



MALTA

Malta's robust regulatory regime and sophisticated structure means that it is well placed to take advantage of the recent market rally. *HFMWeek* talks to those in the know about the continued success of the region as a hedge fund centre and the potential for further growth in the future

HFMWeek: What are the benefits of setting up a hedge fund in Malta?

Gilbert Guillaumier and Ron Attard (GG/RA): Malta is an EU member state which has established a comprehensive regulatory framework for financial services activities.

Maltese legislation and underlying regulations do not explicitly refer to "hedge funds". However, Malta offers the possibility of forming Professional Investor Funds (PIFs) which can be used for setups commonly referred to as "hedge funds". Local PIFs are typically considered to be very flexible structures. PIFs enjoy fast processing in terms of licensing. There are different types of PIFs (those promoted to experienced, qualifying and extraordinary investors respectively), each having its own obligations and characteristics.

The country has a relatively simple tax regime for funds, as those funds which qualify as 'non prescribed' benefit from an important exemption which applies to the income and gains of the fund other than income from immovable property situated in Malta and Malta-sourced investment income.

Malta also boasts a multilingual workforce, central time zone and accessibility of professionals which do make it easier for certain promoters. Set-up costs are also competitive. Moreover there are other advantages: for example self-managed PIFs are allowed and a number of service providers need not necessarily be based in Malta.

Anthony O'Driscoll (AO): The laws of Malta are in conformity with all EU legislation thus placing it on an equal level as that of all other major EU countries. Fees and costs in Malta are relatively speaking much lower than in other EU-based countries (both fixed-costs and salaries).

Malta is the only EU member state with a full imputation system of taxation. Professional Investor Funds are exempt from Maltese capital gains and income taxes, so non-resident investors do not have to pay income tax in Malta. Malta also benefits from an extensive double-tax treaty network, most recently with the US. It also has double taxation treaties with 48 countries including most EU and OECD member states.

Malta boasts an efficient and responsive single regulator (the Malta Financial Services Authority) that allows for a streamlined process with flexibility and accessibility to allow for custom-made solutions. It has a robust yet flexible legal and regulatory framework, with all company law and



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regulations published in English. The MFSA's policy is to encourage ongoing contact between the regulator and the promoter. In this manner funds are set up and licensed in a relatively short time, despite the rigorous screening process involved.

Dermot Butler (DB): Malta is a full member of the EU and offers all the advantages of a EU domicile, while remaining off target, so to speak, in the context of the current attack

on offshore and semi-offshore centres, including Luxembourg, which has not fared well at the hands of Merkel, Sarkozy and Brown. Malta, on the other hand, has managed to keep its head below the parapet and is not considered a centre that has been exploited by the higher-level taxpayers. It is also the third-largest fund services centre, after Dublin and Luxembourg.

Malta is also far less expensive and currently has an ample supply of qualified personnel.

Simon Tortell (ST): Malta's robust and transparent Professional Investor Fund regulatory regime, the favourable tax treatment, the extensive network of double taxation treaties, the clear and competitive licensing fees, the availability of reputable and experienced service providers are all benefits of setting up a hedge fund in Malta.

The possibility of licensing a hedge fund within a relatively short period of time, together with the speed of execution of local service providers further contribute to Malta's attractiveness a hedge fund centre.

HFMWeek: What role does the Malta Financial Services Authority (MFSA) play in attracting new business to the jurisdiction?

ST: The MFSA is the single regulator of financial services in Malta. In pursuance of this function, the MFSA is responsible for the licensing of Maltese-based investment funds and their supervision on an ongoing basis.

The MFSA has proved to be a pro-active and approachable regulator, which has constantly achieved a balance between flexibility and adherence to its international obligations.

The MFSA also focuses on the promotion of Malta as a modern and efficient financial services centre through the organisation of and participation in international conferences which are intended to promote Malta's regulatory framework, contribution in specialised publications and assisting the Maltese government in the scouting of foreign investment opportunities to Malta.

GG/RA: First and foremost, the MFSA ensures that local financial laws and regulations are kept up to date with international best practices. The regulatory framework is structured to ensure best practices of probity and transparency while on the other hand encouraging competition and innovation in the sector. The MFSA also emphasises the importance of focusing on quality rather than quantity when it comes to attracting and regulating business which

and in the day-to-day running of the business.

DB: The Maltese government and the Maltese financial industry have put a lot of effort into attracting new business to the island and they have been largely successful. The MFSA is a great advantage to the island because, while it is an extremely effective and diligent regulator, it is also very proactive and pragmatic. As such, if you have a problem or a query, it won't send you to the lawyer as most other regulators do, but rather, will sit down and see if there is a way that you can mutually solve the problem.

AO: The MFSA being the single regulator plays an essential role in the promotion of new business in Malta. The Authority's amicable approach, timely response and efficiency rank the MFSA as a top-class regulator ready to resolve and find the most appropriate solution to any problems that may arise during the licensing process.

HFMWeek: What challenges has Malta faced as a result of the global financial crisis and how has it coped with them?

DB: Industrial Malta has naturally declined, as have property prices, but only by a very small amount as yet. In fact, I believe that property prices have publicly remained unchanged – it is just that some lower offers have been accepted. In terms of the financial industry, I think that Malta has benefited from the financial crisis, because quite a few funds are re-domiciling from the more exposed jurisdictions to Europe and are looking to set up UCITS. Certainly, Malta has seen a number of re-domiciliations and has been building up its UCITS portfolio.

AO: As in all countries, the effect of the global financial crisis has taken its toll on the funds market. While many registered a decrease in the number of funds being registered, Malta continues to expand. The close co-operation between all market participants in the jurisdiction (custodians, legal advisors, fund directors, fund administrators and investment managers) and the respective regulator has allowed Malta to manage the impact.

Having a single regulator allows for flexibility and the ability to adapt has ensured that any impact due to the global financial crisis is dealt with in an effective and timely manner. In a recent publication by the World Economic Forum, Malta was labelled as having one of the soundest banking systems, placing 10th out of 134 Countries.

Malta also benefits from a pro-active form of legislation that permits the MFSA as the single regulator to publish and update rules and regulations quickly in response to threats and opportunities in the markets. The MFSA also ensures that the records of funds are regularly inspected to ensure that the financial soundness of the fund as well as ensuring that the fund is maintaining its obligations to investors and that the investment policies on which the fund is established are being adhered to.

ST: Malta's stable financial system and well-regulated financial services regulatory environment has mitigated the effect of the global financial crisis on local banks, insurance companies and investment services providers. In fact, international players in the financial services industry are now looking at Malta as an ideal location within the euro-zone in order to relocate their activities.

The difficulty in obtaining finance from the banks, has also led to a number of local companies resorting to debt and equity issues on the Malta Stock Exchange in order to finance new projects. During the past six months, seven bond issues were listed on the Malta Stock Exchange by



existing and new debt issuers with a total amount of more than €170m being raised. These issues were very successful, and in certain cases over-subscribed, within a relatively short period of time.

GG/RA: As in most other financial centres around the world, the current market landscape is challenging and has been characterised by possibly downward pressures on performance and unit values.

HFMWeek: To what extent have professional investor funds (PIFs) contributed to the continued growth of Malta as a hedge fund centre?

ST: Malta's success in the licensing and re-domiciliation of PIFs has played a key role in the development of the entire local financial services industry. In fact, during the past years we have also seen a number of internationally renowned hedge fund administrators establishing a presence in Malta, in order to service locally based PIFs and provide ancillary

services to hedge funds they administer overseas.

DB: The Maltese PIF is an excellent vehicle for a hedge fund and, in our experience, it works very well. It is a fact, however, that we do act for a Master Feeder Fund in Malta, in which the Master Fund has over 60 sub-funds and the Feeder fund close to 50 sub-funds for each of which we produce a daily dealing valuation. I think this has demonstrated Malta's efficiency and I think the PIF will have a big say in the continued growth of Malta as a hedge fund centre. It is, of course, relatively small, but no more than Ireland was 15 or 20 years ago.

HFMWeek: Looking forward, what opportunities lay ahead for Malta?

AO: The market is now demanding a more cost-effective, well-regulated product along with experienced services providers and Malta is well positioned to provide a cost-effective solution to the market, and with the PIF and UCITS, has product offerings that can cater for a diverse array of strategies and investor base.

ST: The establishment of Malta as a ideal hub for the re-domiciliation of investment fund business from offshore jurisdictions and the development of innovative features within our regulatory regime are the main opportunities which lie ahead for Malta in the near term, in so far as hedge fund business is concerned.

DB: I think that if Malta continues the way it has and builds up its strong and clean reputation, then it will have a huge opportunity to develop into an alternative fund centre for hedge funds, funds of funds, real estate, private equity and all other alternative investment vehicles. This is not to say that Malta will not develop in the more traditional UCITS funds, both for hedge funds and for non-hedge funds – indeed, it has already started on that route. While there is the possibility of a pricing backlash – that is, fairly rapidly increased prices that will erode the market's advantage I expect Malta's growth to continue in the future.

GG/RA: As things stand, Malta has now gathered more experience and should have the confidence to take on business. Remaining at the forefront of regulations and finding ways to offer a differentiated product will result in more exposure for us and more interest from foreign investors. Indeed, the island is seeing a number of well-renowned players setting up in Malta. However the most important element is the industry itself, and the island should continue to capitalise on this while exploiting all new opportunities. ■

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ANTHONY O'DRISCOLL, MANAGING DIRECTOR OF APEX MALTA

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SIMON TORTELL, SIMON TORTELL AND ASSOCIATES

leaves a lasting effect on Malta's reputation.

Our experience with clients suggests that the MFSA is frequently perceived as being approachable, offers quick turnaround times, and adopts a pro-business attitude, all of which helps investors considerably during formation