Malta: Stability through Adaptability

By Laragh Cassar, Partner, Malcolm Falzon, Partner, Donald Vella, Partner, and Rachel Muscat, Associate, Camilleri Preziosi, Malta

AN EU MEMBER SINCE 2004, Malta has a stable political environment and resilient economy, which have created an optimal platform for a strong financial services sector. In light of its comprehensive yet flexible regulatory framework, its English-speaking community and skilled professional workforce, Malta has gained popularity as a jurisdiction of choice in financial services. Despite the adverse global economic climate, in 2012 Malta still faced considerable continued growth in this sector.

Investment Funds

Malta has been, for the past number of years, an attractive fund domicile. Indeed, Malta has emerged as a cost-efficient jurisdiction for funds, complementary to traditional European fund domiciles, such as Luxembourg and Ireland.

In the wake of the Madoff scandal as well as the financial crisis, the EU Commission has set its focus on regulating or improving and consolidating the regulation of those areas in the EU financial services sector that have, so far, been left in a regulatory void or have featured too many slips through the cracks. Investment funds have been no exception and this past year has been witness to a number of EU Directives and new proposals, as listed below, which are expected to be implemented into national law either this year or in the near future.

UCITS V

With respect to Undertakings for Collective Investment in Transferable Securities (UCITS) retail investment funds, new subsidiary legislation to the Investment Services Act was implemented in 2011 in order to transpose the UCITS Directive (2009/65/EC). In July 2012, the EU Commission issued new proposals on further amendments to this fourth series of the UCITS Directive (now known as UCITS V). The latter focuses on a clarification of the depositary's functions and introduces new rules on delegation of safe-keeping of assets and harmonisation of the rules governing the depositary's liability. Furthermore, UCITS V aims at the implementation of a remuneration policy for the management company.

UCITS V is intended to be implemented into national law by 2014. Given that these rules are aligned with the new rules to be adopted by July 2013 on the alternative investment funds by virtue of the AIFMD (as described below), the impact on the Maltese UCITS retail funds should be manageable.

The EU Commission issued a consultation paper on the 26 July 2012, opening up discussion on further amendments made to UCITS V by virtue of the implementation of UCITS VI. It is to be seen how this recent consultation paper impacts the UCITS market. The objects of discussion under the UCITS VI consultation paper include eligible assets and the use of derivatives, efficient portfolio management techniques, OTC derivatives, extraordinary liquidity management tools, money market funds and the depositary passport.

Alternative Investment Funds

With respect to professional funds, known to the markets as 'alternative investment funds', or 'professional investor funds' in terms of local legislation, the Directive on Alternative Investment Fund Managers (2011/61/EU) (the AIFMD) is to be transposed into national law by 22 July 2013. The Malta Financial Services Authority (MFSA), Malta's regulatory authority, has been active on the proper implementation of this Directive and has already issued a consultation document outlining the suggested changes to the investment services rules for the local industry's feedback.

It is considered that the AIFMD shall enhance Malta's growing fund industry, particularly through the introduction of an EU marketing passport for all AIF managers. With such marketing passport the AIF managers shall be able to market their funds in all 27 Member States of the EU through a single authorisation process much like that under the UCITS Directive.

Moreover, Malta's place within the context of the AIFMD will also stand out in terms of the so-called de minimis fund managers. The Directive exempts managers of smaller type sized from the requirements of the AIFMD, and grants them the right to opt-in should they wish. Malta may thus continue to benefit from applying an ad hoc regulatory regime for such managers falling within this *de minimis* exemption. This opening has yet to be formalised through regulation.

Even though the fund regulatory landscape is still evolving pursuant to

the introduction of the above directives and proposals, the exponential growth in the number of funds, both retail and non-retail, operating from Malta over the recent years is not only promising but attests to Malta's active role in the development of the investment fund industry in Europe and beyond.

Pension Schemes

In recent times, Malta has gained significant prominence in the pensions industry, and has witnessed a number of foreign pension schemes relocating to Malta. Besides being an attractive pension scheme or fund location, related parties such as scheme or fund administrators have looked into establishing a presence in Malta. In terms of the Special Funds (Regulation) Act, retirement schemes and retirement funds must be registered with the MFSA, which is responsible for reviewing applications for registration, issuing licences to the fund's or scheme's related parties and for the suspension, cancellation or variation of any of the conditions of registration.

QROPS

By virtue of agreement between Her Majesty's Revenue and Customs (HMRC) and the MFSA, concluded in 2009, Retirement Schemes established in Malta and regulated by the MFSA may be considered by HMRC for Qualifying Recognised Overseas Pension Schemes (QROPS) status under UK law. A QROPS is a pension scheme, regulated by the Special Funds (Regulation) Act, which is set up and regulated outside the United Kingdom yet is recognised by HMRC as broadly equivalent to a UK Pensions Scheme. A retirement scheme in Malta can also qualify as a Qualifying Non UK Pension Schemes (QNUPS), which would be free from English Inheritance tax on the passing of the beneficiary.

In March 2012, the HMRC published the final rules under which private pension schemes can be transferred into an overseas pension scheme and be recognised as QROPS. The recognition of overseas pension schemes as QROPS is awarded by the HMRC on a case-by-case basis. In Malta QROPS may be set up by trust or as by contract requiring in either case a licence to be granted by the MFSA.

QROPS have in recent years become increasingly attractive for individuals who intend to retire outside of the UK, although these individuals do not necessarily take up residence in Malta. The recognition by HMRC results in tax efficiencies for UK non-residents who wish to transfer their funds from UK pension schemes to Maltese schemes, without incurring any tax charges in the UK. The investment into a QROPS allows investors to have pension benefits taxed outside of the UK. In Malta, no income tax is charged on pension income, pension cash lump sums, and no capital gains tax is charged on pension fund gains. The income of any retirement fund or retirement scheme that is licensed, registered or otherwise authorised under the Special Funds (Regulation) Act or any Act replacing the said Act is exempt from income tax provided that this income is not derived from immovable property situated in Malta. Due to the implication of various jurisdictions depending on the residence of the investor, the relevant double tax treaty should be carefully examined.

The Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (2003/41/EC) aims at enabling the establishment of cross border occupational pension schemes in fellow Member States. The Retirement Pensions Act, which shall transpose the Directive into Maltese law, shall repeal and replace the Special Funds (Regulation) Act. The Retirement Pensions Act has been published, however, it has not yet entered into force.

Taxation

Although Malta's fiscal legislation was already considered very competitive in terms of attracting foreign investment to the island's shores, even during the turbulent years of 2011 and 2012, recent legislative developments and especially new double tax treaties aim to continue this successful trend.

In another recent development, companies investing into non-Maltese collective investment schemes can now benefit from the participation exemption, if such collective investment scheme is of a nature similar to a partnership constituted under Maltese law, the capital of which is not divided into shares. Furthermore, the foreign collective investment scheme has to provide for the limited liability of its investors constituted, incorporated or registered outside Malta.

International Investment

Malta boasts a healthy treaty network of more than 60 treaties signed with different jurisdictions. In 2012, Malta signed additional treaties with Saudi Arabia, Guernsey, Norway (replacing a previous treaty) and Mexico. The treaty between Malta and Uruguay came into force in December 2012. These two treaties with Mexico and Uruguay heralded Malta's first tax treaties with countries from the South American continent, which are experiencing rapid economic progress and development.

All the above-mentioned treaties follow Malta's general treaty approach and are broadly based on the OECD Model Convention. In addition, treaties with Bahrain, Switzerland and Hong Kong also entered into force in 2012. The Convention concluded between Switzerland and Malta provides for an exemption from withholding tax on dividends and interest paid by a Swiss company to its Maltese holding company, provided that the Maltese company has a capital stake of at least 10 per cent in the Swiss company.

Conclusion

There is no doubt that 2012 has been a challenging but successful year for the financial services industry in Malta - the double tax treaty network was significantly enlarged and new standards were set by the HMRC for the QROPS recognition.

As an outlook for 2013, the AIFMD will have to be transposed into national law and consultations on the UCITS V proposal are expected to take place. With regard to the AIFMD, Malta is optimistic about its potential to attract *de minimis* fund managers.

The legislative amendments promulgated in 2012 once more epitomised Malta´s commitment to provide advantageous conditions for the financial services industry within a robust yet reasonable regulatory framework, as well as its ability to implement EU Directives in a timely and efficient manner. We are confident that these amendments, together with the expected implementation of the AIFMD in 2013, will further consolidate the growth of the financial services industry in Malta despite the challenges posed by the global economic climate. ■