

# MALTA REPORT 2010

# M E N A

## FUND MANAGER

### SERVICE PROVISION

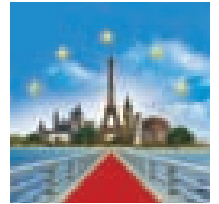
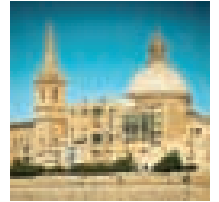
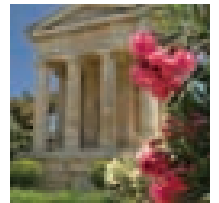
Key points from setting out to ongoing compliance

### CUSTODY

Exploring and what the custodians can offer

### LEGAL

Strong competition against other European domiciles



#### FEATURING

- Camilleri Preziosi
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- FinanceMalta
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- HSBC Malta
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- Regus
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- Valletta Fund Services

# THE PLACE FOR MALTA IN THE ALTERNATIVE FUNDS MARKET

Laragh Cassar of Camilleri Preziosi tells how Malta, with its strong economic and political regime is perfectly set up to be the alternative funds domicile of choice

It is now an accepted reality that Malta is considered an ideal location for the domiciliation of funds. Malta's awareness has grown over the past decade, in particular, following its entry into the European Union (EU). This has been the result of a number of contributing factors, ranging from the general economic, social and political stability of the country to the more industry-specific initiatives intended to intensify awareness.

In particular, the relatively low set-up costs, an open and accessible regulator, the expertise in audit and legal services, the taxation regime and the extensive range of double-tax treaties ratified by Malta have all contributed to its success in the fund industry. Such factors have proven to act as a particular attraction to the smaller- to medium-sized fund promoters seeking to establish themselves in an onshore, well-regulated and cost-effective jurisdiction. Promoters of such medium-sized funds are unlikely to want to incorporate the fund in the more traditional onshore fund jurisdictions,

such as Ireland and Luxembourg, since the costs to do so would typically be too elevated in proportion to the investment's size. The efficiency of the Maltese regulatory, legal and audit fees and ancillary costs places Malta as a complement, rather than a threat to the traditional fund jurisdictions. What is simply too costly to set up in Luxembourg and Ireland is more likely to be a feasible project in Malta. This attraction, however, does not come at a cost to the quality of regulation and service providers.

## The benefits of redomiciliation

As of lately, the fund industry is reported to have experienced a general trend towards the migration to onshore and well-regulated jurisdictions. The OECD led a review of offshore domiciles, anti-money laundering Financial Action Task Force, increased taxes and increasing regulation, together with investor appetite for increased regulation post the financial crisis are reported to be a few of the causes. This has been good news for Malta, since this general trend appears to have acted

as a catalyst to fund promoters and advisors looking beyond the shores of the more traditionally known fund domiciles, both for the launching of new investment funds, as well as for the redomiciling of existing funds.

While the legislation concerning the continuation of companies to Malta has been in place since 2002, in reacting to the trends of the fund industry, the Malta Financial Services Authority has recently issued guidelines on the redomiciliation of funds to Malta. Redomiciliation is a particularly viable option for existing funds, who without wanting to lose out on the existing operations, investments and opportunities, would nonetheless wish to move to an onshore regulated jurisdiction. The redomiciliation would entail a licensing process under Maltese regulations applicable to the said fund and in some instances might involve a corporate restructuring depending on the corporate vehicle used in the original domicile and the corresponding vehicle to be used in Malta.

The most commonly used corporate structure for funds in Malta is the investment company with variable or fixed-share capita, however, other vehicles such as limited partnerships and trust funds have also been used, albeit to a much lesser extent.

One of the success stories for the Maltese fund

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industry has been the professional investor fund structure for non-retail funds - this structure targets three main segments of non-retail investors ranging from the lower end 'experienced investors' to the higher end of the scale known as 'extraordinary investors'.

The regulatory framework of the professional investor fund can be generally described as being flexible while retaining an element of regulatory intervention seeking to ensure 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.

**AIFM Directive**

The prospects for Malta also deserve to be analysed within the context of the much discussed provisions of the AIFM Directive. The proposed provisions have been discussed at all levels and much scepticism on their effect to the hedge fund industry has been noted. The AIFM Directive could, if the concerns evidenced by the industry are adequately reflected in the resultant directive, prove to be beneficial to the Maltese fund industry, as well as for the investment management industry in general. The imposed restrictions on marketing non-Ucits funds to EU investors has been criticised as being protectionist in attitude and may result in an uneven playing field between EU-domiciled and non-EU domiciled products. Due to the uncertainty regarding European private placement rules, an EU-domiciled regulated product may become the only way to obtain investment from EU investors. Accordingly, one of the current lines of thought concerning the effect of the directive is that current offshore funds and



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managers may seek to relocate to an onshore jurisdiction, such as Malta, with a view to continue to service EU investors and benefit from the distribution possibilities that the directive would provide.

The future for Malta in the alternative fund industry is clearly positive. All indications are that Malta is continuously seen as an appropriate platform for establishing an onshore fund.

**Camilleri Preziosi Advocates**

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