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Exciting times for Malta's financial services industry

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The growth of Malta's economy in 2009 continued where it left off in 2008, albeit at a slightly lower pace - given the worldwide financial crisis, whereas encouraging signals have been felt during the first six months of 2010. Testament to this is the World Economic Forum's Global Competitiveness Index 2009 - 2010, which ranked Malta 13th out of 133 countries for its financial market sophistication while its banking system was reported to be the 13th soundest in the world.

Malta has last year identified six critical pillars in which it wants to excel, including amongst others, international educational services, tourism and financial services.

Cooperative agreements

The Malta Financial Services Authority (MFSA), in its continuous effort to foster sustainable growth in financial services, conducted consultations on a variety of legislative and regulatory matters. Moreover, the number of Malta's double taxation agreements (DTA) continued to increase during 2009 and 2010, (now exceeding fifty) with the most recent agreement being signed with Bahrain, whilst the US treaty awaits ratification by Congress and the re-negotiation and improvement of the existing treaty with China is underway.

The MFSA has continued expanding the list of co-operation agreements concluded with other financial services regulators, in order to facilitate and encourage business development between Malta and such jurisdictions, with the most recent Memoranda of Understanding for regulatory co-operation being signed with China and South Africa.

Insurance legislation

Insurance related legislation was consolidated and a number of amendments to the relevant laws were undertaken. The advent of Solvency II is also becoming a fast reality, with the effective implementation due in October 2012.

In order to ensure that Malta's insurance industry remains competitive, a number of key elements were discussed during various consultation initiatives, resulting in guidance notes being published by the MFSA regarding internal models for regulatory capital purposes and the system of governance.

Incorporated and Protected Cell Companies

Another development in this area was the introduction of the Incorporated Cell Company (ICC) vehicle under Maltese law as a further development on the existing Protected Cell Company (PCC) framework.

The PCC allows the setting up of various protected cells under the same legal entity, whereas insurance business promoters can now structure each cell under the ICC vehicle, with separate legal personality being assigned to each segregated cell for further ring-fencing and structuring flexibility.

Investment funds

Other financial services sectors have continued to grow in 2009, with a net increase of approximately 15% in financial services companies setting up their operations in Malta, whilst the number of licensed alternative investment funds (AIFs - referred to as Professional Investor Funds (PIFs) under Maltese regulation), including sub-funds of umbrella structures, increased by approximately 20% in comparison with 2008.

Malta has also witnessed an increase in the redomiciliation of funds previously set up in offshore jurisdictions, primarily as a result of the proposed EU Directive on Alternative Investment Fund Managers. Maltese law does not only allow the migration and continua-

tion of AIFs into Malta (based on re-domiciliation legislation which has been in place and successfully utilised since 2002), but also the conversion of such re-domiciled funds into a Ucits (undertaking for collective investment in transferable securities)-compliant structure (by complying with the respective restrictions and requirements prescribed by the Ucits Directive).

In order to enhance awareness within the industry of the legislative and regulatory changes that lie ahead, the MFSA issued a number of informative circulars, including circulars regarding the Ucits IV Directive and its implementation under domestic law. Other legislative developments over the past year focused on the transposition of several EU Directives, such as the Capital Requirements Directive, Acquisitions Directive as well as the Payment Services Directive and the adoption of subsidiary legislation relating to the authorisation and supervision requirements for Central Securities Depositories.

Moreover in March 2010, the MFSA cleared the path to create an inroad for Malta into another niche market, namely the setting up of *sharia'h* compliant funds (both under the Ucits and PIF regime) and is also actively undertaking a process of legislative and regulatory adaptation to accommodate Islamic banking and insurance (*takaful*) products.

The MFSA's Listing Rules setting out the requirements and conditions for admissibility of undertakings to listing and trading on a regulated market were revised in January 2010 with the main purpose of transposing the provisions of the Shareholders' Rights Directive (2007/36/EC) and of the Company Reporting Directive (2006/46/EC). MFSA is also piloting a consultation process on a proposed comprehensive review of the listing rules aimed at simplifying and updating such rules to make them more comprehensible and more easily applied by practitioners and entities operating in the Maltese capital market.

Pension schemes

A major breakthrough in the Maltese financial sector followed certain amendments to the domestic regulatory and supervisory framework for occupational pension schemes and funds which led to the confirmation by the UK HM Revenue & Customs (HMRC) that retirement schemes established in Malta and regulated by the MFSA may be considered on a case by case basis to be eligible for the status of Qualifying Recognised Overseas Pension Schemes (QROPS).

This recognition has resulted in tax efficiencies for UK non-residents who wish to transfer their funds from UK schemes to Maltese schemes, without incurring any tax charges in the UK.

Conclusion

Overall, Malta has showed a strong resilience and growth capability, despite the recent calamity caused by what may be described as the worst economic scenario for over half a century. It has over the years gained increased popularity and reputation for its stability and confidence generation mainly due to its sound but yet flexible regulatory framework.

The constant development and improvement of its legal and regulatory architecture in financial services as well as in other areas, such as shipping and aviation, online gaming and IT, coupled with the 15-year old efficient fiscal regime (and the participation exemption and tax refund benefits available thereunder) and its EU membership since 2004, augurs well for Malta to continue to grow as an established and well respected financial centre and a domicile of choice for doing business therein and therefrom with other jurisdictions in Europe and worldwide.

Financial and corporate

Recommended firms

Tier 1

Camilleri Preziosi
Ganado & Associates
Mamo TCV Advocates

Tier 2

Fenech & Fenech
Galea Salomone & Associates
Grech Vella Tortell & Hyzler

Tier 3

CDF Advocates
Simon Tortell & Associates

Maltese lawyers can thank the country's resilient financial services sector for the bulk

of their work last year. Its conservative banks - financed largely from deposits - continued to cushion Malta from the global downturn, and spurred a level of confidence long-missing from the rest of Europe.

Although tight lending criteria and minimal defaults made for only a trickle of new finance and restructuring work, this was compensated for by normally loyal borrowers looking to other avenues to raise funds. These avenues came in the form of Deutsche Bank, which was licensed in March, and a buoyant debt market.

"We've had a record year on the bonds market," notes one lawyer. "The market seems to have responded well. All issues have been oversubscribed." Again, financial services created a lot of the activity with Bank of Valletta and Eden Finance responsible for offerings worth €50 million and €15 million, respectively, and other financial issuers looking to reschedule existing bonds for fresh finance.

Equity was a less attractive option and the market is not expected to improve any time soon. A mixed offering by Island Hotels Group Holdings was the only activity of note and even this was described as "quite a bold move in the climate" by one lawyer.

The topic that dominated conversation last year was the raft of upcoming changes to funds. The offshore centre reports growing interest in hedge funds and Ucits (Undertakings for Collective Investment in Transferable Securities), and expects the government to implement the EU's Ucits IV directive long before the 2011 deadline.

In addition, new guidelines about redomiciliation of offshore funds caused "many to move lock stock and two smoking barrels to Malta", according to one practitioner. On a less positive note, fund managers are eager to know how strictly alternative investment structures will be regulated once the Alternative Investment Fund Managers (AIFM) directive is passed. "We know something will eventually go through, but we don't know what it is going to look like," says one funds lawyer. "Either way, Malta has had a bit of an edge in this regard, but this directive will put a bit of a straightjacket on that."

In stark comparison to the financial sector, M&A stayed out of the headlines last year. Most deals were either small-cap transactions or restructures to take advantage of the tax benefits offered to holding companies.

Camilleri Preziosi

Camilleri Preziosi is still regarded as a "top notch" firm by clients and competitors, with partner Louis de Gabriele's reputation as a leading capital markets lawyer helping the

firm make the most of this standing during Malta's recent debt market surge.

Since October 2009, the firm has closed two bond issues, both worth €25 million. The first was for the financing arm of telecoms company Melita Capital Group. The second was for Premier Capital, which owns the majority of Malta's McDonald's restaurants, and is one of the most talked of deals in the market. Funds raised by the issue will help the company expand into the Baltics.

The firm also acted for Island Hotels Group Holdings in the year's only equity-related issue. Under the guidance of De Gabriele, the team restructured the client's subsidiary to assist it list on the Malta Stock Exchange in October 2009. Elsewhere the firm continued to advise Lufthansa Malta Finance on its €4 billion MTN programme.

Capital markets work aside, the firm receives positive client feedback for its finance practice. "They give very profound legal advice and are very good to use when setting up complicated structures," says one banking client. "We'd rather take Louis than anyone else." Another client says the firm's turnaround time can be longer than expected, but suggested this was caused by understaffing and it being a popular choice with clients.

No significant hires were made last year but lawyer Laragh Cassar, who the market rates for funds and investment services work, was promoted to partner level.

Leading lawyers

Louis de Gabriele
Henri Mizzi

Ganado & Associates

Ganado & Associates receives nearly flawless recognition from its peers, mainly in regard to its depth and breadth of talent.

The firm's stalwarts, Stephen Attard and Max Ganado, continue to draw praise for their manner as well as their abilities. One leading lawyer describes Attard as "very competent and very solid", adding: "I always like working with Stephen."

Another competitor credits Ganado for building the firm into what it is today, explaining: "He's a very reputable and very well known lawyer ... he advises on a number of issues but he's very reputable in the financial sector, especially banking".

Peers have also recently taken notice of the firm's other talents. Andre Zerafa is considered a promising young partner and receives praise for his funds work. Conrad Portanier was also named.

Leading lawyers

Stephen Attard

Max Ganado
Andre Zerafa

Mamo TCV Advocates

Mamo TCV Advocates is described by peers as “a top notch firm” and one which forms “part of the Maltese equivalent of the magic-circle firms”. Previously the firm was known for its maritime transactions, but over the past few years it has developed a highly regarded corporate and financial practice.

In addition to its figureheads Richard Camilleri and Andrew Muscat, the market has recently taken notice of young corporate partner Joseph Saliba.

Leading lawyers

Richard Camilleri
Andrew Muscat

Fenech & Fenech

A large firm by Malta's standards, Fenech & Fenech is still known primarily for its work in shipping law. But the market has noticed its strengthening corporate and finance practices.

Under the guidance of lead corporate partner Nicolai Vella Falzon, the firm recently helped PK Airfinance arrange financing of three Airbus A320 aeroplanes, and later advised international company Orascom Telecom Group on the Maltese aspects of its cross-border bond issue.

However, much of the firm's work still has a strong maritime flavour. Its most notable deals include the expansion of one of Malta's busiest ports and the privatisation of a string of ship builders and repairers. This reputation gives the firm an edge when advising the country's many shipping companies.

Clients are pleased with the firm's work. One says: “They've helped us out with many legal issues including financial law advice. We are always very satisfied and have absolutely no complaints. They are very effective in coordinating works between their departments.”

Leading lawyers

Nicolai Vella Falzon

Galea Salomone & Associates

Competitors view Galea Salomone & Associates as a small but very capable firm: “It's more of a niche practice but it's involved in quality corporate and finance work,” says one. For clients, the size enhances the service they receive, with one saying: “They get to know the business.”

Its strength is financial services and its client portfolio includes many of the country's banks such as Fimbank and Investkredit.

Name partner Arthur Galea Salomone, who is also chairman of the Malta Stock Exchange, led banking work for these clients over the past 12 months. In addition to finance transactions, he recently represented Fimbank in the acquisition and development of its headquarters in Malta.

The market knows partner James Bannister for his hedge-fund work. In 2009 he launched Swiss Fund Services and Portuguese fund PLC Estrategia e Gestao, and arranged the licensing for their administrators. He also supervised the country's first application for an investment manager licence.

Partner Galea Salomone's manner and equitable approach garners a lot of respect from both peers and clients. One banking client says: “He tries to strike a balance when doing a deal. When fighting for rights he's reasonable and not one sided - he doesn't bother asking for unreasonable things which the other side is never going to agree to. That is just a waste of all our time.”

Leading lawyers

Arthur Galea Salomone

Other ranked firms

CDF Advocates is geared towards funds work with its principal, Frank Chetcuti Dimech, considered by his peers to be a leader in the area.

Recent changes to fund redomiciliation guidelines have kept the firm busy setting up collective investment schemes and SPVs. Notable work includes a \$5 million restructuring of private-equity fund Actis and establishing a \$19 million SPV for Globeleq in preparation for a share sale. It has also helped Valletta Fund Services set up five funds which range in value from €5 million to €40 million.

Leading lawyers: Frank Chetcuti Dimech

In May 2009 the bulk of Grech Vella Tortell & Hyzler's finance team left to set up **Simon Tortell & Associates**. The breakaway firm works primarily in investment services and regularly advises on the operation of Maltese-registered Ucits (Undertakings for Collective Investment in Transferable Securities) funds in Europe. Its corporate department has recently negotiated a \$60 million shareholders agreement to facilitate the financing of a luxury business complex in Georgia.

The firm is happy with the number of clients that moved across with them. Client feedback indicates many moved because of their trust in partners like Katya Azzopardi: “She is very efficient, comes back immediately which is good because with some firms you

can be waiting a while. We moved with them because we were so happy with Katya.”

Other notable firms

Buttigieg Refalo & Zammit Pace Advocates is a new firm created by a merger last year. Partner Roderick Zammit Pace is well respected on the corporate side.

Small firm **Zammit & Associates Advocates** has been active in the gaming sector, assisting French company Mangas Gaming acquire a \$100 million controlling interest in a domestic poker network. It also advised on local law aspects of the European-wide takeover of Greentube by Novomatic.

Elsewhere the firm helped launch an online system for spot foreign exchange contracts- the first of its kind in Malta.