# MALTA

As Malta's reputation as a financial hub grows, key figures from its hedge fund industry assess the impact of the forthcoming AIFM Directive and examine the increasing role of regulation

**ANTHONY O'DRISCOLL**
is the managing director of Apex Malta, part of the Apex group, which offers global hedge fund administration services with offices in Bahrain, Bermuda, China, Dubai, Hong Kong, Ireland, the Isle of Man, Malta, Mauritius, Singapore and the US.

**DERMOT BUTLER**
is chairman of Custom House Global Fund Services Limited, which offers a 24/5, 'round the world' and 'round the clock' hedge fund administration service out of offices in Chicago, Dublin, Guernsey, Luxembourg, Malta, Singapore and The Netherlands.

**LARAGH CASSAR**
is a partner at Camilleri Preziosi with responsibilities for investment services. Laragh graduated Doctor of Laws (University of Malta, 2002), following which she read for her Master in Law in Banking and Finance (University of London 2003).

**JOSEPH SALIBA**
is a partner at Mamo TCV Advocates and forms part of the financial services department. He has been practising law with the firm since 1997, soon after he was admitted to the Maltese Bar. His areas of specialisation are financial services legislation and regulation, securities law and corporate law.

Over the past few years, Malta has built up a reputation as an EU-based onshore domicile which has the ability to attract investment from funds across Europe. The country's regulatory body is now preparing for the consequences of the upcoming Alternative Investment Fund Managers (AIFM) Directive, as an opportunity emerges for Malta to take its place as one of Europe's prime financial centres.

Anthony O'Driscoll of Apex Malta, Dermot Butler of Custom House, Camilleri Preziosi's Laragh Cassar and Joseph Saliba of Mamo TCV Advocates discuss Malta's suitability as an onshore domicile and how regulation is making the jurisdiction more accessible to a wider market.

**HFMWeek (HFM): How can hedge fund managers benefit from setting up their funds in a domicile that is an EU member?**

**Anthony O'Driscoll (AOD):** With investors looking for greater oversight, transparency and good governance, investment managers are searching for jurisdictions that provide increasing levels of confidence and reassurance. This explains why we are seeing a trend towards onshore-domiciled funds.

Malta provides a perfect entry point for investment managers wanting to set up an onshore fund, due to Maltese regulation being strong and in compliance with EU requirements. In addition, the MFSA has shown itself to be pragmatic and business friendly and is proactive in helping businesses find a solution within the framework of the laws and regulations.

**Dermot Butler (DB):** It is probable that the final version of the AIFM Directive will require that, if a fund wishes to be sold to EU resident investors, it and/or its manager will have to be resident in the EU. It is probable that, if the fund is registered in the EU, whether an Undertakings for Collective Investment in Transferable Securities (Ucits) fund or a professional investor fund (PIF), then the manager will have to qualify as an AIFM acceptable manager, whether that manager is based in the EU or not. There is no doubt that since Malta became a fully signed up member of the EU, its attraction as an onshore jurisdiction for funds and managers has grown substantially, certainly since the proposed AIFM Directive appeared on the scene in April 2009.

**Laragh Cassar (LC):** Recent trends in the fund industry appear to be favouring the concept of onshore funds. This is the result of increased pressure from investors, from the potential repercussions (often criticised as protectionist) of the AIFM Directive, to broadening the scope of distribution of Ucits funds to the EU through the passporting mechanism. The entry of Malta into the EU and the eurozone has naturally been a major plus point and has indeed been used as a tool for promoting Malta.

**Joseph Saliba (JS):** The process of Malta becoming a fully-fledged onshore jurisdiction and promoting itself as such began in 1994, 10 years before EU accession. The process of conversion from offshore to onshore mainly involved the early alignment of the domestic financial services legislative and regulatory package with the Acquis Communautaire, in anticipation of EU membership and the efforts of the MFSA and the government to foster sustainable growth and rebranding by, among other things, intensifying business relationships with foreign regulators, tax authorities and business communities through an ever-growing list of ratified or concluded memoranda of understanding on regulatory matters, double taxation agreements and business development co-operation agreements. Maltese policymakers have been successful in correctly assessing and anticipating the negative repercussions that its pre-1994 'offshore label' could bring to its reputation as a well-regulated domicile and to its relationships with foreign supervisory and tax authorities.

Malta's onshore status has saved it from the hostile scrutiny to which the traditional offshore domiciles have been subjected, particularly as a consequence of the recent financial crisis. Its onshore fiscal regime has secured a place for it on the white list of individual tax authorities in most jurisdictions, without losing the competitive edge which its unique fiscal benefits, cost and flexibility advantages bring to the island's foreign-sourced business and GDP. All this, coupled with the pan-European passporting rights which Malta offers on a level playing field with other EU financial centres, constitute an attractive proposition for hedge fund managers, particularly those targeting European investors, to establish themselves and/or their funds in, or to relocate the same to Malta and thereby continue to offer innovative products which suit the appetites of their clients, while at the same time satisfying the recently increased levels of investor protection demands.

**HFM: How is the MFSA winning new business in such a competitive environment? Has there been increasing interest in Malta as a service centre from any areas in particular?**

**AOD:** The MFSA is continuing to win business by delivering on its promise of ensuring that licensing is very efficiently processed. Malta has seen continued growth with more investment managers seeing Malta as an ideal location with continued increases in the number of PIFs being set up.

**DB:** The MFSA is winning new business through intelligent promotion by the Maltese government and organisations

> "MALTA'S ONSHORE STATUS HAS SAVED IT FROM THE HOSTILE SCRUTINY TO WHICH THE TRADITIONAL OFFSHORE DOMICILES HAVE BEEN SUBJECTED"
>
> JOSEPH SALIBA, MAMO TCV ADVOCATES

such as Finance Malta; the proactive approach of the MFSA and in particular its chairman, Professor Joseph Bannister; an efficient tax environment; and the ability to provide a reasonable infrastructure, backed up by qualified staff and service providers, at reasonable prices.

As a result, there has been an increasing interest in Malta as a fund domicile and a fund service centre, particularly from countries like Austria and Norway, where there are certain double taxation benefits. There has also been interest from the UK for tax reasons, and elsewhere, because of Malta's economic advantages.

**LC:** The recent momentum experienced by the Maltese market has been the result of initiatives launched by the Maltese industry, the regulator and specialist organisations aimed at placing Malta on the map as a fund domicile. The increasing interest in Malta has other contributing factors, namely the general economic, social and political stability of the country, relatively low set-up costs, an open and accessible regulator, expertise in audit and legal services, the taxation regime and the extensive range of double tax treaties ratified by Malta. The most significant interest in Malta has been in the non-retail funds, or PIFs, which provide a flexible vehicle which is licensed and regulated by the local regulator.

**JS:** The MFSA, as the single regulator of financial services in Malta and principal proposer and driver of new financial services legislative initiatives, manages to win new business amid competition by ensuring an efficient combination of a robust and yet highly flexible regulatory framework. In achieving this, it adheres to the Maltese culture of getting things done by remaining approachable and open to new business proposals and by committing to short response times.

**HFM: How are you helping funds redomicile in Malta? How has the threat of the AIFM Directive helped Malta develop as a popular hedge fund centre?**

**AOD:** To date, the AIFM Directive has had little impact on driving development in Malta given that there is very little clarity as to what shape or form the final draft of the Directive will take. Malta's growth over the past two years has been driven by investors looking for funds located closer to home which have greater oversight, transparency and good governance.

**DB:** By explaining that certain funds targeting European investors could benefit by being domiciled in Malta, just as there are certain funds which benefit by being domiciled in the Caymans. The attraction of Malta, in terms of a European/EU base, is its cost base and the proactive attitude of the regulator. Custom House redomiciled to Malta after the merger of Equity Trust's fund business into Custom House in 2008 and the parent company of the Custom House Group is now a Maltese company, which is not only a holding company, but also an active administrator and a licensed custodian of funds of funds.

As yet, we have not helped any funds redomicile into Malta, but we have assisted clients who wanted to set up a new fund structure based in Malta. The threat of the AIFM Directive has definitely increased the attraction of Malta, which, although it is still relatively small and has a long way to go to catch up Ireland and Luxembourg, most definitely has a 'head of steam'.

**LC:** Camilleri Preziosi has assisted funds (particularly non-EU funds) redomicile to Malta and obtain licensing under Maltese law, either in the form of a PIF or a Ucits fund. Our involvement includes assisting in structuring the transaction, preparing the necessary documentation to permit the redomiciliation take place, preparing the necessary paperwork and assisting in the general process to enable the licensing of funds in Malta. Our experience in this area has shown that the threat of the AIFM Directive has intensified awareness of Malta and spurred offshore funds to relocate to Malta with a view to servicing EU investors and benefiting from the distribution possibilities under the Directive.

**JS:** Malta began implementing effective and straightforward redomiciliation rules for corporate bodies in 2002, which have since been successfully used by an increasing number of trading companies and, more recently, by corporate funds. Mamo TCV Advocates has advised and assisted on funds migrating into Malta from offshore centres. While some fund promoters have been fast enough to migrate or replicate their offshore funds in Malta or other onshore domiciles in anticipation of upcoming tighter regulations, it is felt that the majority of them are still waiting to see the final outcome of the Directive before making the move.





Apart from the contemplated passporting abilities for funds which are expected to further develop Malta as a popular hedge fund domicile, the passporting of the management services of the AIFMs themselves proposed under the Directive is expected to constitute another opportunity for Malta, as most hedge fund managers seeking authorisation in the EU will now be enticed to concentrate their activities in the one EU country (which appears to them to be the most beneficial in terms of tax, costs and other factors) for onward transmission of services into Europe. Malta and its unmatched fiscal regime will surely stand out on their map in choosing the right domicile.

**HFM: What are the benefits of keeping Ucits and other onshore structures in Malta?**

**AOD:** Malta has significant cost advantages relative to other more established EU jurisdictions and Malta has highly qualified and multilingual staff – an ideal combination to deliver cost-effective and well-regulated products.

**DB:** Apart from lower establishment and operating costs which make Malta attractive next to its 'big brother' competitors in Ireland and Luxembourg, there is very little difference between the three centres. Luxembourg has the advantage, or disadvantage depending how you look at it, of being a multilingual centre, whereas Ireland, which is English speaking, has a definite attraction for US managers. Malta has developed working relationships, including double taxation treaties, with a number of countries and is consciously targeting China and the Shariah market.

**LC:** Using Malta as a Ucits fund domicile has several advantages which compare favourably to other traditional fund domiciles. Such advantages relate to its small size and a generally business-oriented community determined to develop and cultivate the fund market. Increased interest in Malta is being experienced by Ucits hedge funds.

**HFM: What factors do you think contribute to the continuing popularity of PIFs and to what extent does this contribute to Malta's reputation as an international financial service centre?**

**AOD:** PIFs provide greater flexibility within the portfolio than Ucits, while continuing to be well regulated. PIFs have three investor classes; experienced investors with a minimum investment of €15,000, qualifying investors with a minimum investment of €75,000 and extraordinary investors with a minimum investment of €750,000. PIFs provide an excellent entry point if moving from an offshore structure to onshore. The functionaries of a PIF may include a manager and/or an administrator, an investment advisor and/or a custodian or prime broker, and can be located outside Malta. In this situation a judicial representative, who is a lawyer or accountant based in Malta, must be appointed. Again, this flexibility makes the transition to an onshore jurisdiction an easier process for the investment manager as it allows for relationships to be maintained with many of the existing service providers.

**DB:** The PIF remains popular in Malta, as does the QIF in Ireland and the SIF in Luxembourg. A PIF is much the same as the classic Cayman fund, with regard to investment restrictions, although it is more strongly regulated. For those who have not joined the Ucits bandwagon, the PIF is the logical fund to set up in Europe.

**LC:** One of the success stories for the Maltese fund industry has been the PIF structure. The regulatory framework of the PIF can be generally described as being flexible while retaining an element of regulatory intervention seeking to ensure the protection and stability of the financial market. This form of fund has been commonly used by hedge funds as well as private equity funds and has been particularly attractive to the medium-sized hedge fund outfits.

**JS:** PIFs have so far constituted the success story of Malta's funds industry and the factors leading to this are various but can be grouped under four broad categories, namely:

- Flexibility: the availability of various structuring options for the PIF make this type of fund a highly flexible one which can be used for hedge funds, private equity, real estate and an infinite array of other investments targeted to any type of professional investor.
- Reputation: PIFs can still provide the investor protection guarantees on which the marketability of the funds has come to depend.
- Cost: cost is a key element for promoters and investors alike, and in this respect Malta surely can offer the most competitive package within the EU, with professional fees, salary and office costs being in the region of two-thirds of those in other established centres.
- Tax: Malta's favourable fiscal package for holding and trading entities as well as its extensive double tax treaty network (with more than 50 countries) provide further tax planning opportunities for funds investing through special purpose vehicles and other tax efficient structures.

**HFM: Do you expect any changes in regulation in the coming year? What is the future for Malta as a domicile?**

**AOD:** We are all awaiting the final outcome of the AIFM Directive. How the AIFM Directive, when finally implemented, will shape the future of Malta and everywhere else remains unclear. Malta, as a European jurisdiction for regulated alternative investment funds, is well placed to address the demand for heightened oversight, transparency and good governance. Malta-based service providers have a proven track record in providing professional services to Malta and non-Malta domiciled funds while being substantially less expensive than other territories in the industry. Malta should stand to benefit as investors demand more regulated product forcing more managers to move onshore. The Maltese regulator continues to support the funds industry and its development in Malta, and is proactive in its approach to ensure that Malta, as a jurisdiction, has an efficient regulated funds regime which meets the needs of a global industry. Malta remains well-equipped and ready to meet the evolving requirements of the hedge fund sector.

**DB:** Obviously, we are awaiting the outcome of the AIFM 'trialogue' negotiations, which will inevitably result in changes in regulations in Europe and, therefore, Malta – although not for perhaps two or more years. It is likely that, rather than complicate their lives by trying to comply with AIFM from outside the EU, non-EU managers will set up EU-based managers and funds, each complying with the Directive. This will mean more work for service providers in Malta. As a jurisdiction, Malta has momentum now, but that is liable to increase and its future as a domicile is, I think, underpinned by its low-cost base and efficient infrastructure.

**LC:** There are a number of initiatives being made by the Maltese industry to increase Malta's attractiveness as a fund domicile. One such initiative is addressed at increasing the presence of private equity firms in Malta by fine-tuning our law relating to limited partnerships. The purpose of this would be to ensure that the more typical structures used internationally for private equity funds would be easily absorbed by local legislation and practice. ■