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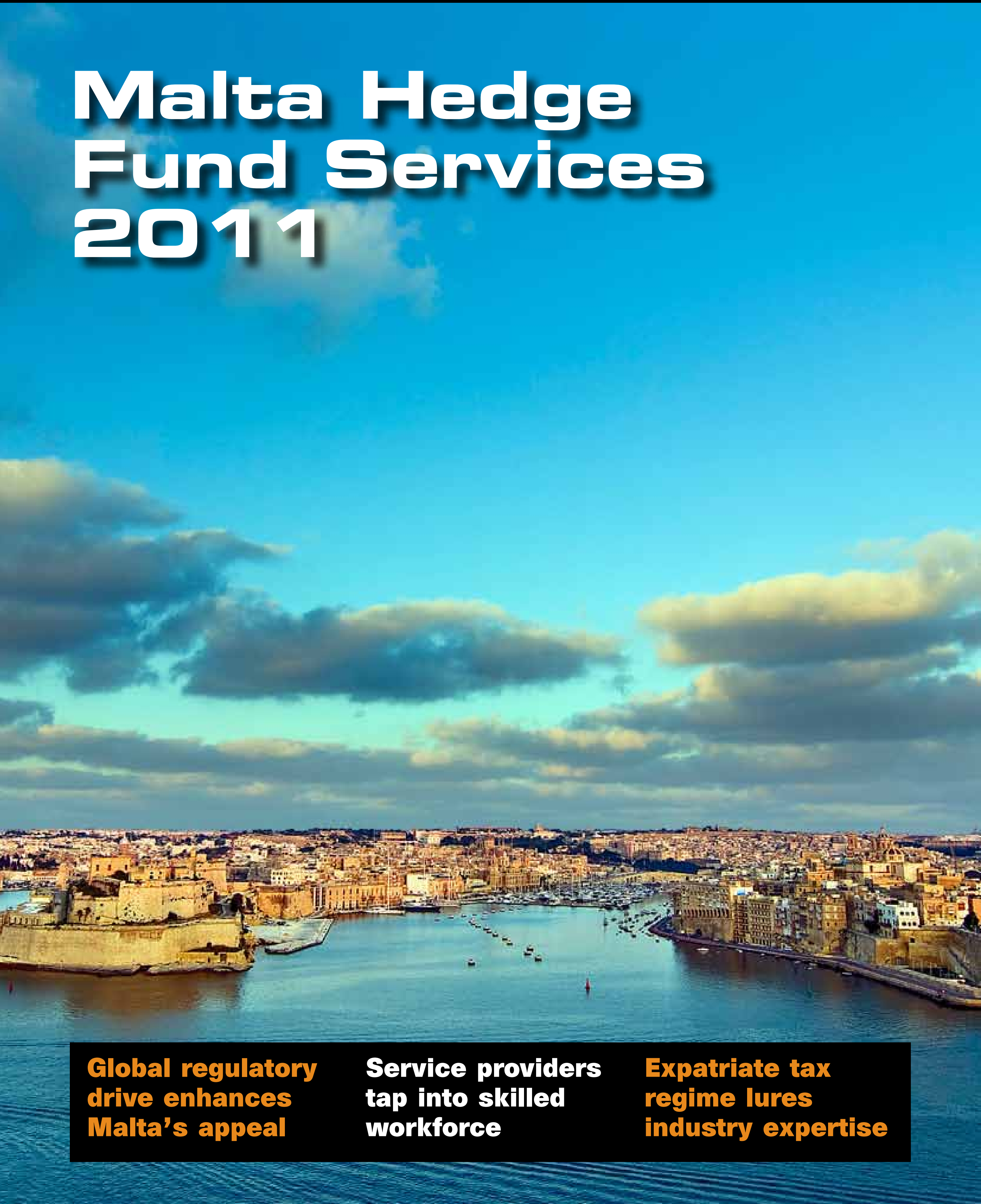

Global regulatory drive enhances Malta's appeal

Service providers tap into skilled workforce

Expatriate tax regime lures industry expertise

Redomiciliation of funds into the EU

By Laragh Cassar

Malta's rules on the redomiciliation of investment funds have contributed to its success story as an alternative fund domicile in the European Union. Coupled with a robust yet flexible regulatory framework and a highly skilled workforce, Malta can offer fund managers added value and synergies through increased efficiencies and returns.

Merit is also due to the Malta Financial Services Authority as it has lived up to its philosophy of offering a level of flexibility within firm regulatory principles, earning itself the title of a reputable authority while being sensitive to the particular requirements of applicants.

During a period when added returns have become an important consideration in the decision-making process, Malta offers lower compliance costs than other jurisdictions without undermining the high level of professionalism provided by the service providers available on the island.

As a result of the implementation of the Alternative Investment Fund Managers Directive, the redomiciliation of investment funds to Malta as an EU jurisdiction may also allow managers to benefit from the Europe-wide passport offered to professional investor funds. This will allow fund managers to establish a European base and promote their funds in all 27 member states of the union through the single authorisation requirement obtained from the MFSA.

With the surge of exchange-traded products in the funds industry, it is worth noting that Maltese funds may be listed on the Malta Stock Exchange as well as obtain access to listing on foreign exchanges. In fact, the Malta exchange has been recognised by the UK and a number of Malta-based companies have listed on the London Stock Exchange.

Laragh Cassar is a partner with Camilleri Preziosi

A redomiciliation of the fund to Malta would not affect the fund's existing listing arrangements in other jurisdictions. Further efficiencies of redomiciling include efficient tax planning opportunities for the fund, its investors and its service providers, which are achieved by Malta's established and efficient taxation framework as well as the extensive network of double-taxation treaties with around 58 countries.

The process of redomiciliation is available to funds (as well as service providers) in the form of corporate bodies and established in jurisdictions that permit the redomiciliation of their companies. The scope of the applicable laws regulating the redomiciliation of companies ensures continuity and a smooth transition from their original jurisdiction to their newly-acquired Maltese domicile.

This is reflected in the legal effects of redomiciliation under Maltese law, as this does not create a new legal entity nor does it affect the continuity of the company. The redomiciliation does not have any effect on the property of the company, its assets, liabilities and obligations, nor does it render defective any legal proceedings against the company. The applicable regulations also provide for the validity of share pledges made in the jurisdiction where the company was originally formed.

Fund managers and investors need not worry about the validity of existing contracts entered into with service providers, the registration of fund investors, or the ownership of the portfolio of assets belonging to the fund.

Continuity of the contracts entered into with a fund's service providers is also facilitated by the fact that the MFSA currently does not require the service providers of non-retail funds to be established in Malta. ■

10 ▶ mouth is slowly helping us reach a critical mass, at which point we can really enter Luxembourg's and Dublin's league," he says. "That won't happen overnight, but we are very confident that given time, as well as the effort and commitment being put in by everyone from the regulator to service providers and fund promoters, we will definitely succeed."

Industry practitioners say the government's commitment to keeping Malta's legislation and regulation up to date and competitive is impressive. Over the past year a series of changes to the law has made partnerships and contractual funds more attractive by comparison with investment companies by giving them greater flexibility, while incorporated cell companies have been added alongside traditional umbrella structures.

While the more traditional structures remain popular, Cassar says the important thing is to offer actual and potential clients a full range of options. For instance, she notes that the law governing cell companies only came into effect at the end of last year. "There has been interest from both the local and international fund industry," she says.

"It is now possible to create an umbrella structure where each cell is to all intents and purposes a company in its own right, with its own governance and accounts. This interesting and novel concept is particularly useful for platform structures where each sub-fund can be treated as an individual corporate vehicle while benefitting from the efficiencies of an umbrella fund structure. This was not possible previously."

Tua notes that the changes also make it easier for funds to be redomiciled as a going concern from offshore or other jurisdictions to Malta, keeping their portfolios of investments and track records intact, because this requires an incoming fund to adopt a similar corporate structure to that used in its previous domicile. "We did our first redomiciliation way back in 2004," she says, while acknowledging that many managers prefer to keep parallel onshore and offshore structures for different types of investor.

While the overall outlook for Malta as a fund jurisdiction is positive, industry members say a watchful eye needs to be kept on a handful of issues that could become problematic if they are not managed carefully. Perhaps least significant for the long term is a squabble between Valetta Fund Management and domestic investors left out of pocket when the La Valette Multi-Manager Property Fund was suspended in 2008 after its assets fell in value from a peak of EUR84m to EUR34m.

Some investors have claimed they were not informed of the risks of the fund, nor about fraud proceedings brought against directors of one of the underlying funds; that a number of privileged shareholders were allegedly informed of the fund's difficulties, enabling them to redeem shortly before the suspension; and that a EUR0.75 per share buy-back offer from Bank of Valetta was inadequate. Nevertheless, the offer eventually won acceptances totalling 98 per cent of the fund's capital.

"Disputes are something that happens as a domicile matures, but we have to be careful that such failures that do occur cannot in any way be attributable to a lack of regulation," Ghio comments. "You can't regulate against all failures, but through the regulatory framework you can ensure that service providers offer adequate checks and balances against fraud. That is something that the MFSA continues to take very seriously."

There is also measured concern that as the Maltese fund industry grows, the regulator may find it harder to maintain its reputation for rapid and efficient licensing of funds. "It's possible we could become victims of our own success," Ghio adds. "The MFSA can feel the strain sometimes when it has to service many applications at the same time. Currently one of our advantages is time to market, being able to get a structure licensed within weeks compared with a month in Luxembourg or Dublin.

"If bottlenecks start to grow, the MFSA will have to widen its pool of resources, which is not always easy to do quickly. You can't just find new staff on the street, and nor can you leave new hires to their own resources. They have to be trained, and they need adequate supervision. This presents a challenge, but the MFSA has already increased headcount as its responsibilities and business coming to our shores have grown, and up to now it has coped quite well." ■