Custody and Depository Services

An established and reputable international banking centre and ranked in the global top ten in terms of sound banking systems, Malta continues to offer numerous opportunities for specialised banks and niche players. The financial centre is currently catered to by a handful of custodians, but with new credit institutions turning their focus on Malta, custody services are set to grow.

The provision of custody and depositary services, as defined by the Undertakings for Collective Investment in Transferable Securities Directives (UCITS) and Alternative Fund Manager Directives (AIFMD), has been a hot topic in Malta for the past few years with a booming fund industry and only a handful of specialist credit institutions offering services.

Although global banking and financial services company Deutsche Bank has a presence on the island, the majority of Malta's current custody and depositary service providers fall into boutique-scale in international terms – which has thus far suited the demands of the marketplace. Players such as domestic Bank of Valletta (BOV), Austrian Sparkasse, Mediterranean Bank and recent addition Swissquote, all provide highly specialised services safekeeping financial and other assets for funds and provide monitoring and oversight functions over funds' managers and portfolios. At the end of 2013, Malta had seven MFSA-licenced custodians. However, by the end of 2014 regulator MFSA reported it was seeing an increase in applications from both new international custodians as well as existing Malta-based entities looking to expand their activities.

With the fund industry developing rapidly, industry professionals in Malta see it as inevitable that custody and depositary services will grow too. If the successful cluster strategy taken by the jurisdiction is anything to go by, things will be looking brighter in 2015-16. Malta launched the industry by building a solid structure for fund vehicles, which started clustering around 2005, what followed was a cluster of fund administrators in 2007 and subsequently fund managers around 2009. The last piece of the puzzle is at the cusp of finding its place, with the beginnings of a cluster of specialised custodians.

Custodian Requirements

A Custodian is required to have the business organisation, systems, expertise and experience deemed necessary by the MFSA to carry out its functions. The nature and extent of required resources (particularly with regards to the local staff complement) will largely depend on the number, nature and extent of mandates to be taken over by the Custodian. There are no prescriptive requirements relating to the nature of office premises and IT systems, including in regard to links with the Head Office, which the local branch is expected to have in place, as the regulator considers these to be operational issues which are best left up to the company to decide. The rental of office space on an office-sharing basis is permitted provided appropriate arrangements are in place to safeguard the confidentiality of documentation. As for services provided by the branch’s Head Office, the MFSA would expect the branch to have adequate communication and reporting arrangements in place to ensure services are being properly performed as well as to enable it to report to the regulator as may be required.
Licencing of Custody Operations

Custodians of collective investment schemes require a Category 4 Investment Services Licence issued by the regulator, the MFSA, under the Investment Services Act (Chapter 370 of the Laws of Malta):

▶ Category 4a: for custodians servicing any type of collective investment scheme
▶ Category 4b: where the custodian only acts as depositary of Alternative Investment Funds (AIF) under the conditions set out in Article 21(3) last paragraph of the AIFMD (Directive 2011/61/EU) or which are subject to the so-called ‘depositary lite’ regime under Article 36 of the AIFMD.

Key Features of Category 4a Licence

A Category 4a licence holder may be established in Malta as follows:

(a) a credit institution, constituted and licensed under the Laws of Malta
(b) a branch, established in Malta, of a credit institution authorised in an EEA State
(c) a branch, established in Malta, of a third country credit institution which is subject to prudential supervision requirements at least equivalent to the requirements applicable to Maltese credit institutions
(d) a company, incorporated in Malta which is wholly owned by a credit institution, provided that the liabilities of the Licence Holder are guaranteed by a credit institution and the credit institution is either a Maltese credit institution or is a foreign credit institution which is subject to prudential supervision requirements at least equivalent to the requirements applicable to Maltese credit institutions
(e) a company incorporated in Malta which is wholly owned by a Maltese or foreign institution or company which is deemed by the MFSA to be an institution or company which provides unit-holders with protection equivalent to that provided by a Licence Holder fulfilling the requirements of (a), (b), (c) or (d) above and provided the liabilities of the company acting as custodian are guaranteed by the institution or company and the institution or company has a minimum paid-up share capital of EUR 5 million or its equivalent in foreign currency
(f) an investment firm in Malta or a branch of an investment firm established in another EEA State subject to capital adequacy requirements in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013 including capital requirements for operational risks, and authorised in accordance with Directive 2004/39/EC and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with point (1) of Section B of Annex I to Directive 2004/39/EC; such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 28 (2) of Directive 2013/36/EU.

Key Features of ‘Depository Lite’ Licence

A Licence Holder in possession of a Category 4b Investment Services Licence is eligible to act as a custodian to one of the following:

(a) Alternative Investment Funds (AIFs) which:
   • have no redemption rights exercisable during the period of 5 years from the date of the initial investments; and
   • which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody according to Article 21(8)(a) of the AIFM Directive; or
   • which generally only invest in issuers or non-listed companies in order to acquire control of such companies according Article 26 of the AIFM Directive;
(b) Third country AIFs managed by an EU AIFM, which are marketed in the EU/EEA in terms of Article 36 of the AIFM Directive.

A Category 4b Investment Services Licence Holder shall be either one of the entities which is eligible to obtain a Category 4a Investment Services Licence or alternatively one of the following entities:

▶ A Category 2 Licence Holder (excluding fund managers)
▶ A Recognised Fund Administrator

The Authority expects a Category 4b Investment Services Licence Holder to ensure compliance with the applicable SLCs outlined in Part BIV of the Investment Services Rules for Investment Services Providers. In particular, provision is made in the Rules for the depositary’s exemption from strict liability in terms of the provisions of the AIFMD, as outlined in Section 4 of this Guide.

Application Fees:

<table>
<thead>
<tr>
<th>Investment Services Licence</th>
<th>Application Fee</th>
<th>Supervisory Fee</th>
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<tbody>
<tr>
<td>Category 4a</td>
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<tr>
<td>Category 4b</td>
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