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Part of the Austrian Savings Banks -

Sliema, SLM 3112 – Malta

Sparkasse Bank Malta plc
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.

more information on:

www.financemalta.org
Malta - An IFC Gaining Strong Growth Traction

Malta has long been able to boast a vibrant tourist industry – blue skies, blue waters, 300 + days of sunshine a year and a growing high end holiday destination, which has seen 1.6 million tourists visit Malta in 2013. Today, Malta also boasts a vibrant financial services sector – youthful, energetic and innovative, as evidenced by the various financial services clusters shaping the industry in the Insurance, Funds, Trusts and Foundations sectors, which are primarily driven by the international financial services operators that have established their presence in Malta. Malta is now being recognised as a serious player on the international financial stage.

At FinanceMalta we are very proud of what Malta has achieved over the last two decades as an international finance centre. Malta’s economy has been successfully diversified and today there are a number of equally vibrant sectors such as the aviation and maritime sectors, and high end manufacturing, adding a new and significant string to our economic bow with the creation of a knowledge-based industry to shore up our traditionally successful tourist and construction industries. Today, Malta has a highly balanced yet dynamic economy in which manufacturing accounts for around 14% with financial services at around 13% of GDP and employing 10,000 workers.

In March 2013 general elections were held, which saw the Labour Party being voted to power. After just over 20 years under a conservative leadership, as with all political leadership changes, this had the potential to induce a degree of uncertainty for the country and in particular for the financial services sector – traditionally a politically sensitive area for many countries. However, it is testament to the sector’s importance and to the united approach that Malta’s political parties have taken towards financial services over the past two decades that the change was a seamless one to the business in the sector. The ‘business as usual’ message sent out by the Government shored up the confidence investors have in doing business in the sector. The ‘business as usual’ message sent out by the Government shored up the confidence investors have in doing business in the sector. The ‘business as usual’ message sent out by the Government shored up the confidence investors have in doing business in the sector. The ‘business as usual’ message sent out by the Government shored up the confidence investors have in doing business in the sector. The ‘business as usual’ message sent out by the Government shored up the confidence investors have in doing business in the sector.

Malta’s stability has already been somewhat tested by the credit crisis and resultant global downturn, however, Malta’s economy proved stoic in the face of the financial storm. While recession hit much of Europe, Malta’s GDP continued to show year on year growth, which proves that the ‘steady as she goes’ strategy has been the correct one.

As a result, it is not a coincidence that the financial sector has been built around strong growth in the funds and insurance sectors, with wealth management clearly beginning to make headway and the strong banking backbone continuing to support the various sectors. In addition Malta’s stock exchange plays an important role in the growth of Malta’s financial sector as evidenced by the sustained investment in its technological platforms, which has strengthened the offering of specialised, cost effective services and products. However, as we look to the future and to growth prospects going forward, Malta aims to further strengthen its position as an international finance centre in the EU, to make it the ‘go to’ option for investment and doing business.

Malta has an attractive package to market: its remain a highly competitive place within which to conduct business, with an English speaking and highly qualified professional workforce and a sophisticated telecommunications network that simplify and enhance the services our financial sector supplies. Equally important, Malta is strategically located in the EU providing access to the south and south east fascia of the Mediterranean, which positions it as a strategic gateway to the MENA region, whilst at the same time, by way of its EU membership, non EU business that establishes itself in Malta will also have access to the EU marketplace.

But you don’t need to take it on my word alone – Standard and Poor have reaffirmed Malta’s stable outlook as well as its BBB+ / A-2 rating, Malta was ranked 14th out of 148 jurisdictions for the soundness of its banks in the 2013-14 Global Competitiveness Report, in the Global Financial Centres Index it was amongst the largest risers in the ranks, moving up 15 places from 68 to 53 and it was awarded ‘Most favoured domicile in Europe’ in Hedge Fund Service Provider rankings 2013 by Hedge Funds Review.

For a jurisdiction with a land mass of 122 square miles and a population of less than half a million, Malta is certainly making its mark on the global financial stage. Despite the uncertainties in Europe, Malta has been “a steady ship” amongst the troubled waters of the last five years and it continues to move forward at a steady pace as the economic outlook clearly confirms.
The Making of a Financial Centre

Malta has a huge and colourful history, a history that is built upon fortresses and palaces, war and religion, knights and churches. Placed as it is, midway between Europe, Africa and Asia it was once at the centre of the known world and time and again over the centuries it has proved the cliché that from small acorns, great oak trees grow.

Punching above its weight has been a recurring theme in its long history and now with the success story that is its financial services sector, Malta has once again proved itself larger and more significant than its geographical size would lead many to expect.

As an island state Malta has long had to be self-sufficient and innovative - making the move into financial services was a master stroke in maintaining this self-sufficiency. Throughout its young history as a financial centre Malta’s innovative spirit has been the foundation upon which it has built a robust pillar of the Maltese economy.

Becoming an EU Member State in 2004 and joining the Euro in 2008 were pivotal moments in the island’s financial sector’s growth; surviving the ensuing global financial meltdown relatively unscathed cemented the island’s reputation as a strong and reliable jurisdiction in which to do business.

Deciding to position itself on the world stage was a bold move by the smallest country in the European Union, but it was a bold move shored up by a cautious and sensible approach. Twenty years ago tourism was the life blood of the Maltese economy, now, with its contribution of 13 per cent to GDP, the financial services sector is also a mainstay.

Birth and Growth of a Modern Financial Centre

Accepting that the world was changing and that Malta also needed to change to ensure its future development was the initial impetus behind developing the country’s financial sector.

The country could no longer rely simply on tourism and construction to sustain economic growth. The digital era made oceans and landmass secondary considerations in the global movement of wealth and enabled the Maltese to believe that they too could compete with the established finance centres in Europe and around the world.

There are obvious factors that contribute to the Maltese success story: Location – a natural stepping stone between Europe, Asia and Africa; Language – English is one of the island’s official languages; and arguably most influentially - EU and Euro membership. But these factors alone are not sufficient to make and sustain a financial centre.

In 1988 Malta passed legislation to establish an offshore framework. However, as the island moved towards joining the EU it stepped away from offshore and moved towards developing as an international financial centre.

The objective was to offer an alternative to the established and traditional financial centres in Europe and the founders recognised the key to success was the provision of well-regulated financial services and they endeavoured to create a centre of excellence in the field.

Twenty years later, having survived the global recession in much better shape than many of its neighbours, Malta can reflect on its financial services success story.

A key aspect in Malta’s success is the seemingly unique relationship between regulator, government and practitioner.

An open door policy between the main stakeholders has allowed a natural and innovative evolution of the industry.

“To be a successful IFC the correct infrastructure needs to be in place”, Chris Naudi, President of the Institute of Financial Services Practitioners, explains. This infrastructure must include the correct level of regulation and staff. Malta strives to be ahead of the pack when updating its regulation in compliance with EU developments and is often among the first member states to put new directives in place. This has been a consistent approach and one that has help built the jurisdiction’s reputation as a serious player – leading as opposed to playing catch up to its larger and more experienced neighbours.

Noted industry stars in the Malta financial repertoire are insurance, funds and asset management, trusts and foundations and wealth management, while Malta also has one of the lowest OECD compliant tax rates within the EU area, which makes it a very attractive option for financial investment. Investors can set up tax efficient structures in Malta and benefit from the interaction of the full imputation system of company taxation and the general tax refund system. Repatriation of profits is tax free as Malta does not charge any withholding taxes on payment of dividends to non-residents. Interest and royalties paid withholding taxes on payment of dividends is tax free as Malta does not charge any tax refund system. Repatriation of profits is tax free as Malta does not charge any withholding taxes on payment of dividends to non-residents. Interest and royalties paid withholding taxes on payment of dividends is tax free as Malta does not charge any tax refund system. 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Malta over the centuries has put its geographical position to good use, developing a significant maritime hub. Today the island’s ship register is the largest
in Europe and one of the 10 largest registers in the world. It was accession to the EU that focused the spotlight on the Maltese register and by the end of 2013 the total gross tonnage of ships registered under the Malta flag was 51.8 million. The Aviation industry is also seeing growth. Under the relatively new Aircraft Registration Act there has been a steady build-up of aircraft listing on the register. By February 2014 there were 160 aircraft registered in Malta. The object of the Act was to develop the island into a fully-fledged aviation centre that supports operators, financiers and managers and this seems to be developing at a steady pace.

However, the island’s most prized asset is acknowledged to be its human resources and much time, money and effort has gone into developing and sustaining a professional and top level work force to secure the industry’s future. From an excellent education system right through to degree level and professional qualifications, to attracting experienced ex-pats back to the island to help build and sustain the base level of professionals.

There is a great sense of identity amongst the Maltese. They recognise the strengths and the limitations that island life brings. They acknowledge their place in the global architecture and work to their strengths without allowing the limitations to inhibit their ambition. The success story that is the Maltese financial services sector is reflective of the island’s long history of innovation and adaptability. Cementing this success will come down to the island’s allegiance to its core village values. It has been a steady trajectory thus far and it looks like this is set to continue.

**A NEW GOVERNMENT**

In March 2013 the Labour Party won the general election after practically 25 years in opposition. Prime Minister Joseph Muscat had successfully modernised his party in his five years as Labour leader prior to winning the election.

But what did this mean for the financial services sector that had been launched and developed under the Nationalist Party?

The main concern for the new government was to provide continuity of support for the financial services department.

“Our first priority was to insure a smooth transition, we were in opposition for 25 years and we wanted to send a clear signal that we didn’t intend to interfere with the private sector and the work being done by FinanceMalta,” Dr Edward Zammit Lewis, Parliamentary Secretary for Competitiveness and Economic Growth explained.

In fact the political parties had taken a collaborative approach to the financial sector during the gestation and development of the sector in Malta, which has to have been one of the fundamental reasons for its success. There was consensus between the parties about the direction the island wanted to take as an international finance centre. Dr Zammit Lewis agrees: “Our main asset in this sector since the mid 1990s has been that the two main political parties agreed over the financial services sector which sent a signal of reassurance to those looking at Malta in which to invest.”

Malta is a highly politicised country with a voter turnout of over 90 per cent at general elections – unheard of in many other European countries. ‘Stability’ and ‘confidence’ are words that crop up time and again when in conversation about the sector and the new government under Prime Minister Muscat intends to maintain this stability without halting Malta’s growth and development.
The insurance industry is at the forefront of Malta’s development as a financial centre, boasting a mature domestic market with a compliment of life and non-life insurers and reinsurers as well as a growing international captive sector. Local regulatory demand for transparency and compliance coupled with the intrinsic right of every insurer and reinsurer to passport its business throughout the EU indicates that the growth of the insurance sector is likely to continue, as seen in the increase in Insurance Operators from eight in 2004 to 58 as of 30 September 2013.

Malta is the only full European member state to offer Protected Cell Company (PCC) legislation, allowing companies to establish a cell within a PCC and write risk through that cell. The PCC set-up allows the start-up and ongoing regulatory burden of an insurance company to be spread throughout the owners of the various cells and the core of the PCC without putting any individual cell owners’ assets at risk from liabilities of the others. Cells are particularly attractive to medium sized corporate groups wishing to establish their own insurance vehicle.

As a full member of the European Union, insurance businesses that incorporate in Malta can benefit from harmonised EU legislation and regulation with the benefit of an EU wide insurance licence which gives them the ability to passport business into other member states. This is of particular advantage to those establishing a captive insurance business in Malta whose core business remains in another European jurisdiction.

Malta has a significant number of licensed insurance management companies, ranging from well known international names to more boutique establishments and all insurance managers are members of the Malta Insurance Management Association.

Insurance

Maltese tax law is based upon the UK tax system. It is the only remaining full imputation system in the EU, which means that tax paid by a company will remain a prepaid tax on behalf of the tax liability of shareholders. All companies resident in Malta are subject to income tax at 35 per cent. There is no separate corporation tax. Upon a distribution of profits, shareholders are entitled to claim a refund of tax paid at the corporate level to avoid any double taxation of corporate profits. Companies incorporated in Malta are considered to be ordinarily resident in Malta and are subject to tax on their world-wide income and capital gains. Companies incorporated outside Malta are considered residents of Malta if their management and control is exercised in Malta, however as they are not domiciled in Malta they are subject to tax on income arising in Malta and on foreign income but not capital gains, that they receive in Malta. Companies that are not incorporated nor managed or controlled in Malta are subject to income tax only on income and capital gains arising in Malta.

Corporate Tax System

Malta’s banking sector has grown significantly in the last decade from four domestic banks to become an international banking hub, with 25 banks now open on the island. While four or five of these banks have approximately 85 per cent of the domestic market, the remaining are there because of the advantages to be enjoyed being domiciled in Malta - EU passporting licenses, the ease of business use and attractive tax benefits.

Regulation of the banks is tight and onerous but the cost of doing business in Malta is significantly lower than in northern Europe, including Luxembourg and Ireland.

Maltese banks remain well capitalized, and have high liquidity ratios as well as sound, well diversified portfolios. Their funding is sourced mainly from customer deposits, and their prudent business model has enabled them to emerge largely unscathed from the turmoil of the 2008 banking crisis. Malta was ranked 14th for the soundness of its bank in the 2013 World Economic Forum Global Competitiveness Index.

Banking

Corporate Tax System

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**PERSONAL TAX**

Individuals are charged on their income at a progressive tax rate up to 35 per cent. A person who is ordinarily resident and domiciled in Malta is subject to tax on his or her world-wide income and capital gains. A person who is resident but not domiciled in Malta is taxed on income and capital gains arising in Malta and on foreign income (but not foreign capital gains) received in Malta.

Non-resident individuals are subject to tax on income and capital gains arising in Malta.

Residence will be based on where a person effectively lives and has a home. If a person has spent more than 183 days in a tax year in Malta they are considered residents.

Temporary residents who are not ordinarily residents in Malta but have earned income from Malta are subject to tax on this income but are not liable to tax on any income arising outside of Malta.

**TRUSTS**

Since the introduction of trusts to Maltese residents in 2004 the domestic trust industry and practice has grown considerably.

The Continuation of Companies Regulations issued under the Companies Act, 1995 provide existing trust companies with a particularly attractive incentive to apply to be registered as being continued in Malta, hence allowing a company to re-domicile without the need of dissolution in its jurisdiction of incorporation and be re-incorporated in the jurisdiction of choice (in this case, Malta).

Re-domiciliation allows continuation of legal personality from one jurisdiction to another, thereby eliminating the need to transfer all the trust business and trust assets to a new entity in the chosen jurisdiction. Conversely, a trust company set up in Malta can always have the option of continuing outside of Malta.

A foreign trust company may wish to remain domiciled in its jurisdiction of incorporation but set up a branch in Malta. The company must simply give notice in writing to the MFSA of its intention to act as a trustee in Malta at least 45 days prior to commencing its activities in Malta and ensure it has received confirmation that the MFSA does not object thereto. A foreign licensed trustee may therefore take advantage of its regulatory status in its own jurisdiction to simplify and accelerate the process by setting up a branch, thereby also eliminating the cost and effort that would usually be required for a full application.

Where the proper law of a trust is a foreign law, the Act provides that its validity, construction, effect and administration shall be governed by the foreign law concerned. The trust would thus be recognised and given effect to in Malta in accordance with The Hague Convention which has been ratified by Malta.

The Income Tax Act allows the taxability in Malta of a trust having a Maltese trustee. Furthermore, a Maltese trust can avail itself of the option of being treated as a company for income tax purposes, under the tax transparency model. Income attributable to a trust is not taxable in the hands of the trustee if it is distributed to the beneficiary.

**Funds**

In November 2013 Malta won the Hedge Fund Review award: Europe’s favoured domicile in the Hedge Fund Service Provider rankings 2013, a feat the industry is understandably proud of.

Its reputation as a hedge fund domicile was established upon accession to the EU in 2004, which allowed for passporting rights so that investment services and UCITS schemes may be registered in Malta and passported to any EU country. Such membership, as well as the Malta Financial Services Authority’s membership in the Committee of Securities Regulation (CESR), guarantees a sound regulatory and legislative framework, which inspires confidence.

The basic structure used for collective investment schemes is the SICAV with its variable capital nature and possibility to establish sub-funds within such structure. Professional Investment Funds (PIFs), on the other hand, constitute a new variety, seeking progressively lighter regulation for funds targeted at increasingly financially literate investors. PIFs refer to the Experienced Investor Fund, the Qualifying Investor Fund and the Extraordinary Investor Fund.

The tax structure in Malta also provides a significant incentive. Companies that list securities on the Malta Stock Exchange are not charged with capital gains tax; nor is stamp duty due on transfer of such shares or securities. Furthermore, Malta also has an extensive double tax treaty network.

- There are over 600 funds registered in Malta
- Just under 10.6bn NAV
- 113 Investment Services Licences
- 26 Fund Administrators
- 6 Custodians
How important is the financial services sector to the Maltese economy?

ES: The financial services sector has witnessed significant growth over the years, and today stands as one of Malta’s key economic pillars, with a GDP contribution of 13 per cent and employing over 10,000 mostly in well-paid, high quality jobs. Clearly Malta’s economic vision is based on a significant diversification – from high-value added manufacturing to IT, from tourism to financial services and online gaming.

However, the financial services industry has continued to grow in its different sub-sectors, including banking, insurance, investment companies, as well as new business in emergent areas such as pensions and retirement schemes. Evidently, the financial service industry is an important source of economic growth and increased Government revenue, which is then re-invested in the different societal needs, ranging from quality education to healthcare.

What do you consider significant milestones in its development?

ES: Malta continued to implement significant reforms built around full consensus throughout the Maltese political landscape. This included a programme of reforming all its finance sector legislation in line with international best practice and was one of the first six countries in the world to reach an advanced accord on fiscal matters with the Organisation for Economic Co-operation and Development (OECD).

Today, Malta not only follows international policy, buy it is actively involved with the OECD, the EU and the Commonwealth in modelling global regulatory policy. This is not enough – we continuously build on these achievements – Malta has now over 70 tax agreements with various countries around the world – ranging from Europe to the US, from Southern America to the Middle East.

What was the impetus to create a successful financial centre? And why in your opinion is it a success?

ES: As an island practically devoid of natural resources, Malta’s success depends on its human resource to thrive and prosper. We have invested heavily in the education of our skills base and this is certainly an integral part of our success. It is no coincidence that in 2013, the World Economic Forum ranked Malta’s educational system amongst the best 20.

Within the sector itself, success is attributable to a number of reasons. First of all, Malta seeks to play a proactive role in the industry, rather than reacting to developments. In this manner we seek to identify the new niches of growth which can enable the sector to grow forward. We continue to invest heavily in the training of our personnel, aided by tax grants, which attract highly qualified personnel from abroad to our shores.

In terms of regulation, the Malta Financial Services Authority (MFSA) has built an important reputation for being an accessible and responsive regulator, which seeks to support potential investors in identifying tailor-made solutions to do business in Malta. Evidently, due diligence is observed, based on our mantra that quality is far more important than quantity. In parallel, Malta’s marketing efforts are then spearheaded by FinanceMalta, which is a public-private partnership that aims to strengthen Malta’s financial services brand through a comprehensive promotional programme.

All this is supported by ancillary benefits, ranging from a top quality IT infrastructure, to Malta’s cultural and historical offering – which makes it an ideal location to visit and stay for business and beyond.

How does Malta compare/contrast to other European IFCs such as Ireland and Luxembourg?

ES: As indicated before, our target is to keep building Malta’s reputation as a top quality jurisdiction in financial services. It is not our intention to compete with other jurisdictions – and neither do we want our economy to become fully dependent on one major sector.

Despite this effort at remaining true to our principles, Malta has received important accolades in the recent past. Towards the end of last year, as one example, a leading journal awarded Malta the coveted award of Europe’s favoured domicile in the hedge fund industry.

The World Economic Forum has also placed Malta’s financial centre amongst the top 20 world jurisdiction in terms of key indicators ranging from financial market development to soundness of banks, and from the regulation of securities exchanges to the strength of auditing and reporting standards.

How has Malta weathered the economic downturn so well?

ES: Malta is a small and open economy that is dependent on international trade in goods and services for its economic survival.
The Maltese people’s collective well-being is dependent on Malta’s resourcefulness, its productivity, its international competitiveness and on its ability to leverage internal investment and foreign direct investment. As a result, the Maltese Government has made a clear choice in favour of macro-economic stability:

- It deregulated most economic sectors, strengthened market competition and enhanced consumer protection. It also put in place robust and credible legal and financial regulatory framework and systems that ensure stability, continuity and confidence. At this juncture it is pertinent to note that Malta’s banking and financial systems have over the past years been characterised by a resilient and robust structure which has been underpinned by prudent and cautious policy implementation. Moreover, contrary to what occurred in other EU Member States, the extent of resources devoted to the construction industry were limited such that the correction of the property market was orderly and did not result in high levels of unemployment. Furthermore, wage moderation helped sustain the labour market.

- It diversified Malta’s economic base and is continuously opening up to new opportunities and the diversification of the Maltese economy occurred in sectors whose market proved resilient to the crisis. Furthermore, Malta’s financial, maritime and aviation industries and services are now well established and are contributing substantially to growth and job creation alongside the more traditional manufacturing, tourism and distribution industries. The Maltese Government is now working on new sectors: bio-technology and the creative and the green economies. Its strategies in these areas are well-developed and are already being implemented. The Government is investing heavily in Malta’s physical and environmental infrastructure, its communications networks, and its health and education sectors as well as in energy supply, energy efficiency and energy security. The Maltese Government is incentivising investment and strengthening access to investment finance to all enterprises. In general, the Government is taking all measures to create a business environment that facilitates entrepreneurship and that is conducive to growth.

- It is investing heavily in Malta’s human resources. Over the past years, Government has renewed the educational set-up through significant investments in all the levels of Malta’s education system. The provision of diversified and dynamic vocational and lifelong learning programmes further assist in addressing the requirements of the labour market. Government is incentivising and rewarding work through a range of fiscal, family-friendly and active labour market policies. Moreover, it is noteworthy that during the economic crisis, firms in Malta were able to withstand the shocks by resorting to short-term measures, such as shorter working weeks, without resorting to massive lay-offs. The performance of the labour market has been positive with the Labour Force Survey reporting an increase of 3.1 per cent in employment in the third quarter 2013. Notable increases came from female employment. The official Eurostat harmonised and seasonally adjusted unemployment rate stood at 6.4 per cent in November which is the same at the rate prevailing at the end of 2012.

- It has strengthened Malta’s international competitiveness. The current account surplus stood at 2.8 per cent of GDP during the first three quarters of 2013, which was higher than the 2.3 per cent of GDP level recorded during the same period of 2012. This development was mainly underpinned by a lower deficit in the goods account, which more than offset the decrease in the surplus registered in the services account. Meanwhile, net income outflows increased partially offsetting the slight increase in net current transfers inflows. Concomitantly, during the first three quarters of 2013, net direct investment inflows increased to 3.4 per cent of GDP, when compared to the net outflows of 0.2 per cent of GDP registered during the first three quarters of 2012. This stemmed from higher inflows of foreign direct investment and other capital which offset a reduction of reinvested earnings of foreign owned companies in Malta.

- It is proceeding with the planned consolidation of government’s finances.

“The Maltese people’s collective well-being is dependent on Malta’s resourcefulness, its productivity, its international competitiveness and on its ability to leverage internal investment and foreign direct investment.”
In particular, it is noteworthy that in line with the Council Recommendation on Malta’s 2013 National Reform Programme and Council opinion on Malta’s Stability Programme for 2012-2016, Malta is required to correct its excessive deficit by 2014 in a sustainable and growth-friendly manner. Over recent months, the Maltese Government has upheld its commitment to a sustainable fiscal position by gradually but consistently reducing the fiscal imbalance, to reach a balanced budget in the medium-term. In the first 11 months of 2013, the shortfall between recurrent revenue and total expenditure of Central Government declined by €34.8 million when compared to the corresponding period last year. During the 2014, the decline in the general Government deficit is projected to be sustained. Government is committed to undertake policy reforms in order to safeguard public finance sustainability whilst supporting economic growth. coral performance to date in each of these areas has been creditable. However, in the context of an extended period of economic and financial instability and risks and renewed geo-political tensions and their risks to peace and economic stability, vigilance must never be lessened. The Maltese Government will therefore continue with its policy for macro-economic stability and to manage all the risks to such stability, including those that result from geo-political tensions. The Government will continue work to ensure free trade and fight off any protectionist measures. The Government will continue with its fiscal consolidation strategy. However, it will also work with the European Union to balance this strategy with a parallel one for economic growth and employment.

**FC** How important has the Malta Stock Exchange been in the growth of the Malta as an IFC?

**ES:** The Malta Stock Exchange has been an active, as well as a successful contributor towards the development and growth of the local financial services sector through the creation of a capital market with over 75,000 mostly retail investors. The Exchange’s operations are domestic, but it has recently made significant strategic investments to ensure international connectivity through the use of a global trading platform, Xetra, which is operated by Deutsche Bourse in Frankfurt and a custodial relationship with Clearstream AG, a global custodian.

The Exchange, while continuing to support the domestic market is investing resources to attract international listings to Malta, provide access to international markets and custodial services and is also actively promoting its services internationally.

**FC** What are your feelings with regard to the move towards automatic exchange of information, FATCA etc?

**ES:** The world has become increasingly globalised and cross-border activities have become the norm. As a consequence, tax administrations need to work together to ensure that taxpayers pay the right amount of tax to the right jurisdiction. One key aspect of international tax co-operation is exchange of information. Exchange of information comes in different forms and includes exchange upon request, spontaneous information exchange and automatic exchange of information. There is currently a trend towards shifting the international standard in transparency in tax matters towards automatic exchange of information. Malta is committed to be a tax transparent jurisdiction and therefore it is only natural that Malta adopts automatic exchange of information as part of this commitment.

One needs to point out that Malta already exchanges information on an automatic basis in relation to the EU Savings Directive. Malta has now negotiated and signed a FATCA Agreement on the basis of the latest Model 1 Intergovernmental Agreement (reciprocal version) issued by the US. The basic purpose of this Agreement is that financial institutions (eg banks) which are resident (or carrying on business) in Malta or the US will be required to comply with certain prescribed reporting obligations. This Agreement will require financial institutions in both Malta and the US to submit the required information to their own tax authorities which in turn will automatically share such information with the other tax authority.

Such shared automatically exchanged information will be useful both for Malta and for its tax treaty partners in order to ensure that the relevant tax laws are being complied with.

**FC** Is there a fear of over regulation in the sector, particularly from the EU?

**ES:** What happened over the past five years was certainly unprecedented, and unfortunately brought about a significant level of distrust in financial institutions as well as a general instability which is affecting other sectors of the economy. The regulatory changes, particularly those intended at strengthening the banking industry are addressing these issues and have already succeeded in bringing about a level of stability, particularly amongst our European counterparts. We will, however, remain attentive in seeking a balance between the key objectives of fulfilling our legislative
tasks, including being responsive to consumer expectations, without imposing unnecessary burdens on the service providers. In this context, proportionality is a crucial feature in regulation and supervision.

**What role can/does Malta play as an investment stepping stone into the region?**

**ES:** Malta is very strategically located at the heart of the Mediterranean with very close ties to mainland Europe, North Africa and the Middle East. The island is considered the best choice for investments in knowledge-based sectors and high-end manufacturing. Malta is also considered an ideal logistical hub due to its excellent port infrastructure. This, together with EU membership, makes the country a perfect gateway to the Euro-Mediterranean region and beyond.

**Malta has been ranked impressively as 41st in the Global Competitiveness Index 2013/14 – to what does it owe this rating and in particular being ranked 14th regarding soundness of its banks?**

**ES:** Besides soundness of banks, Malta ranked higher in other indicators too, such as technological readiness, health and primary education, quality of educational system, quality of math and science education, intensity of local competition, strength of auditing and reporting standards, business costs of crime and violence, quality of port infrastructure, telephone infrastructure, internet bandwidth, local supplier quantity, FDI and technology transfer, ease of access to loans. As can be evidenced, this is a long list of indicators wherein Malta ranks in the top 20 within the Global competitiveness index. This indicates that the soundness of banks is not the only factor which has contributed towards this positive result.

**What will be growth areas?**

**ES:** The financial service industry is a very dynamic and continuously evolving world. We need to continue striving to identify those areas of growth – whether its new products or services, for which we can develop the necessary regulation so as to attract further business to our shores.

While banking, investment and insurance services are well established – over the past years, we have seen new developments, such as the setting up of occupational pensions, and pension fund administrations in our jurisdiction. Creating a diversified sector is healthy for Malta.

We need to continue preparing our human resource base for these developments and this is why we are continuously upgrading our educational offering at our University and technical college to embrace such changes, while ensuring a close cooperation between industry and the educational institutions.

**How important are IFCs such as Malta to the global movement of wealth and for the facilitation of investment?**

**ES:** IFCs have an important responsibility – yes they are centres through which considerable amount of wealth goes through – but this is what places more responsibility on us. Unfortunately, we have seen the financial crisis create a crisis within societies. We want to be strong enough to avoid this – this is why our regulatory efforts will remain meticulous – without however stifling an industry, which, can indeed form the basis for further economic growth and job creation – to the wider benefit of society as a whole.

**How can Malta’s role within the global financial architecture be further developed?**

**ES:** Malta as a Member State of the European Union implements all EU legislation in the national legislation and therefore its financial supervisory architecture is that of the EU, however, where possible under the legislation Malta carries out innovation through regulation without infringing the legislation. In the past after careful study, the MFSA has implemented new legislation concerning Protected Cell Companies for insurance etc. This is ongoing work.

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Malta Meets OECD Standards

The OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes published the details of their Peer Review of Malta’s practices in June 2013. The island was deemed to be ‘largely compliant’ with international standards. The report explored Malta’s practices primarily in three aspects:

- Availability of information
- Access to information
- Exchange of information (EOI)

Malta was rated as ‘largely compliant’ as it was considered ‘compliant’ in all but two categories.

The report confirmed that: ownership and identity information, as well as accounting information, is maintained by all relevant entities to the standard, though delays were experienced in some cases.

The Maltese authorities have broad access to information, with adequate rights and safeguards in place that are compatible with effective EOI. They also have not had any difficulties in accessing information required for EOI purposes.

Malta’s broad network of EOI agreements shows the jurisdiction’s ongoing commitment to international standards of transparency and effective EOI. The OECD feels these agreements sufficiently protect the confidentiality of information received, while providing the appropriate rights and safeguards. Malta continues to expand its network of agreements and its EOI team were deemed by the report to have improved their efficiency in replying to requests for information during the three year period under review (July 2009 – June 2012).

Availability of information

During the review period, the Maltese authorities received 65 EOI requests concerning accounting information. In 59 of these cases, information was obtained from the Inland Revenue Department database directly, while in 30 cases information was also obtained from the Registry of Companies’ database. Accounting information was sought from the taxpayer in 24 cases and from third parties in three cases. In some of these cases, information for a particular request was obtained from different sources.

Except in two cases, the Maltese competent authority had no trouble retrieving and providing accounting information to its EOI partners. “Peers are generally satisfied with the information provided by Malta”, the OECD commented, “although sometimes its provision is delayed.”

Malta’s legal framework ensures that ownership, accounting and bank information is available according to the standard. However, as new legislation establishing comprehensive requirements on the availability of ownership and accounting information has been recently introduced, the OECD have advised Malta to monitor its practical implementation.

Access to information

The Maltese competent authority has direct and unrestricted access to tax databases where most of the requested information is readily available. Direct access to the database of the Registrar of Companies also facilitates the collection of information. In addition, information may be sought from other government agencies, the person under investigation and third parties in possession or control of the requested information. Information is generally produced within the 30 day timeframe given by the Maltese competent authority. In the vast majority of the cases, the requested information was provided to the requesting party within 180 days.

The Maltese authorities have broad powers to access information, including ownership and identity information as well as accounting records, pursuant to the Income Tax Acts and this power can be used to obtain information for EOI purposes. These powers apply whether Malta could access the information for its own tax purposes or not. Malta also has sufficient compulsory powers in place in order to compel information, including fines and imprisonment.

The OECD added: “There are no bank secrecy provisions in Malta’s laws that would impede access to bank information pursuant to a request for information under a treaty. Further, the attorney-client privilege standards that would apply to information pursuant to an EOI request is found in the Cooperation Regulations and is identical to the standard found in the OECD Model.”

Exchange of information

Malta has a network of 67 Double Taxation Conventions (DTCs) and three Tax Information Exchange Agreements (TIEAs) developed over almost four decades. It continues to negotiate new agreements and to update old agreements through Protocols and new treaties. In October 2012, Malta signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention), broadening its network of EOI instruments to cover a total of 82 jurisdictions.

Overall, feedback from peers was positive and some of Malta’s EOI partners praised its “clear and coherent communication” during the request process as well as its quality cooperation and quick response times.

During the review period, the Maltese EOI team improved their efficiency in replying to requests for information. In that time, Malta received 81 EOI requests from 22 partner jurisdictions. Of these 81 requests, Malta was able to provide a final response within 90 days in 26 cases (32 per cent), between 91 and 180 days in 38 cases (47 per cent), and between 181 days and one year in 15 cases (19 per cent). The remaining two cases (two per cent) were processed in more than one year.
G**ROUP TREASURY COMPANIES HAVE BECOME QUITE POPULAR** over the last number of years. With the creation of such companies questions arise such as where the company should be located, how to make the transition from the existing funding arrangements, as well as issues such as foreign exchange implications.

While Treasury Companies may continue to operate the existing bank account/s, it may therefore be advisable to open a bank account in Malta (although this may be achievable) and the company may continue to operate the existing bank account/s.

Certain important aspects should be considered during the redomiciliation procedure, particularly for finance or group treasury companies:

- Whether the Maltese company be funded through debt or equity or a mixture thereof? In Malta, there are no debt to equity ratios or thin capitalisation rules and no withholding taxes apply on either outgoing interest payments or dividends, therefore there is a great degree of flexibility when it comes to the funding of the Maltese company. Also, no capital duties are levied and only a registration fee (based on the company’s authorised share capital) is payable to the Registry of Companies.

- Any step-up in the book values of the company’s assets (including intangibles) may be beneficial since they give a higher tax base without triggering any adverse tax implications in Malta.

- Any “drop down” of additional/new loan arrangements by means of an assignment or contribution agreement. Any resultant amounts may be capitalised into equity (or reserves) without any costs.

- The currency in which the share capital of the Maltese company is to be denominated as this determines the reporting currency. It is possible under our legislation to convert the company’s currency following the redomiciliation procedure. The Companies Act in Malta requires that audited financial statements must be prepared in the same currency in which the share capital is denominated whereas the tax legislation provides that tax payments and tax refunds are also made in the same currency (in which the share capital is denominated) and this may therefore minimise the exposure to exchange fluctuations.

- Notwithstanding the aspects highlighted in the last point above, finance or treasury companies with loans in different currencies are not insulated from currency fluctuations and exchange risks. It is important to note that in Malta, unrealised exchange gains are not subject to tax. Likewise, unrealised losses are not deductible for tax purposes and this may cause certain issues since the tax profits will be higher than the accounting profits and therefore the finance or treasury company may find itself in a situation where it cannot distribute sufficient profits to enable the shareholder or shareholders to claim the tax refund of the tax paid by the company and thus lower the overall effective tax rate. This is either overcome or else mitigated by hedging or putting in place back-to-back arrangements to reduce or eliminate the exposure to currency fluctuations.

Once the company is redomiciled to Malta, it may benefit from Malta’s extensive treaty network and the EU Directives to reduce or eliminate any withholding taxes on interest payments received by the Maltese company. Malta’s tax legislation also provides for unilateral relief provisions for the elimination of any double taxation. It is also possible to claim a Flat Rate Foreign Tax Credit (FRFTC) to reduce the tax payable by the Maltese company and the overall effective tax rate. In view of Malta’s rather unique full imputation system and the tax refund mechanism whereby shareholders may claim part of the tax paid by the company, the overall effective tax rate for group treasury companies is five per cent or less, notwithstanding that the company is subject to Malta’s standard corporate income tax rate of 35 per cent.

Avanzia Taxand is a leading tax firm in Malta. It is ranked as a Tier 2 firm by the International Tax Review and has won the National Tax Firm Award more than once since it came into existence in 2005. Over these years, Avanzia Taxand assisted a number of groups in either establishing or migrating an existing group treasury company and its directors.
The Global Residence Programme

With its Mediterranean climate, developing infrastructure, ease of access and high standard of living there is a lot to attract new comers to the island. And it is in Malta’s interest, in terms of growing its economy and sustaining the workforce, to attract residents to work, live and invest in Malta.

One of the early initiatives put forward by the new government when it took office last year was to relook at Malta’s Residency Programme. This task was given to Parliamentary Secretary for Competitiveness and Economic Growth Dr Edward Zammit Lewis.

The Global Residence Programme was the successor to the disastrous High Net Worth Individuals (HNWI) programme that had been launched in 2012 to replace the Permanent Residence Programme. The HNWI scheme had been an uncompetitive one and had in its 20 month lifespan resulted in a mere six applications, four of which were accepted.

When Dr Zammit Lewis turned his attentions towards replacing the HNW1 scheme he knew that it was important to ensure that no further damage was done to Malta’s reputation in this area and that any replacement needed to be immediately effective and of benefit to Malta.

And so after consultation with the private sector and FinanceMalta, in June 2013 the Global Residence Programme was launched.

“We managed to devise a programme which was serious and reputable on an EU level, gave long term residence status and satisfied the aspirations of the financial services practitioners and the property sector,” said Dr Zammit Lewis.

The programme allows foreign individuals from outside the EU and European Economic Area who purchase high value property and who pay taxes to benefit from a residence permit in Malta. The objective was to increase the demand on property, thereby increasing tax revenue, bolstering work in the construction industry as well as to professionals such as lawyers and tax consultants, and boost the leisure and hospitality industry. There is a particular incentive to invest in southern Malta and Gozo.

What differentiates this scheme from the previous one is that it effectively reduces the thresholds for the purchase of immovable property and renting property in Malta that allow for residency.

To qualify under the Global Residence Programme an applicant must purchase a property worth €220,000 for properties in the South of Malta or Gozo or a minimum value of €275,000 for properties in Central and Northern Malta. In terms of a rental threshold, residency will be granted for those paying an annual rental value of €9,600 (€800 monthly) in Central and Northern Malta and €8750 (€730 monthly) in Gozo or in the South of Malta.

The Programme provides the applicant a special tax status by taxing them at 15 per cent on any income arising outside Malta that is remitted to Malta, subject to a minimum annual tax payable of €15,000.

### Programme Requirements

To apply for the Global Residence Programme an individual needs to prove:

(a) The applicant is a third country national and is not Maltese, EEA or a Swiss national.
(b) The applicant does not benefit under the Residents Scheme Rules, the High Net Worth Individuals – EU/EEA/ Swiss Nationals Rules, the High Net Worth Individuals – Non-EU / EEA / Swiss Nationals Rules, the Malta Retirement Programme Rules, the Qualifying Employment in Innovation and creativity (Personal Tax) Rules of the Highly Qualified Persons Rules.
(c) The applicant holds a qualifying property.
(d) The applicant is in receipt of stable and regular resources, sufficient to maintain himself and his dependents.
(e) The applicant is in possession of a valid travel document.
(f) The applicant is in possession of sickness insurance in respect of all risks across the whole of the EU normally covered for Maltese nationals for himself and his dependents.
(g) The applicant is a fit and proper person.

**NOTE:** The new programme also allows for the use of an Authorised Registered Mandatory in Malta to submit the application on your behalf.

Once the special tax status has been acquired the applicant is deemed to be resident for tax purposes in Malta and is chargeable to tax on his / her income as follows:

(a) Foreign source income, which is received in Malta is taxable at the rate of 15 per cent with the possibility of claiming double tax relief but subject to the minimum annual tax liability referred to below.
(b) The individual must pay a minimum of tax liability of €15,000 per annum.
(c) Other income that is not covered by these rules is charged separately at the rate of 35 per cent.

Under the Programme, dependents of the applicants will not have a minimum tax bracket, with a specific and detailed...
description of a dependent contained in the legislation.

“The government will support this scheme…We will see that the procedures that operate this program are not bureaucratic and create the least possible disruption to applicants who want to invest and pay taxes in our country,” Dr Zammit Lewis promised of the Programme.

And the programme has proven to be a hit — there has been a very good response since its launch a mere six months ago, with one high end property retailer in Malta selling 39 high end apartments within weeks of the programme launching.

The scheme also reflects government efforts to bolster investment into Gozo and the south of Malta where the prices of property are lower.

“We are doing this because we believe in economic growth and because we believe in the potential that our country offers,” Dr Zammit Lewis maintains.

“We shall be ensuring that Malta gains the momentum that it lost with the introduction of the HNWI scheme. Everyone benefits from the attraction of this sector of residents in Malta. It is not only the property sector that benefits, but industries such as the financial services industry, the legal profession, the entertainment and hospitality industry and even the aviation industry. We shall once again revive Malta as a destination of choice to the benefit of the economy and to increase our competitiveness.”

Citizenship by Investment

In November the Maltese Government controversially announced the new Malta Individual Investor Programme.

The legislation is still being fine-tuned to reflect public response to the scheme but is expected to be operational by early 2014.

The idea behind the proposal is to grant Maltese citizenship, and thereby EU citizenship, to suitable individuals and families who qualify under a very strict due diligence regime and who make a significant contribution to the National Development Fund established by the Government.

Applicants would be required to make an investment of €1.15m. That total will include:

- A contribution of €650,000, 70 per cent of which will go into a national development and social fund run by a board of trustees. The remainder will go to the consolidated fund.
- €350,000 property investment or €16,000 annual rent.
- €150,000 investment in bonds or shares kept for five years in Malta.
- The applicants spouses and children below 18 years of age will
each pay €25,000, unmarried children between 18-25 and parents above 55 years, €50,000 each. Other fees will be due diligence fees (€7,500 for the applicant, €5,000 for the spouse, parent and over-18 children, €3,000 for children under-18) and passport fees and bank charges of €500 and €200 per person, respectively.

The programme will be capped at 1,800 after which it would be closed.

Under the scheme applicants would be subjected to extensive due diligence which would be undertaken by a government agency established specifically for this task, ‘Identity Malta’, which would take a minimum of six months, and importantly, the names of those granted citizenship under the scheme would be made public.

The proposed scheme, the legislation for which has passed through parliament, has caused a significant amount of uproar in Malta and throughout Europe, however the government has been at pains to highlight the benefits and to allay concerns over the perceived threats of the project, with significant emphasis being placed on the extensive due diligence that will be carried out and the ability to revoke a passport under certain conditions.

The new citizens will have the right to freely travel, reside and work in all 28 EU states. They will also have the right to enter 69 non-EU countries, including the US, under Malta’s visa-free travel pacts.

The National Development Fund is a posterity fund and will receive 70 per cent of the €650,000 application fees - since the Individual Investor Programme is capped at a maximum of 1,800 applicants, the government is foreseeing a minimum contribution to this fund of €819 million over the coming years.

The money deposited in the Fund shall be used ‘in the public interest’ for education, research, innovation, social purposes, justice and the rule of law, employment, the environment and public health.

There has been much opposition to the scheme in Malta and throughout Europe however Dr Edward Zammit was at pains to point out that the government would not take any chances on harming Malta or its financial services sector.

Prime Minister Muscat has made the objectives of his government with regards to the IIP clear:

“Our focus is on the attraction of extremely highly talented and networked people from around the world by offering them the possibility of sharing the Maltese and European journey that we as a nation will make in the future.”

“In a country which has no substantial natural resources so far, talent is our gold. People are our treasure. This programme is aimed squarely at importing more of what is most truly precious to us. We know that it will help us consolidate and build upon what we have and at the same time open new opportunities to us and future generations.”

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Negotiating and Implementing the AIFMD: The Malta Experience

By Christopher P Buttigieg¹, Malta Financial Services Authority and University of Malta

More than four years have passed since the Commission issued a proposal for an Alternative Investment Fund Managers Directive (‘AIFMD’), which formed part of the EU policy response to the financial crisis of 2007-2008.

The world of EU securities regulation and supervision has changed considerably since then. The Lisbon Treaty came into force and changed the law-making process for delegated acts to be adopted by the Commission. The European Institutions implemented a significant revamp of the European regulatory framework by widening the scope of regulation and the extent of detail of substantive law applicable to securities markets. The European Securities and Markets Authority (‘ESMA’) became operative with strong supervisory convergence at national level. ESMA was also vested with a de facto pan-European supervisory role for credit rating agencies and trade repositories and has the function of coordinating colleges of supervisors for central counterparties.

The significant regulatory and supervisory response to the financial crisis and the subsequent euro-crisis changed the dynamic of financial regulation and supervision of securities business in the EU, including that applicable to alternative investment fund management.

The AIFMD regulates the activity of all fund managers (‘AIFM’) which manage alternative investment funds (‘AIF’) being all those collective investment schemes that do not qualify as UCITS schemes.

Malta is a jurisdiction of choice for international financial services, particularly in the funds sector with over 600 international funds, 60 fund managers and 27 fund administrators established in Malta. The scope of the Directive is wide and, as a consequence, it captures a significant majority of the Malta industry. The implementation of the Directive has been carried out by the Malta Financial Services Authority (‘MFSA’), Malta’s single regulator and supervisor for financial services.

Section 1: AIFMD Legislative Process

The Commission’s proposal for the regulation of the alternative investment funds industry was published in April 2009. It immediately became the subject of controversy, particularly with the hedge funds industry in London threatening to move outside the EU. The Commission’s proposal required greater transparency, restrictions on leverage and a higher degree of capital held by fund managers. This specific regulation was required in order to fulfil EU policy-makers’ commitment to apply harmonised EU regulation in fields of finance which were largely unregulated before the financial crisis. However, the Commission’s proposal came under scrutiny as having been prepared in haste and without proper consultation. In particular, it tried to apply a one size fits all regime to an industry which is characterised by very different types of players. The same points were raised by Member States during the meetings of the Council of the European Union and by MEPs at the European Parliament.

Along the way, the various issues of concern raised during the initial stages of the debate were tackled through revisions to the Commission’s proposal. Other concerns were, however, triggered during this process. This was the case of the depositary passport, which was Malta’s main issue during the debate on the level 1 text.

The Commission’s proposal required the appointment of the depositary by the AIF having the role of safekeeping the assets of the fund and monitoring the activity of the fund manager. The proposal required the depositary to be a credit institution in the EU, thereby allowing free movement in the field of depositary services. As a consequence of discussions in Council and at the specific request of a number of Member States, the text was amended to include a requirement that the depositary had to be established in the same Member State of the AIF. This created an issue for a number of Member States where
the depositary industry was not yet fully developed, as the lack of competition from external depositaries would most likely result in inefficiencies and higher charges applied by the local depositary business. Moreover, it was Malta’s view that the restriction on the free movement of depositaries would have a serious impact on the development and growth of the funds industry in the affected Member States.

Malta made the point that a depositary passport was necessary to complete the internal market for the funds industry and that the mechanisms for such a passport to operate had already been established, particularly given the extent of existing harmonisation of the requirements applicable to credit institutions and investment firms in the EU. In Malta’s view the extent of harmonisation of the activity of depositaries should have allowed a framework for mutual recognition between Member States to operate effectively in this field. However, the majority of Member States in Council were, at that stage, not yet convinced about the desirability of mutual recognition in the field of depositary services, particularly given the alleged importance of proximity of supervision of the depositary by the financial supervisor of the AIF. Malta further argued that unless a full depositary passport was allowed, Member States should as a minimum be granted the option to permit EEA credit institutions and investment firms to get access to their market and provide depositary services within their territory. This was a pragmatic solution to address the depositary passport challenge during the stage of the AIFMD legislative process.

Ultimately, the requests made by Malta and other Member States having a similar view resulted in a compromise whereby a transitional provision for a period of four years was included in the AIFMD. This transitional provision gives Member States the discretion to allow AIFs established on their territory to appoint depositaries in other Member States. This discretion is however restricted to the appointment of depositaries that are authorised as credit institutions in their home Member State. Furthermore, the text of the Directive was amended to include a recital which invites the European Commission to put forward an appropriate horizontal legislative proposal which inter alia governs the right of a depositary in one Member State to provide services in other Member States. The overall intention of these amendments being that of giving Member States, where the depositary industry is not yet fully developed, sufficient time to allow their depositary industry to grow, while at the same time giving the European Commission the time to put the depositary passport back on its legislative agenda. This has already materialised in the case of UCITS funds with the publication of the 2012 UCITS VI Consultation.

At level 2 of the AIFMD legislative process, the major issue of contention emerged from the requirements which regulate the delegation by an AIFM to a sub-manager, specifically the requirements on letter-box entities. The version of the AIFMD Delegated Regulation issued in March 2012 inter alia stipulated a quantitative test whereby, in the event that the totality of the individual tasks delegated by the AIFM substantially exceeded the tasks carried out by itself, the AIFM was to be considered as a letter-box entity. This meant that the fund manager would no longer be considered an AIFM for the purposes of the Directive. This provision raised significant concerns within the hedge fund industry, particularly given the accepted market practice for fund managers to make the high-level policy decisions directly while delegating the day-to-day stock picking and risk management of the portfolio to another firm in the EU or a third country. This accepted market practice allowed the realisation of a certain degree of economies of scale.

The proposed rule on letter-box entity meant that the AIFM would have to undertake much of the previously delegated activity directly. This would have made the prevailing delegation model unworkable for an AIFM and would have resulted in a significant amount of restructuring within the industry, with the cost being passed on to investors. This was Malta’s most significant concern at this stage of the AIFMD legislative process. Malta, together with other Member States, argued in favour of a more workable solution with regard to the letter-box entity requirements. Ultimately, the Commission moved away from the quantitative determination of a letter-box entity, by replacing the proposed rule with an approach which requires the assessment of compliance of the delegation structure with an established set of qualitative criteria. However, this meant that the mechanism for assessing the delegation arrangements would most likely result in different interpretations of the relevant requirements at national level and, as a consequence, in a fragmented approach to the supervision of AIFM delegation structures and in opportunities for supervisory arbitrage.

In an attempt to resolve the risks resulting from an uneven approach to the interpretation of the requirements on letter-box entities, the Commission Delegated Regulation stipulates that ESMA may issue guidelines to ensure a consistent assessment of delegation structures across the Union. Unfortunately, while ESMA has carried out a sterling job on AIFMD at Level III, above all in negotiating MOUs with over 40 third country competent authorities for the purpose of the Directive and in establishing a consistent approach to the application of the reporting by AIFM and the implementation of the requirements on remuneration, it has yet to initiate work in the field of delegation by AIFM. This is a key area for convergence if the intended harmonisation objectives of the Directive are to be achieved in practice.

The Transposition and Implementation of AIFMD by Malta
As the AIFMD has an impact on a significant majority of fund management companies and collective investment schemes established in Malta, the implementation of the Directive became a top priority on the Authority’s regulatory agenda. To address the implementation challenge, the Authority set-up an Implementation Working Committee, which was inter alia responsible for suggesting amendments to the local legislative framework for the purpose of the AIFMD. The Committee had three main objectives: [i] carrying out the correct transposition and implementation of the AIFMD and subsidiary legislation; [ii] ensuring a smooth transition from the existing regime for the regulation of Non-UCITS fund managers, which was largely
based on MiFID, to the AIFMD regime; and
[iii] ensuring that certain features of
the regime, such as the framework for the
regulation of professional investor funds,
would be retained.

The Implementation process resulted
in: various changes being implemented
to the Investment Services Act which is
Malta's primary legislation that regulates
the activity of investment services licence
holders and collectives investment schemes;
the publication of four new legal notices
which regulate the passporting by AIFM,
the marketing of AIFs, and the activity of
third country operators; and significant
changes to the structure and content of the
MFSA's Investment Services Rules which
regulate the activity of investment services
licence holders in Malta.

From a services provider perspective, the
Investment Services Rules for Investment
Services Providers were restructured
to reflect the European framework for
securities business, i.e., MiFID, UCITS and
the AIFMD.

Article 3 of the AIFMD provides an
exemption for small fund managers and
lays the foundations for a de minimis
regime, however, Malta decided to exercise
the discretion to regulate de minimis fund
managers through an existing licensing
process rather than registration, as it
considered that it is in the best interest of
fund managers to be licensed particularly
when dealing with potential investors.
Moreover, it is the MFSA's policy that
only persons who are assessed as being fit
and proper to provide financial services
and subject to proper investor protection
regulation (including anti-money
laundering and funding of terrorism
regulation) should be allowed to establish a
financial activity in Malta. These decisions
are reflected in the published Rulebook.

Malta also decided to introduce a
depositary-lite regime. The AIFMD
contemplates the possible provision of
services by a depositary-lite in the case of
third country funds and EU AIFs, which
have no redemption rights exercisable
during a period of five years from the
date of the initial investment and which,
in accordance with their core investment
policy, generally do not invest in assets that
must be held in custody.

Malta's depositary-lite allows entities
such as recognised fund administrators and
investment firms that are subject to an initial
capital requirement of €125,000 to apply
for an authorisation to provide restricted
depositary services. This is an area which is
experiencing significant interest from the
industry and should facilitate the process
for private equity and venture capital type
funds to be established in Malta.

The following diagram depicts the
structure of the Investment Services
Rulebook pre and post the implementation
of the AIFMD:

From a practical implementation point
of view, the biggest challenge faced by the
Authority was that of ensuring a proper
understanding of the AIFMD by the
industry and the internal preparation for re-
authorisation of all existing fund managers.

In terms of the Directive, all existing fund
managers are required to take the necessary
measures to comply with the Directive and

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2 A copy of the MFSA Investment
Services Rules may be downloaded from the
mt/pages/viewcontent.aspx?id=506
Funds

are also required to submit an application for authorisation as an AIFM to their national competent authorities by the 22 July 2014. To address these practical challenges the Authority organised a number of information sessions for the industry and prepared self-assessment questionnaires to be completed and submitted by existing fund managers for authorisation as an AIFM. In order to be in a position to process all relevant applications for re-authorisation, the Authority applied a provisional earlier deadline, 31 March 2014, for the submission of the relevant self-assessment questionnaires by existing fund managers.

The Authority has issued guidance on the setting up of an AIFM in Malta3 and launched a question and answer facility on its website4, which allows the industry to raise queries with the MFSA relating to the practical implementation of the Directive. The industry has found this facility very useful. The Authority has already replied to over 70 queries.

Conclusion
This paper examines the implementation process of the AIFMD from Malta’s point of view. At every stage of the process, Malta, like other Member States, faced a number of challenges and issues, which would have had an impact on its reputation as a jurisdiction of choice for international financial services. Malta took the necessary steps to ensure that these issues would be properly addressed. During the negotiations in the Council of the European Union, Malta argued in favour of an internal market for depositaries. As part of the discussions on the Delegated Act, Malta was in favour of a more workable solution with regard to delegation arrangements by an AIFM. At transposition stage, the de minimis requirements, the depositary-lite arrangements and the establishment of an AIF rulebook were the main topics of internal debate. With regard to practical implementation, making sure that the industry was well informed and prepared for AIFMD was the main challenge addressed by the Authority.

The Malta process analysed in this paper demonstrates a pragmatic approach to the AIFMD. However, the implementation of AIFMD is not yet complete and monitoring supervision of compliance with AIFMD would, at this stage, appear to be the final test for the MFSA in this area of regulation. Various mechanisms may be applied to address this final challenge. Requesting regular reporting on the stages of implementation appears to be a sensible solution in order to obtain the required information which would allow the prioritisation of supervisory activity. This will be followed up by on-site inspections focusing on assessing the extent of proper implementation of the AIFMD by the industry and/or regulatory meetings to examine the implementation from a governance perspective. Nonetheless, whichever supervisory mechanisms are in the end implemented, the MFSA will most certainly continue to apply the same pragmatic approach to the AIFMD as it has applied during the process so far.

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3 The MFSA Guidance Notes are available through the following web-link: http://mfsa.com.mt/pages/viewcontent.aspx?id=510
4 Queries to the MFSA may be made on the 'contact form' which is available through the following web-link: http://mfsa.com.mt/pages/contact.aspx
There is no disputing that there is a unique relationship between the regulator and private practitioner in the Maltese financial services sector.

The very ethos of the regulator is to provide a personalised and bespoke service for businesses in Malta. The country’s size allows this individual approach to all licensees and this enables both the interests of the business and compliance with regulatory standards to be accommodated.

The words ‘flexible’ and ‘dynamic’ are often used in reference to the Malta Financial Services Authority (MFSA), Malta’s single regulator for financial services.

It was established in 2002, taking over supervisory functions previously carried out by the Central Bank of Malta, the Malta Stock Exchange and the Malta Financial Services Centre. The MFSA licenses, regulates and supervises investment funds, banking and insurance business, as well as investment service providers and trustees, it also regulates the Malta Stock Exchange and manages Malta’s Registry of Companies and the Consumer Complaints division.

From the establishment of Malta as an IFC, the Regulator, with Professor Joe Bannister at its helm, has taken an interactive and open door approach to those involved in the industry.

The success of this policy has, according to Professor Bannister, been twofold.

It has allowed the regulator to be innovative in terms of its regulation. The regulation is always in conformity with EU demands but there are still regulatory structures to be found in Malta that are unique to the jurisdiction. Furthermore, this approach has brought stability to the financial centre. When the financial crisis brought recession to Europe, Malta was in an uniquely secure position primarily because the island’s banks traditionally do not borrow to lend, the international crisis impacted little on the domestic market and in many cases subsidiaries based in Malta found themselves in a more stable position that the parent company in its home country.

The MFSA’s objective is to have good quality business come into Malta and to maintain a healthy synergy between the government, the regulator and the practitioner.

Professor Bannister has been at the heart of Malta’s IFC development from the beginning and is the ‘go to’ person for all stakeholders in the sector. He speaks passionately about the synergy across the industry – the symbiotic relationship between government, regulator and industry players and he feels that being a single regulatory body has given the MFSA a slight advantage over other regulators.

The act establishing the MFSA stated that the body was to act as an advisor to the government on financial services matters. The MFSA acts as a consultant to the government and therefore has first-hand information as to developments and proposals. The Authority proposes primary and secondary legislation and its rules and guidelines have the force of law. The consultative process that then takes place between government and industry is very beneficial and proactive.

However, the plethora of regulation that has been generated since the credit crisis is “tiring on everybody and it is becoming a struggle to cope with it – a significant amount of effort has to go into to understanding and interpreting the directives,” Professor Bannister claims. The regulation is necessary, he says: “it has to be there, but it is coming too fast and the concern is that it may squeeze the market”.

Nonetheless, Malta’s Regulator seems to be handling the regulatory onslaught and it is becoming apparent that other Regulators are beginning to follow the MFSA’s example and ensure open and ongoing communication with the industry – attending conferences, having ‘meet the regulator’ panels and meeting companies on a formal and informal basis.

“In Malta we don’t believe in letting the regulation stifle innovation, here we look at innovation through regulation. We don’t push, we let things happen.”
As an example, Professor Bannister offers the Alternative Investment Managers Directive. This Directive has been the subject of much discussion and legislation throughout Europe. Malta has taken 13 decisions on the AIFMD, one of those decisions has been on the issue of the de minimis licence. The MFSA opted for a minimum licensing regime rather than registration to de minimis AIFMs as it considered it in the best interest of fund managers to be licensed, particularly when dealing with potential investors. The de minimis licence holder will only be allowed to provide collective portfolio management to collective investment schemes which are not retail schemes. A de minimis licence holder may also provide MiFID type services (such as investment advice), but in such cases the licence holder will also be required to comply with the rulebook in place for MiFID firms.

This, Professor Bannister says, illustrates how Malta assesses a regulation and opts for a way through it that is of benefit to those doing business on the island, not just a black and white interpretation of the legislation.

When the MFSA was established there were 49 people working for it. Today, 250 people work within the MFSA, consisting of specialist regulators, lawyers, accountants and support staff, facilitating the formulation of policy, decision making and support for both licence holders and consumers, a reflection indeed of how the sector has grown in Malta.

When you speak to anyone within the financial services sector in Malta, they are quick to highlight the flexibility and dynamism that the Regulator brings to the industry. Chris Naudi, President of IFSP, acknowledges how important it is for a jurisdiction the size of Malta to show that it is a serious player on the international stage and that it can do that by leading the way in implementing regulation, rather than waiting to see how the ‘big players’ do it and then following suit. This has been the approach consistently and has helped to build the jurisdiction’s global reputation.

The Maltese Regulator is deemed to be ‘firm but fair’ and will exhibit a practical and flexible approach to interpreting the letter of the law to ensure it benefits Malta and the businesses investing there.

The stability that Malta has as financial centre can be put down in no small way to the relationship the Regulator has with stakeholders and instead of allowing regulation to become a inhibiting aspect of the industry, the MFSA has looked at how it can be used to create unique and innovative products that will entice investors to the island.

With regard to the future, Professor Bannister doesn’t feel that the regulation flowing from Europe will impact negatively on growth in Malta. “We are seen as a good start up jurisdiction, particularly with regard to investment. Regulation is in effect the same across Europe, companies are free to choose where to start up, however, businesses need more guidance and need to be able to call the regulator when needs be and to get a proper response. And that is how it is done in Malta.”

“The innovative component in our industry coupled with the excellent qualities of our workforce have enabled us to overcome many a challenge on the way to establishing ourselves in this competitive market.”

Malta is a jurisdiction that complies with and helps develop international best practice and is actively involved with the OECD, the EU and the Commonwealth in modelling global regulatory policy.

The MFSA is a member of the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). The Authority is also a member of the International Organisation of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS) and a signatory of the Multilateral Memorandum of Understanding with other members of these Institutions.
The Malta Stock Exchange - Small is Beautiful

Housed in a converted Church, the Malta Stock Exchange embodies the dichotomy that is Malta. The old embracing the new.

The Malta Stock Exchange Act was enacted in 1990 and Borza ta’ Malta began trading in 1992. In the 22 years since, the Malta Stock Exchange has developed into a successful niche exchange, opening up the Maltese capital markets to domestic investors and pushing further onto the international stage.

The Exchange provides a structure for admission of financial instruments to its lists, which may be traded on a regulated market place. In addition the Stock Exchange offers a comprehensive range of back office services, including maintenance of share and bond registers, clearing and settlement and custody services through its in house Central Securities Depository (CSD). The Exchange is linked with Clearstream Banking in Germany and Luxembourg, facilitating international access.

This boutique Stock Exchange is able to provide admission, listing and trading of instruments in a cost and administrative efficient manner and has enjoyed steady year on year throughout its 22 year history.

The stock exchange was set up by the Government in the early 1990s to develop the capital markets in Malta through investment via a primary market and to facilitate trading of listed securities via a secondary market.

Trading began in 1992 solely in government stocks and this developed and grew to where the current market capitalisation is €9.3 billion – a relatively small exchange, but one that correctly reflects and supports the Maltese economy. There are currently 75,000 individual investors in Malta who have invested in stock exchange instruments. This is part and parcel of the popularisation strategy of the Exchange. There is a very broad spread of investors with very different values of investment, which is the bedrock of the Maltese economy.

Internationalisation of the Exchange
The Malta Stock Exchange has successfully developed its domestic market, however, the potential growth of this pool of investors is finite and the Exchange is currently developing a strategy to develop its international platform.

There are three pillars to this ‘internationalisation’ strategy.
1. Promotion of the admission to listing. Instruments brought to market through an IPO with consent of the MFSA create passporting opportunities. EU approved instruments can be brought to Malta and instruments approved in Malta can be traded elsewhere. It was recognised that this was a huge opportunity for Malta to capitalise on its lower administration costs and better level of accessibility (being small and well networked means approving instruments for trading can be fast and efficient).
2. Enhancement of Secondary Market Trading. To make the secondary trading options on the Maltese Stock Exchange more attractive to international investors meant a technological upgrade, the most significant change being the adoption of the XETRA trading platform, which is supplied by Deutsche Bourse AG, in July 2012.
3. Inhouse Central Securities Depository Services. This was achieved when the Exchange linked with Clearstream Banking, which has led to the launch of the Exchange’s custody business.

Malta Stock Exchange has been linked with Clearstream for two years and that relationship is now beginning to bear fruit in an international context, especially since the launch of the XETRA platform (for example in the ability to offer remote custodial services). This is a low resource but lucrative string to the Exchange’s bow.

However, the Stock Exchange is not about to forget what its core business is and the importance of its domestic market. Cliff Pace, Business & Product Development Manager at the Exchange says: “We need to be careful what direction we go in, we should never forget that our core business is the exchange business – trading, listing etc - and the importance of the domestic market, our bread and butter. Anything over and above that is the jam of the business, eg custodial services. We are very careful that any new business goes through risk analysis

MALTA STOCK EXCHANGE PRODUCTS & SERVICES

Admission
- Financial Instruments:
  - Equities
  - Bonds
  - Corporate Bonds
  - Government Stocks
  - Treasury Bills
- Collective Investment Funds

Trading of Financial Instruments

Central Securities Depository Services
- Securities’ issuance services
- New issues registration services
- Register and securities administration
- Clearing and settlement
- Custodial Services
and we work closely with the regulator to ensure it is fully in line with where we are going and we need to be able to offer specialised services without damaging our core business.”

Looking to the Future
The objective of the Malta Stock Exchange going forward is threefold.

First, to continue to support the local market and increase listings coming from Malta, in tandem with this there is an ongoing education process to ensure a full understanding of what can be achieved through and by the Exchange.

One area, for example, that the stock exchange is looking into is the financing of SMEs. The average IPO operating in Malta is about €10-15 million, ie, relatively low market capital issuers and the number of issuers out there with the potential to come to market is limited. One option is to tap into the SME market. Smaller, family run businesses are traditionally reluctant to consider coming to market to raise finance so plans are in the pipeline to create a pan Mediterranean structure to encourage SMEs down this path.

Secondly, the Exchange is looking to broaden the product base by including ETFs and ETCs on the platform. Attracting an ETF to trade in Malta is very challenging because of its current liquidity issues. Local investors on the Malta Exchange tend to buy to hold, the spread of finance is small over a large number of investors and there is a very conservative approach to actual trading. Introducing more international investment should encourage liquidity in the Exchange.

Thirdly, enhancement of the custodial services currently on offer. In the last 22 years the Malta Stock Exchange has been consistently profitable, there has been growth on a year by year basis and the number of issues comes to market has been healthy. The Stock Exchange continues to play a vital role in the success story of the Maltese financial sector.

Chief Executive of the Exchange, Eileen Muscat admits: “Our vision remains to consolidate and strengthen the domestic market and increase our international footprint by offering specialised cost effective services and products”

The Malta Stock Exchange is not trying to be something it isn’t. Like the Malta financial services sector as a whole it recognises its limitations but uses such ‘limitations’ to refine and hone the services it does provide. For Borza ta’ Malta small is indeed beautiful.

EU REGULATED MARKET STATUS
The European Wholesale Securities Market (EWSM) is a new EU ‘regulated market’ for wholesale debt securities dedicated to the needs of arrangers and issuers of wholesale debt products.

EWSM delivers service excellence to international market participants – process efficiency, a price promise and a highly professional regulatory regime.

Combining the strengths of two reputable European exchanges, the Irish Stock Exchange (ISE) and the Malta Stock Exchange (MSE), into one truly European market, EWSM is designed to meet international debt issuer requirements.

The EWSM was established as a joint venture between the ISE and MSE. It is authorised and supervised by the Malta Financial Services Authority. The ISE is the market promoter and provides primary market infrastructure and other corporate services to the EWSM. The MSE acts as ‘Market Operator’ and provides secondary market services to the EWSM under MiFID.

WHY CONSIDER MEMBERSHIP ON THE MALTA STOCK EXCHANGE?
• An EU regulated environment with a strong reputation for doing business
• Diversification opportunities
• Low-cost entry and efficient market support from MSE professional staff in partnership with Deutsche Börse’s XETRA® technical experts
• “Small is beautiful” – a small market that thinks big!
• XETRA® as a user-friendly and efficient trading platform ensures your accessibility to a worthwhile business proposition
Maritime & Aviation

On the Move in Malta - Maritime and Aviation Developments

The Maltese Maritime Industry

Much of Malta’s success as an IFC comes from its strategic position geographically and the success of its Maritime industry is no different. Located on one of the oldest shipping routes in the world with a long history of maritime tradition, it is no surprise that 2013 proved to be a record year for the Maltese Ship Register and positioned Malta as the leading European maritime jurisdiction.

Due to its location in the centre of the Mediterranean, Malta is ideally situated as a base for HNWIs travelling to other European and Middle Eastern destinations as evident in recent figures showing an increase of 18 per cent in the number of yacht registrations with 398 super-yachts as of December 2013 now flying the Malta flag worldwide.

As a diverse maritime nation with a robust shipping law, based on the English equivalent, the Maltese Merchant Shipping Act has governed the registration of vessels since 1973 and in its 40th year, 13.6 per cent growth in the merchant fleet was recorded with the Malta Maritime Registry now boasting a total 51.8 million gross tonnes.

As a pragmatic jurisdiction there have been numerous amendments to the Merchant Shipping Act over the years to ensure that Malta keeps pace with global developments, introducing not only important safeguards but also making the financing of Maltese ships more attractive.

Registering a ship requires that it must be owned by a company incorporated in Malta. There are no registration restrictions on the type of ship so vessels including yachts, cruise liners and even oil tankers can be registered so long as ownership rests with a European Union citizen or a legally constituted corporate body. Other benefits include the lack of any nationality requirements for shareholders or directors of Maltese companies, and neither are there any nationality restrictions on those employed on Maltese-flagged ships. There are also no inspections necessary for vessels under 15 years prior to registration.

Malta has also continued to consolidate its position on the White Lists of the Paris and Tokyo Memoranda of Understanding on Port State Control by attaining the highest quality ranking in their annual inspections. The White Lists contain the leading flags with consistently low detention records and are aimed at harmonising inspections on foreign flagged ships calling at different ports, increasing safety on board vessels and protecting the marine environment.

The Maltese Aircraft Registry

Having already established the Maltese flag’s attractiveness in the maritime industry, Malta has now also seen growth in its aviation industry, with almost 160 registrations as of February 2014, including many internationally renowned entities setting up operations in Malta.

The merger in 2010 of the three entities responsible for civil aviation, maritime and land transport, into a single Authority – Transport Malta has resulted in the shipping and aircraft registers falling under the jurisdiction of the same regulatory body, allowing the expertise and knowledge gained through the successful shipping registry to further enhance the Aircraft Registry’s attractiveness.

In 2010, the Aircraft Registration Act was introduced, which consolidated the existing laws on registration and encouraged further growth in the aviation sector. As part of this strategy, Malta is striving to become a one stop hub by promoting diverse sectors in the aviation industry from component production, to R&D, maintenance, repair & overhaul, and even back-office setups among others.

A number of attractive tax incentives were implemented in the Income Tax Act to enhance the competitiveness of the aviation industry. Amendments included making the income from ownership, leasing or the operation of aircraft and aircraft engines used internationally taxable in Malta only to the extent that it is remitted to Malta. Another area of interest is the concept of fractional ownership, which can reduce the cost of business aviation and grant more flexibility. In addition, the amendments allow for the registration of aircraft under the terms of a beneficial trust and grant more flexibility. In addition, the amendments allow for the registration of aircraft under the terms of a beneficial trust and the industry also benefits from the island’s extensive network of Double Tax Treaties, many of which include regulations regarding the operation of aircraft.

Malta has also ratified the Cape Town Convention on International Interests in Mobile Equipment. The treaty creates international standards for registration of contracts of sale, security interests (liens), leases and conditional sales contracts, and various legal remedies for default in financing agreements, including repossession and the effect of particular states’ bankruptcy laws.

The Cape Town Convention facilitates the acquiring and financing of aircraft and provides financiers and borrowers in the aviation market greater confidence when granting credit, and has also had the added bonus of making credit cheaper to obtain as it allows persons involved in cross border secured financing and aviation leasing transactions to benefit from increased predictability and certainty of rights and remedies, a benefit known as the Cape Town Discount.
Malta in Practice – Into Europe and Beyond

By Geraldine Schembri, Rachel Saliba and Melanie Ciappara – EMCS International

Strategically located just 90 km south of Italy and 290 km north of Libya, Malta’s advantageous geographical position, as well as its equitable climate, rich historical heritage and famed friendliness of its people have long been charming its visitors. The country has had strong shipping traditions and a manufacturing base which has evolved into a high value added proposition. Yet Malta is today making a name for itself for other reasons.

The island is a cosmopolitan meeting point of cultures and languages partly through its location and also because of its evolution into a trade and financial centre. Its accession to the European Union in 2004 and the Eurozone in 2008, served to firmly consolidate its position as the ideal location for efficient international business and as one of Europe’s most stable and innovative finance domiciles. Suffice to say the number of funds on the island has grown significantly post accession and at the end of 2013, Malta was awarded ‘Most favoured domicile in Europe’ by Hedge Funds Review. The number of fund managers is also increasing sharply.

Excellent flight connections, a sophisticated ICT infrastructure, a high broadband penetration and a competitive market with the latest technologies, Malta offers a premium environment for business. A high standard of living as well as comparatively low daily running costs present a refreshing change from other busy, chaotic and high-cost business centres. Furthermore English is universally spoken and written and is the language of education and business. This, together with the high level of education and training level of the Maltese labour force are key competitive factors.

An excellent regulatory framework covering areas as diverse as banking, fiduciary and corporate services, trusts, insurance, funds and securitisation amongst others, as well as an extensive double tax treaty network has attracted major players and also spawned successful start-ups which now have a regional or global reach.

International Tax Planning

The ‘offshore’ regime was signalled out in 1995 and in 2004 with Malta’s accession to the EU, the tax legislation was amended to conform with EU law and was approved by the Commission.

Malta boasts a double tax treaty network with around 70 double tax treaties signed not only with EU Member States, but extending also to a wide range of jurisdictions around the world ranging from the EU Member States and extending further afield to South America (such as Mexico and Uruguay) to Asia (including China, Hong Kong, Korea and the United Arab Emirates) and Africa (notably Libya, Egypt, Morocco and South Africa).

Malta is particularly interesting as a stepping stone for dividend distributions out of the EU in view of the fact that it does not impose any withholding taxes on outbound dividends, royalties and interests. Consequently Malta is an ideal jurisdiction to extract profits out of the EU and as a member of the EU, the EU Parent Subsidiary Directive and Interest and Royalties Directive can be availed of. Malta also provides unilateral relief and underlying tax credit relief.

Trading Companies

A company incorporated in Malta is deemed to be resident and domiciled in Malta. It will be taxed at the standard corporate rate of 35 per cent on its worldwide income. However, when the Malta company makes a dividend distribution to its shareholders, the shareholders will be entitled to claim a refund of 6/7th of the tax payable by the Malta company, reducing the effective tax rate.

Given Malta’s strategic location, in the middle of the Mediterranean Sea, a Malta trading company can be used for logistic purposes. Furthermore, Malta traditionally has strong business relationships with North Africa – for example a number of Maltese businesses operate in Libya. Foreign companies, some from outside the EU, are seeking to capitalize on the market knowledge and location to set up a base in Malta to penetrate North Africa or even Europe itself.
Holding Regime
Where a holding of shares by a Maltese company in a foreign company whose capital is divided into shares qualifies as a 'participating holding', the Maltese company may claim a participation exemption from Maltese tax on income and capital gains derived from such participating holding. In the event one avails of the Parent Subsidiary Directive or a zero per cent withholding tax rate applies, using a Maltese holding company results in a complete clean through.

As outlined earlier, Malta is a popular jurisdiction for non-EU investment into the EU although its treaty network is also interesting for investment into other jurisdictions. For example, a recent treaty with Israel can attract investment into Israel via Malta.

a) A participating holding arises where there is a holding of 10 per cent or more of the equity shares of a foreign company, which holding confers an entitlement of at least 10 per cent of any two of the following:
• Right to vote
• Right to profits available for distribution AND
• Right to receive assets available for distribution on a winding up

Eligibility is possible if the 10 per cent holding is not met subject to satisfying other criteria: for example if the holding is in excess of €1.2 million.

b) Dividends distributed by the foreign company will be exempt if one of the following conditions is met:
• It is an EU company or
• It is subject to a foreign tax rate of a minimum of 15 per cent or
• It does not derive more than 50 per cent of its income from passive interest and royalties, so that trading or holding companies would qualify.

If none of the above criteria are met, a company must satisfy both of the following conditions:
• the shares in the non-resident company must not be held as a portfolio investment
AND
• the non-resident company or its passive interest or royalties as defined have been subject to tax at a rate which is not less than five per cent.

The dividend article in Malta's treaties is generally based on the OECD model tax convention with the foreign withholding tax imposed by foreign jurisdictions upon a distribution of dividend ranging between zero and 15 per cent. A 10 per cent withholding tax rate applies in the treaties with Egypt and Tunisia, whilst a 5 per cent withholding tax rate applies in the new treaty with China, Croatia, Czech Republic, Romania and Slovakia. A zero per cent withholding tax rate applies in the case of Malaysia, Singapore, Syria, United Kingdom, Bulgaria and Israel.

IP Regime
In recent years many jurisdictions, including Malta, have created tax incentives in order to encourage the owners of intellectual property rights to set up structures and locate their assets within their territory. The local tax system provides for specific incentives aimed exclusively for the benefit of profits deriving from intellectual property with several options available.

Malta offers a specific exemption on royalties and similar income derived from qualifying patented IP. The exemption may be requested by any person owning IP rights and receiving royalties or similar income. This exemption benefits IP developed as a result of R&D activities performed anywhere in the world and which would be patentable in Malta. The licensee must prove that the patent is used in a productive economic activity such as manufacturing, software development or data processing, for example.

In the structure below therefore, the Malta Company, as the holder of the patent, will receive royalties from a licensee situated outside Malta. If the company decides to opt for the tax exemption applicable to patents, then the income at Malta level will be exempt from tax. In addition, since Malta does not apply any outbound withholding tax on dividends paid by the Malta Company to its shareholder, the profits from the license agreement may be repatriated through Malta tax-free.

In the event the exemption cannot be availed of, other options are available depending on the nature of the business of the company.

The foreign withholding taxes on royalties in terms of Malta's double taxation treaties range from zero per cent to 18 per cent. No withholding tax is levied on the distribution of royalties from Croatia, Denmark, Finland, Georgia, Korea, Spain, Sweden, UAE and Israel which paves the way for international tax planning out of the EU.

Apart from the advantages mentioned above, one cannot ignore the practical advantages Malta has over a lot of other jurisdictions advantages: English being an official language along with Maltese, with legislation enacted in both languages. Its flexible and accessible regulator, the solid reputation of its banks, a highly educated and well-trained labour force and cost competitiveness make it a very appealing jurisdiction indeed.

EMCS International is a boutique professional services firm and forms part of the EMCS Group of Companies, which has been providing advisory services to an international client base for the past thirty years. Our specialist area of expertise is international business structuring with a strong emphasis on tax advisory, company incorporation accounting and compliance services.

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FinanceMalta, a non-profit public-private initiative, is set up to promote Malta’s international Financial Centre. The organisation brings together, and harnesses, the resources of the industry and government, to ensure that Malta maintains a modern and effective legal, regulatory and fiscal framework in which the financial services sector can continue to grow and prosper.

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Established in 1891, Fenech & Fenech Advocates is a leading law firm in Malta with a strong commercial, corporate tax, maritime, ship registration, M&A, aviation and financial services practice and is a recognised pioneer in eGaming and ICT law.

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The bank forms part of the Austrian Savings Bank. From Malta, the bank provides Private Banking, Wealth Management and Fund Custody services to its customers. Offering a highly private and personalised service via a team of experienced and dynamic professionals.
**IFC REVIEW 2014**

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**Publishing date:** April 2014

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**IFC CARIBBEAN 2015**

Caribbean financial centres have been described as the ‘plumbing’ of the global economy, they have been integral to the efficient flow of wealth throughout the established financial marketplace, but more significantly have proven to be key in the development of the emerging economies.

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