

Malta

Chamber of commerce:

Malta Chamber of Commerce
Exchange Buildings
Republic Street
Valletta
Malta

Tel: +356 233873/247233

Fax: +356 245223

Email: info@chamber.org.mt

Website: www.chamber.org.mt

Professional body:

Chamber of Advocates
Valletta
Malta

Tel: +356 2124 8601

Fax: +356 2124 8601



Corporate finance legislation in Malta

Max Ganado & Conrad Portanier

Ganado & Associates

Valletta

Malta gained full membership of the EU on May 1 2004. This event has stimulated significant developments in the domestic financial services industry. The challenges and opportunities that lie ahead are exciting indeed. Malta has over the past few years been positioning itself as an international financial centre within the EU and, since the signing of the Athens Treaty, has been witnessing an increase of interest in Malta generally.

Panoramic view

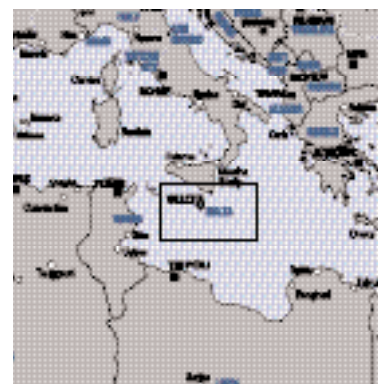
The Malta Financial Services Authority (the MFSA) is the main regulator of the financial services industry and now oversees: (i) banks and financial institutions; (ii) insurance companies, insurance intermediaries and affiliate insurance companies; (iii) investment services companies; (iv) collective investment schemes; (v) retirement schemes and funds; and (vi) investment exchanges and listed securities.

The Central Bank of Malta has retained the task of developing and carrying out monetary policy in Malta.

The Malta Stock Exchange (the Exchange) is the only recognized investment exchange in Malta. The Exchange lists a limited number of local securities and more than 300 international funds. At the close of 2002, the Exchange's total market capitalization (excluding funds) stood at over \$4 billion.

The Exchange has shed its status as regulator of the market and is adapting to its new role as market operator. The MFSA has taken up the role of regulating investment exchanges and the approval process for listing securities. Any company seeking to list securities on the local capital markets must first comply with the listing rules issued by the MFSA (in its capacity as listing authority in Malta). These comprehensive rules deal with the workings of the listing authority, conditions for admission to listing, methods of bringing securities to listing and listing particulars. The company must in parallel also seek admission to a recognized investment exchange.

The foundations for a solid financial regime have all been put into place. An amended Companies Act 1995 – inspired to a large degree by its UK counterpart – provides the backdrop for all corporate financial activity in Malta. An amended Insider Dealing and Market Abuse Offences Act 1994 regulates and defines market abuse and insider dealing offences. Procedures for the control of concentrations have been introduced to address competition law issues relating to mergers and acquisitions. A non-obligatory code of principles on good corporate governance has been compiled by the Exchange for the purpose of setting corporate governance benchmarks for Maltese companies. A company listed on the Exchange is obliged to make reference in its annual auditor's



report of the extent to which the company has complied with the code. A Set-Off and Netting on Insolvency Act 2003 has also been introduced for the purpose of ensuring the validity of close-out netting provisions on an insolvency, eliminating the systemic risks associated with certain financial dealings. And the list of legislation goes on.

Malta's capital markets – looking beyond the shoreline

Over the past few years, a number of large corporates, as well as some start-up companies, have gone for an initial public offering on the Maltese capital markets. Admittedly, the number of listed equities has been limited, because few local companies – usually family owned – wished to relinquish full ownership and control. In contrast, the listing of debt instruments has been steadily on the increase as companies started looking for alternative sources of finance as a means of reducing the rates of interest and extending repayment schedules.

In this regard, the Exchange has contributed in no small way to the development of alternative corporate finance, which was, until a few years ago, limited to traditional bank finance. Yet, to date, trading of both equities and debt instruments on the secondary market remains low. In contrast, the listings of investment funds have mushroomed, and a significant number of indigenous and international funds are quoted on the Exchange. Index-linked and capital guaranteed products have also found their way into the local retail market.

The future of Malta's capital markets is full of challenges but brimming with opportunities. The government has just given notice of a Securitization Bill that is expected to provide a solid legal framework for securitizations in Malta. The need for securitizations has long been felt by a number of state and private entities. The appetite for local securitizations is already tangible and the vehicle for their implementation is taking shape.

Yet the future of Malta's capital markets lies overseas. Many local analysts aim to make Malta a hub of corporate finance for the Mediterranean region. Securitization and pension funds will definitely boost the local capital markets, but the real leap will only materialize if Malta manages to position itself as a centre for international finance, particularly in the Mediterranean rim.

The accession of Malta and Cyprus to the EU is expected to bring renewed energy to collaboration between the EU and the Mediterranean. In this regard, the Exchange has recently embarked on a project – BorzaMed – to create an exchange for the Mediterranean region. The concept revolves around the feasibility of developing an efficient regulatory framework for cross-border trading of securities in the Mediterranean. This will in turn give companies listed on the individual markets the potential to have easy access to a pool of capital far larger than the respective domestic market.

Financial services remain the fastest growing sector of the Maltese economy and account for more than 12% of Malta's gross domestic product. New legislation on trusts should form the basis of rendering Malta a centre for trust administration by international operators, particularly because of the location of Malta, the use of the English language, the relatively low costs of operating there and the pool of available educated staff. The

introduction of English trust law into the mainly civil law system of Malta is expected to result in enhanced flexibilities in the legal system which will be of benefit to overall development.

Perhaps one of the greatest advantages of the island has always been its small size. The limitations imposed on it by its size have always made the Maltese nation look beyond the shoreline – financial services in and from Malta. This explains why a number of international banks, fund managers, investment houses and professional practices from jurisdictions such as the US, Germany, Austria, Switzerland, Turkey and the UK have decided to set up shop in Malta.

It has come a long way from where it started 16 years ago, from an introverted and closed system to an offshore corporate centre and then in 1994 to a financial centre with the elimination of offshore laws. Malta should make significantly more progress in the next decade.

Banking and capital markets

Recommended firms

Camilleri Preziosi Advocates

Ganado & Associates

Fenech & Fenech Advocates

Galea Salomone & Associates

Mamo TCV

Mergers and acquisitions

Recommended firms

Camilleri Preziosi Advocates

Mamo TCV

Fenech & Fenech Advocates

Ganado & Associates

Galea Salomone & Associates

Gatt Frendo Tufigno Advocates

Camilleri Preziosi Advocates

Top-tier firm Camilleri Preziosi Advocates is based in Valletta, and employs a legal staff of two partners and seven associates. Partner Louis de Gabriele fronts the banking and capital markets department, and is one of the country's most respected practitioners, described by one rival as "the lawyer that you will most often come across in any legal matter." The group has recently seen Laragh Cassar join the group as an associate. He joins a group described by peers as containing "both hardworking and serious lawyers."

Recent clients include The Bank of Valletta, Bawag Malta Bank, Garanti Bank (Malta branch), Sparkasse Bank Malta, Charts Investment Management, Mariner Finance and International Hotel Investments. In 2003 the firm acted on two major finance deals, both of which involved a large international bank operating through its Maltese branch or subsidiary. Camilleri Preziosi also advised a major international entity on a medium-term note programme.

The firm has also advised on several capital markets projects, and in the words of one competitor, "does most of the bond issues in Malta". The standout deals this year have been two bond issues and listings on the Malta stock exchange, valued at €12.5 million (\$15 million) and €9 million respectively. In both cases Camilleri acted for the issuer.

The corporate and commercial department has also taken on new talent in associates Marisa Azzopardi and Adrian Mallia. Both are former trainees. Meanwhile, associate Maria Chetcuti Cauchi left to form her own practice. In a £5 million (\$9 million) deal, the firm advised Testaferratae-Edrichton Group on a lease and purchase option concerning Cavalieri Hotel. This deal was overseen by Camilleri lawyers Henri Mizzi and Marisa Azzopardi. These same two also acted for BP Marine on the aborted privatization of Malta Offshore Bunkering. Leading lawyer Henri Mizzi also advised the Virtu Group on an £11 million deal as well as a £3 million case involving the Satariano Group.

The firm conducts its business in Maltese, English and Italian.

Key contact partners

Louis de Gabriele

Henri Mizzi

Leading lawyers

Louis de Gabriele

Henri Mizzi

Fenech & Fenech Advocates

Managing partner Tonio Fenech heads this Valletta firm, which employs seven partners and four associates. Of these, three partners and one associate are UK qualified.

The banking and finance department assists clients with the details of negotiating and structuring finance deals. These include asset and project finance, as well as capital markets and banking deals. This has involved providing advice on setting up foreign banks in Malta and as a result, the firm is considered an authority on the regulatory and operational aspects of Maltese banking.

From a strong team, name partner Tonio Fenech is regarded as especially capable. The firm is also fortunate to have Nicolai Vella Falzon, a lawyer regarded as a potential future star.

Key contact partners

Rosanne Bonnici

Ann Fenech

Tonio Fenech

Leading lawyer

Tonio Fenech

Galea Salomone & Associates

Galea Salomone & Associates is part of the Ernst & Young Law Alliance, and as a result was responsible for handling the Malta merger of Ernst & Young and Arthur Anderson. Affiliation with the E&Y group gives the firm access to 2000 lawyers in over 60 countries.

The firm recently acted in the revision of Maltese stock exchange law; name partner Arthur Galea Salomone is deputy chairman of the Malta stock exchange.

Key contacts

Marliese Buhagiar
Arthur Galea Salomone
Andrew Zammitt

Ganado & Associates

Leading lawyer Max Ganado is repeatedly recommended by his peers, described by one competitor as “very creative” with “a lot of experience within Malta,” and by another as “very well educated, with a very confident and steady presence.” He heads this widely respected firm, and his technical and negotiating skills play a large part in maintaining its excellent reputation. Stephen Attard is also praised, and is a lawyer cited as a potential star.

The firm acts on all aspects of loans, and regulatory matters regarding the Malta Financial Services Authority, and has advised foreign banks on establishing a presence in the country. Max Ganado has also been working on the launch of the Law and Trust Act, which introduces the concept of a trustee in Malta for the first time. Of the two main Maltese banks, Camilleri advises one, while Ganado & Associates advises the other together with Mamo TCV.

Key contact partner

Max Ganado

Leading lawyers

Stephen Attard
Max Ganado

Mamo TCV

Mamo TCV is one of Malta’s largest law firms and employs 30 lawyers. Based in offices in Valletta, the firm is the result of a merger between law firms Tonna Camilleri Vassallo & Co and John Mamo & Associates.

The firm has a reputation for excellent banking work, which assures it a relationship both with leading foreign and domestic banks. The firm has recently been taken on to litigate for HSBC. For banking, Mamo was described by one commentator as a firm that “does a lot of large-scale deals,” and recommended lawyers such as Andrew Muscat help to bolster the firm’s excellent reputation. Muscat is also head of commercial law at the University of Valletta.

Key contact partner

Andrew Muscat

Leading lawyer

Andrew Muscat