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Developments in Malta's finance legislation

Frank Chetcuti Dimech
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In the first half of 2006 the principal new piece of Maltese legislation is the Securitization Act (the Act), which was published in April 2006. During this time Malta also witnessed increased interest in structures for venture capital and Ucits, while the hedge fund and captive insurance sectors continued to grow rapidly.

The new securitization law provides a comprehensive framework for the conversion of receivables or other assets into securities that can be placed and traded in capital markets. The originator is at liberty to select any method of transferring the securitization assets to the special purpose vehicle (SPV). The transfer of assets to the SPV does not trigger any form of local tax, except if the assets transferred consist of immovable property situated in Malta.

The SPV can take any permitted legal form, such as an investment company (variable or fixed share capital), a partnership or a trust. Therefore, if the relative criteria are met it is possible for the SPV to be constituted as an international trading company (ITC) or as a collective investment scheme, including a professional investor fund (PIF). The Act allows three forms of securitization: (i) asset securitizations; (ii) synthetic securitizations (which do not involve a transfer of receivables by the originator to the securitization vehicle); and (iii) loan securitizations.

Securitization transactions will in principle not be regulated. However, the constitutive documents of the SPV must provide that they are subject to the provisions of the Act, and the SPV must give notice to the competent authority that it intends to enter into one or more securitization transactions.

The limited partnership (LP) is a tax-transparent entity ideally suited for international venture capital transactions through Malta. The LP is a partnership *en commandite* with a separate legal personality which is licensed as a collective investment scheme. The capital can be divided into shares, and both the limited partners and the general partners (usually the fund manager) can be limited liability companies formed in any jurisdiction. The LP itself, by virtue of its licence as a collective investment scheme, is not subject to any income tax or tax on capital gains. If the LP is appropriately structured, capital gains realized upon the disposal of investments can be distributed to the partners without any local tax. The fund management company, as the general partner of the LP, can be constituted as an ITC, allowing it the beneficial tax treatment associated with

such a structure. Expatriate managerial employees of the fund management company are also exempt from social security payments and customs duty upon the importation of personal belongings.

A specialized regime governing hedge funds (or PIFs) was introduced in Malta in 2000. The net asset value of Maltese PIFs as at February 28 2006 was in excess of \$3.6 billion. Maltese PIFs benefit from a flexible regime, quick licensing and attract no income tax or capital gains tax liability at fund and non-resident investor levels. The same blend of EU-domiciled structures and flexible regulation also fuelled the growth of captives and captive insurance managers. Captives are exempt from contributing to the Protection and Compensation Fund, exempt from localization rules and from custody of assets, and can be set up under a protected cell company (PCC) structure. A captive that underwrites risks situated outside Malta is able to operate a foreign income account, and non-resident shareholders can benefit from a tax refund when dividends are distributed from this account. Management services provided to captives and licenced collective investment schemes (such as PIFs) are also zero-rated for VAT purposes.

Malta implemented the Ucits III regime immediately upon accession to the European Union on May 1 2004. In line with the current interpretation of the Ucits Directive, the preferred methodology entails the use of self-managed funds (usually a Sicav), and the delegation of certain management functions to an external management company which is authorized in any EU member state and recognised in Malta. At the licensing stage, the proposed delegation arrangements must be clearly defined. Current regulatory practice suggests that as a minimum the board must have at least one, but preferably two, local directors who satisfy the "fit and proper" competence criteria and must meet periodically in Malta. The board should also retain the ultimate supervision of the risk management process through regular reporting to and from the management company, and be involved in setting the fund's policies.

Amongst the foremost reasons to choose Malta as the base for a Ucits fund, one can certainly cite the Maltese Financial Services Authority's (the MFSA) growing reputation as a serious yet flexible regulator and the cheaper set-up and listing costs. Since a Ucits must be available in its home member state and cannot only be sold cross-border, tax issues in the Ucits' domicile are particularly relevant. Malta imposes no tax or capital gains on a Ucits' income, and investors are not taxed unless they are resident in Malta (in which case there is a straightforward withholding tax of 15% on income and realized capital gains). This compares favourably with the more established fund domiciles which impose either a tax on the Ucits' net asset value or on investors' income and capital gains at person-

al tax rates, or a combination of both.

The last few months of 2006 and the beginning of 2007 will see the MFSA and financial services operators working towards the implementation of MiFID on time for the November 1 2007 deadline.

Banking and capital markets

Recommended firms

Tier 1

Camilleri Preziosi Advocates
Ganado & Associates
Mamo TCV Advocates

Tier 2

CDF Advocates
Fenech & Fenech Advocates
Galea Salomone & Associates
Grech Vella Tortel and Hyzler Advocates

Mergers and acquisitions

Recommended firms

Tier 1

Camilleri Preziosi Advocates
Mamo TCV Advocates

Tier 2

Fenech & Fenech Advocates
Ganado & Associates

Tier 3

Galea Salomone & Associates

Camilleri Preziosi Advocates

Valletta's Camilleri Preziosi Advocates remains in the top tiers of Malta's rankings after winning universal praise from rival firms. It maintains its reputation for securing key roles on the big deals and pushing them through successfully. Partners Louis de Gabriele and Henri Mizzi remain, in the words of one peer, "among the very best" in the jurisdiction; they are supported by a group of seven able associates, including rising star Laragh Cassar, of whom one banking client said "she's very flexible, gives advice immediately and is a very hardworking person".

De Gabriele heads the finance department, and another important client was keen to praise him because "commercially he is very knowledgeable and always closely involved in the negotiations". In one of the most important deals to reach the Maltese market this year, de Gabriele advised International Hotel Investments on its €12 million investment bond issue on the Malta Stock Exchange, which closed in March 2006. Camilleri Preziosi also advised Malta International Airport on the government of Malta's disposal of 20% shares in the company, working opposite Ganado & Associates.

The firm's banking practice advises both foreign and local banks that provide financing to companies in Malta. Clients in this area include Bank of Valletta, its subsidiary Valletta Fund

Management, Bawag Bank, the Commonwealth Bank of Australia and Charts Investment Management Services

The corporate practice, meanwhile, has a great reputation and has enjoyed another busy year. De Gabriele advised the government of Malta on the disposal of its 60% equity stake in Maltacom for €220 million to Emirates International Telecommunications (Malta) and Tecom investments. The firm worked for the buyer on its acquisition of Town Investments, a company that is carrying out a major residential redevelopment on the island. Among the year's other highlights, the firm also advised on a €12 million agreement for the acquisition of 70% of 3G Telecommunications, one of three companies allocated a 3G mobile licence.

Camilleri Preziosi is a member of Taglaw, a legal network of 135 law firms spanning more than 75 countries.

Leading lawyers

Louis de Gabriele
Henry Mizzi

Key contact partners

Louis de Gabriele
Henri Mizzi

CDF Advocates

CDF Advocates was a new addition to the rankings last year, and has kept its place in the banking and capital markets ranking this year after a solid performance over the past 12 months. Frank Chetcuti Dimech is the managing partner of the firm, which has a 10-year relationship with the Bank of Valletta.

Financial services form the main part of CDF's work, and Chetcuti Dimech has provided general regulatory advice on financial services and data protection to the Bank of Valletta and Valletta Fund Management as well as advice to SJ Berwin on the regulatory aspects of marketing a fund formed as a Scottish LLP in Malta.

Leading lawyer

Frank Chetcuti Dimech

Key contact partner

Frank Chetcuti Dimech

Fenech & Fenech Advocates

Fenech & Fenech began life in 1891, and now has eight partners and nine associates. The firm has expanded into the corporate and commercial sphere, although its focus remains shipping and maritime law. Managing partner Tonio Fenech and Nicholai Vella Falzon, partner in charge of the corporate and commercial department, remain highly rated by the market.

The firm has assisted its clients on setting up investment companies, listing shares on the Malta Stock Exchange, preparing prospectuses, and on the private placement of shares. It also advises on company law, and has a well-established litigation department.

Leading lawyers

Tonio Fenech
Nicholai Vella Falzon

Key contact partners

Rosanne Bonnici
Tonio Fenech
Nicholai Vella Falzon

Galea Salomone & Associates

Galea Salomone & Associates is a three-partner firm based in Floriana, just outside Valletta. Arthur Galea Salomone was highly rated by his peers for his "dependability and thorough knowledge of capital markets." He is deputy chairman of both the Malta Stock Exchange and the Malta Arbitration Centre. The firm regularly advises Investkredit International Bank, a wholly

owned subsidiary of the Austrian Bank Investkredit. In bank lending this year, Galea Salomone & Associates advised Gemxija Crown when it borrowed €440 million for the acquisition of Mistra Village, one of Malta's largest real estate deals of 2005.

In corporate work, meanwhile, the firm is advising the Maltese government's privatization unit on the sale of its 25% stake in Bank of Valletta, and worked with Ernst and Young on the liquidation of Healthland Management and Healthland International.

Galea Salomone & Associates is a member of ILF, an association of 70 law firms in forty countries.

Leading lawyer

Arthur Galea Salomone

Key contact partner

Arthur Galea Salomone

Ganado & Associates

Ganado & Associates focuses on its shipping and admiralty law practice, but still maintains an enviable reputation for providing sound advice in banking and commercial matters. Among the year's standout mandates, it worked opposite Camilleri Preziosi for the government of Malta on its disposal of 20% of its shares in Malta International Airport in November 2005. At time of going to press the firm was advising the privatization unit of the government of Malta on the commercialization of the petrol division of Enemalta, the energy corporation.

Clients find it difficult to single out outstanding individuals, preferring instead to stress that "the whole team is very good". Name partner Max Ganado is highly-rated by rival firms and lawyers and acts for HSBC in Malta, and his colleague Stephen Attard also comes in for praise again this year. Ganado & Associates is the Maltese representative member of the worldwide legal alliance Lex Mundi.

Leading lawyers

Stephen Attard
Max Ganado

Key contact partner

Max Ganado

Grech Vella Tortell & Hyzler Advocates

New to the rankings this year, five-partner firm Grech Vella Tortell & Hyzler was complimented by rivals for its presence in the local market. It is involved in the government's privatization programme, and works with a range of international law firms.

For example, in a recent matter name partner George Hyzler led a team that worked in conjunction with international powerhouse Linklaters when it advised two subsidiaries of Malta Holding – Tecom Investments (a Dubai Free Zone company) and Emirates International Telecommunications (Malta) on the €220 million acquisition of the government of Malta's 60% interest in Maltacom.

Key contact partner

Dr George Hyzler

Mamo TCV Advocates

Mamo TCV remains in the top tier in both practice areas this year. It has four partners, who are ably supported by a team of 15 associates.

Partners Richard Camilleri and Andrew Muscat were both nominated as leading lawyers by the market, but David Tonna was also present in some high-profile transactions this year. These have included acting for San Paolo IMI on a €100 million syn-

dicated loan to the Bank of Valletta, advising the International Finance Corporation on a \$40 million loan to Fimbank, and guiding Depfa Bank through a €200 million loan facility to Enemalta, the Maltese energy corporation.

The firm also provides general financial services and capital markets advice to JP Morgan Asset Management and Fidelity, while in the mergers and acquisitions arena Andrew Muscat advised Maltacom on the purchase of the government's 60% stake in the company.

Leading lawyers

Richard Camilleri
Andrew Muscat

Key contact partner

Richard Camilleri
Andrew Muscat
David Tonna