt from compliance with particular AIFMD provisions.

THE CHOICE OF AN EU DOMICILE

Managers will of course be very cautious and selective in identifying the most appropriate EU domicile which possibly ticks all the boxes. Regardless of the many uncertainties still surrounding the implementation of the Directive, Malta is expected to compete successfully for this place, both as a domicile for the fund and for the fund management operation in question, due to various factors in which Malta scores highly no matter the order of priority. Malta offers a uniquely beneficial fiscal environment, particularly for managers and their shareholders with a low resultant tax leakage and the benefit of a wide network of double taxation agreements, while offering tax neutrality at the fund level. Tax is not, however, the principal and only element driving managers to Malta. Indeed, the competent and approachable regulator and the availability of a skilled professional labour force and the appropriate funds infrastructure have been key elements in making Malta the domicile of choice for managers which should be expected to increase in number. Particularly in view of the fact that the AIF industry is dominated by Anglo-Saxon players, being an English-speaking country has also proved to be a determining factor for Malta. The cost competitiveness of locally based service providers, including those providing legal and audit services, is certainly another major (and driving) plus point.

In conclusion, the introduction of the EU Passport (including the third country EU passport) should open up new distribution opportunities to the managers which were previously not available through the national private placement regimes. As stated above, the safest option and scenario for managers wishing to (continue to) target European investors, currently seems to be that of an EU manager managing an EU AIF and availing itself of the EU passport. While other EU fund domiciles will be keen to compete for this place, Malta is expected to remain the obvious option for many managers intending to access the EU market and further boost its position as a prime fund domicile of choice and service centre in the EU, also in view of its pretty straightforward re-domiciliation procedure.
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Regulatory developments

Global endowment funds reveal plans to make fresh allocations in 2010 and the display an increased appetite for hedge fund-allocation, as a number of academic institutions Cavalla told managers and is looking to bolster the ranks with a about 17% exposed to hedge funds, is looking jumped from 52% in 2008 to 61% in 2009. direct hedge fund investment – the sole meth-

– is also becoming increasing popular state-

Cambridge currently has investments with 15

HFMWeek

wholesale move into direct investment. according to Cambridge’s Cavalla, however, due diligence on a number of managers, with a available, is the single manager, single fund –

nEWS

possibly hire more managers

hedge fund. however, our activity in the hedge

policy, as it looks to diversify existing strategy

pursue a more risk-orientated asset allocation

In terms of strategy, Cambridge – whose

endowment is wholly separate to the money of

its associate colleges – has a sizeable allocation to

equity long/short, but, Cavalla said, the university

endowment is wholly separate to the money of

its retirement System (CalSTrS), the US’s second

The $134.1bn California State Teachers’

ment – has reallocated a significant portion of

of allocation for the University of Cambridge

– is also becoming increasing popular state-

In May 2008, SbCeRa has already started the screening process

actively searches. We will wait and see who the sur-

waiting for the dust to settle before starting any

agers due to the volatile markets. “We are inter-

early 2009, and a new asset allocation strategy

PsPRs board voted to include hedge

funds as part of this search. “We will do this par-

The PsPRs board voted to include hedge

funds as part of this search. “We will do this par-

sion to portable alpha,” added

The PsPRs board voted to include hedge

funds as part of this search. “We will do this par-

PsPRs board voted to include hedge

funds as part of this search. “We will do this par-

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Part of a new search process, the retirement

PsPRs board voted to include hedge

funds as part of this search. “We will do this par-

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PsPRs board voted to include hedge

funds as part of this search. “We will do this par-
AN EARLY PIONEER STANDING TALL

ANDREW FRANKISH OF IDS TALKS ABOUT HOW THROUGH THE KNIGHTS OF MALTA FUNDS PLATFORM AND THE LIONS OF AFRICA, MALTA HAS BROADENED ITS OPTIONS FOR FUNDS

Emerging fund markets, such as Africa, continue to be a relatively untapped resource in the majority of European domiciles. Service providers in Malta are helping to build the reputation of the jurisdiction as a realistic alternative to better known onshore funds, and IDS was an early pioneer in taking this message to the African funds market. HFMWeek speaks to Andrew Frankish about the jurisdiction’s unique selling points.

HFMWeek (HFM): IDS Malta has a long-standing relationship with the Lions of Africa (LoA). What were the market conditions that led to the launch of the Knights of Malta Funds platform? What level of interest do you expect this to generate?

Andrew Frankish (AF): Lions of Africa was setup to fill a gap in the market that IDS had identified. Knights of Malta came about through a similar process. At the time of starting to work on the platform, there was nothing similar on offer in the Maltese market, nothing that offered emerging fund managers a quick and cost effective way of launching a fund in Malta. The market tends to drift towards domiciles that are known when it comes to setting up funds – in the EU that happens to be Dublin and Luxembourg. To attract managers to Malta there was a need to be able to provide a means to launch in Malta quickly and efficiently, without the need to commit to a large launch size. We are already seeing flows from managers outside of Europe wanting a presence in the EU, and are confident that as the interest in Malta grows, managers will look more to these cost-effective solutions.

HFM: How can IDS Malta assist with the re-domiciliation process for both new and existing funds?

AF: There is the Knights of Malta structure, through which we cater for pure start-ups as well as fund managers wanting to set-up mirror funds. The network of service providers is set-up at the platform level, so all of the partnerships have already been formed. This shortens the time to launch for a new fund. With these savings in time and cost, IDS through its relationship with Knights of Malta is well positioned to assist new fund launches in Malta.

Should the fund manager not want to go the platform route, we have excellent working partnerships with many of the leading legal and accounting firms in Malta as well as the regulator. Malta’s financial services providers are working collectively to grow the Maltese financial industry as a whole. Through this shared mindset, the relationships that are needed to successfully take a fund from idea to launch are ever present and IDS is definitely part of that thinking.

Any fund manager that has looked at the task of re-domiciling an existing structure between jurisdictions will know what a complex task it is. There are the legal requirements on both sides to think about, as well as regulatory compliance and tax issues for the investors. It is really the relationships that make this work in Malta. We are in the process of investigating a re-domiciliation for a Cayman-based fund, and through the partnerships we are able to get the best legal and tax advice, consolidate this and present it to the client.

HFM: To what extent does Malta’s EU membership increase investor confidence? What, if any, are the drawbacks to membership, and how can these objections be countered?

AF: There has been a lot of uncertainty in the market over the past two years, and investor confidence is starting to return. Malta’s membership of the EU is a positive when it comes to European-based investors, as there is a definite increased confidence level with a ‘close-to-home’ investment. The transparency and level of regulatory oversight required in the EU provides another boost in confidence – it is something that an investor is able to relate to through experience elsewhere in the EU, and then associates with Malta.

Joining the EU, has allowed Malta to be part of a con-
Malta and a larger economy. This has provided many opportunities. Malta cannot compete on production and resource intense industry, but with a young, highly motivated and qualified work force, Malta has instead focused on developing its financial sector.

**HFM:** With the growing challenge of onshore and UCITS III products, how can Malta ensure it remains competitive?

**AF:** Malta’s growth lies in the PIF structures. Luxembourg is already the EU leader in the UCITS space, and for Malta to compete for any real market share at this stage is not realistic. A common criticism is the time to launch for funds through competing jurisdictions, and the MFSA is keen to ensure that this does not happen to Malta. There has been the development of the authorisation department within the regulator to handle new applications, as well as the recent recruitment of a number of people to help handle the flows. The costs of set-up both from a legal point of view as well as licensing are very competitive, and the costs of running a fund servicing operation are around two-thirds those of the same operation in Dublin. By continuing to ensure that the application process is smooth and efficient for fund managers, and the costs remain enticing and competitive, I believe Malta will see a steady increase in interest.

**HFM:** What impact has the introduction of the AIFM directive had on Malta? What is IDS Malta doing to help its clients adapt to the new requirements?

**AF:** The AIFM Directive has focused attention on all on-shore domiciles, with fund managers looking to products at home that are able to serve their investors needs. This has put a definite focus on the jurisdictions currently seen as ‘alternate’ in the market, with Malta topping that list. This move to onshore will obviously not all be to Malta, but I think that Malta will see increased growth. The majority of funds that we provide administration services to are Malta domiciled, and we also have a large portion that are domiciled outside of the EU, but do not market to European investors. However, we are looking at the funds that will be affected by the AIFM Directive, and working through gaps between current and desired state. We are then able to actively engage with the clients on next step solutions rather than just presenting the gaps that exist – we prefer to work proactively and present a problem, together with a well thought out solution, rather than a thin solution with inherent problems.

**HFM:** Over the next three years, how will Malta develop as a domicile for funds? How will IDS Malta align itself to meet these changes?

**AF:** We are seeing an increasing number of events promoting Malta, and this is being converted into enquiries about the jurisdiction. We have yet to see a large number of these enquiries convert into launches, but it is a solid starting point and something that we as a jurisdiction will be able to develop. We are seeing a typical herd mentality at the moment, with managers doing either what they have always done, or doing what everyone else is doing. Until we get a good number of managers committing to the jurisdiction, we are not going to see that wave of inflows to which we are all working toward. Over the next three years I see that changing, and with developments like the AIFM Directive coming into play there is a need to look at Malta more seriously as an option. IDS Malta is well placed to meet the need for services that come with a growing jurisdiction. Our current model is to use our centre of excellence in South Africa, where we have over eight years of experience providing the entire sphere of administration services to a variety of fund types. Currently all investor and client-facing services are provided locally, but this will evolve to include all services, and be a fully operational centre as the industry and market here expand. We hope that over the next twelve to eighteen months we will be well placed to provide all our clients with a high quality and unique service provided entirely from Malta, not only in the administration space, but also support services through strategic partnerships.
7 reasons why international financial institutions are dropping anchor in Malta:

- English as an official language;
- Cost competitive skilled workforce;
- EU member with euro as its currency;
- Consistently highly ranked quality of life;
- Meticulous yet accessible single regulator;
- Robust yet flexible legal and regulatory framework;
- Secure and stable business environment and a world class IT infrastructure.

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