Small jurisdictions have always prided themselves on being innovative and flexible, and the Mediterranean islands that comprise Malta are no exception. This growth has benefited the island’s size legal market, prompting firms to develop new practice areas in response to client demand. Malta’s regulators are also responding, bringing in new legislation to encourage shipowners to register their vessels in the islands and fund managers to domicile their funds there. Our Malta Special Report examines the reasons behind the increase in business.

**Practice area: Employment**

Employment law is also an area of innovation. As this week’s Special Reports show, court decisions can give helpful guidance as the law develops constantly. Rachel Dineley reports on how a recent Employment Appeal Tribunal hearing will help employers make difficult decisions over who to choose for redundancy. The case, involving law firm Eversheds, examined crucial questions of sex discrimination.

New regulation on remuneration introduced by the FSA recently will have an impact on many areas of employment law, as Daniel Stilitz QC discovers. Paul Goulding QC and Diya Sen Gupta, meanwhile, examine the trend of companies poaching whole teams of staff from each other. The feature finds out that victims of poaching raids are gaining support from the courts in defending themselves against the losses.

Malta’s influence belies its size as EU membership has helped the island extend its expertise in a number of sectors. Joanne Harris looks at how the exclusively indigenous legal profession is reaping the rewards.

**Malta Ahead in the Med**

Malta’s influence belies its size as EU membership has helped the island extend its expertise in a number of sectors. Joanne Harris looks at how the exclusively indigenous legal profession is reaping the rewards.

**Region: Malta**

Malta is one of the EU’s smallest countries, but is ambitiously setting itself up as one of the most innovative. In recent years its shipping and financial services industries have grown enormously.

Since Malta’s accession to the EU seven years ago the country has moved quickly to take full advantage of all the opportunities membership of the union can offer. Its financial services industry has ballooned and the island is also seeking to set its stall out as a rival to other Mediterranean ports for the lucrative shipping industry.

The swift developments and changes in the jurisdiction have meant its legal market is also becoming more flexible and developed. Malta boasts a handful of corporate law firms, most family-owned and run, that are making the most of this change in the country’s business environment.

Being an island nation means Malta has always attracted interest from seafarers. The Romans used Malta as a naval base and more recently, until withdrawing from the country in 1979, so did the British.

**Shipshape**

But the ships docking in Malta’s marinas now are very different. Instead of battleships, there are now cruiseliners, superyachts and freighters making use of Malta’s islands – mainly Malta, Gozo and Comino – as a base both literally and figuratively.

Fenech & Fenech Advocates managing partner Ann Fenech says Malta is now the seventh-largest jurisdiction worldwide for ship registrations, or flags, with 44 million tonnes of shipping registered in the country. In particular, she says the jurisdiction is increasingly popular for cruise ships.

Ganado & Associates managing partner Max Ganado thinks joining the EU has been the real advantage for Malta when it comes to shipping. Ganado says EU law over shipping tax moved more in line with Malta’s (taxing the tonnage rather than income on cargo) just as the country acceded to the union.

“Instead of the business dropping we found that EU companies used the flag even more because it was now a European flag,” Ganado explains.

He says the recent increase in superyacht registrations can be put down to favourable VAT laws. A recent report by...
Malta

PricewaterhouseCoopers (PwC) for Transport Malta showed that, at the end of 2010, 213 superyachts were registered under the Maltese flag, generating around €250,000 (£219,400) in tax revenues and fees annually. Meanwhile, Malta’s value-added tax policies, which make it tax-efficient to buy and import superyachts in the jurisdiction, are yielding around €8m a year.

The report added: “Furthermore, there is substantial work generated for local surveyors (€500k pa) as well as for corporate/legal services providers.”

PwC estimated that the gross direct superyacht output in Malta in 2010, excluding tax receipts, stood at €8m a year. With additional capital investment, the report said, this could grow substantially.

Fenech says the Maltese registration process is easy and the jurisdiction offers a number of advantages to shipowners. “Maltese law offers an enormous amount of protection to the mortgagee and financiers”, she adds.

Indeed, there are no duties or restrictions imposed if a Maltese-registered vessel is sold or transferred, which represents a distinct advantage in times of recession.

**Going the extra yard**

A major development in the Maltese shipping industry last year was the privatisation of Malta Shipyards, formerly a state-owned entity. The business was split into four: the Malta Ship Repair Site; the Malta Super Yacht Yard Facility; the Manoel Island Yacht Yard; and the Pieta and M alta Marinas. The process began in 2008 and ended in 2010, when Malta Shipyards was finally sold.

Fenech & Fenech won the coveted role of advising the Malta government’s privatisation unit on the whole process, while three firms were engaged in related instructions on the other side. Sole practitioner Max Mifsud advised on the privatisation of the Manoel Island yard, and Ganado & Associates was instructed on the marina deal.

The process was not without controversy. Workers threatened to strike and the government was forced to relaunch the process for the superyachts facility. However, with the bids complete the successful companies can work on building up their businesses in this lucrative area.

Simon Tortell, founder of Simon Tortell & Associates, agrees with Fenech that shipping is a key area for law firms in Malta to develop. Although shipping is not yet a core part of the services offered by Tortell’s firm, which he launched just two years ago, he says it is one he intends to grow.

**Fecund funds**

For Tortell the main business driver is financial services, particularly investment funds. Like shipping, this sector of the Maltese economy is on the rise, with consistent year-on-year growth in the number of funds domiciled in the jurisdiction.

According to Tortell the key to Malta’s success in funds, like with shipping, was its entry to the EU, which allowed it to offer not just its own funds structures, but to also take advantage of the EU’s popular Undertakings for Collective Investment in Transferable Securities (UCits) regulation.

“I think the EU’s achieved a gold brand. The great advantage of UCits comes from the fact that they’re properly regulated funds,” notes Tortell.

The latest statistics from Malta’s Financial Services Authority show almost €8bn of funds in collective investment schemes domiciled in Malta in December 2010. A total of 106 licences to offer investment services had been granted, and the number of fund administrators – a key part of the investment funds industry – is growing steadily.

“The laws themselves are based on the UK model and investors generally worldwide derive a great deal of comfort knowing that,” says Fenech of the Maltese model.

Ganado adds that Malta’s mixed legal system, containing elements of both common and civil law, is an added comfort to investors.

“That gives us an ambidextrous capacity, which is attractive to both the civil law and permitting protected cell companies (PCCs) for insurance undertakings. A PCC allows an insurance company to segregate assets into individual cells.

This year Malta introduced the concept of incorporated cell companies (ICCs). Aimed at professional investors, ICCs also exist in the Channel Islands, but Malta is the first EU jurisdiction to offer them. Unlike a PCC, each cell in an ICC has a separate legal identity, allowing trading between cells. Different fund managers can, for instance, run funds in the individual cells with the umbrella company run by a separate entity.

Tortell highlights the ICC legislation as another example of Malta’s efforts to promote itself in this area.

**Folks story**

But there is another angle to the investment funds story.

“Things – notwithstanding the recession – have absolutely blossomed. In the past couple of years the Maltese banks were probably the only banks in the whole of Europe that didn’t need a government bailout.”

Ann Fenech, Fenech & Fenech

common law jurisdictions because we can speak both their languages,” Ganado explains.

**Directive action**

Tortell says the implementation of the EU’s alternative investment fund managers (AIFM) Directive in 2013 will also offer Malta a number of opportunities. He thinks Malta should be aiming to compete with the established EU funds jurisdictions for business.

“I like to look at Luxembourg as a real goal”, reveals Simon Tortell. “Luxembourg isn’t much larger than Malta in size, so we can be compared very happily. The [Luxembourg] government and Luxembourg lawyers are extremely inspiring.”

Recent innovations in regulation that expand the vehicles available for fund managers should also help. Malta has had legislation in place for several years

“All we’ve seen investors not only moving their business to Malta, but we’ve seen them moving their families,” says Fenech. “Then it takes on a much wider perspective as far as the law’s concerned.”

She says this has led to Fenech & Fenech really ventured outside its own borders. Tortell believes he has come the closest with the establishment of a business development office in London, where he now spends a considerable amount of time liaising with clients.

“By Maltese standards this is a very big investment,” Tortell says. “It’s a long, hard slog, but I have a very good team back home behind me.”

**Home rule**

Malta is too small a jurisdiction to attract any foreign firms, so the local practices are confident they will be able to continue to take advantage of future innovation introduced by the country’s government.

“I’m convinced that Malta will compete at the highest level,” insists Tortell, “because as a nation we’re hungry and determined that people who use us get what they bargained for.”

"I think the EU's achieved a gold brand. The great advantage of Ucits comes from the fact that they're properly regulated funds" Simon Tortell, Tortell & Associates