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Offering a Safe Haven

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As the funds industry seeks refuge under the protective shroud of hardening regulation, the need to re-evaluate investment strategy is of heightened priority. According to Andrew Zammit, managing partner of Zammit & Associates - Advocates, Malta - with its environment catered specifically for professional investor funds (PIFs) - is a perfectly-positioned home for funds fleeing from pressures found in other, more petrified, parts of the globe.

How have professional investor funds (PIFs) contributed to Malta's reputation as an emerging financial domicile?

Professional investor funds, or 'PIFs' as they are commonly known, are a special class of non-retail funds catering for high-calibre investors subject to a lighter regulatory regime when compared to other forms of funds available under Maltese law. Similar to their Irish counterparts, this class of funds is subject to little or no restrictions on their investment or borrowing powers. The PIF regime is divided into three broad categories based on the participating investors' sophistication, wealth and investment experience, with the applicable regulatory requirements being relaxed according to the minimum entry threshold required from each individual investor. The lightening of regulatory burden and the favourable tax treatment of Maltese PIFs have rendered them very attractive to fund managers and investors.

How can PIFs benefit investors? How have they survived during times of financial uncertainty?

Investors in PIFs benefit primarily from the fact that, although the PIF is subject to the MFSA's regulatory scrutiny and reporting requirements, a business friendly pro-active approach by the regulator ensures that this benefit is not overshadowed by restrictions and bureaucracy.

Whilst PIFs are in no way immune to the impact caused by the prevailing financial uncertainty, cost considerations certainly become more relevant to an investor in the lean times that we are currently facing, and in this sense we find that Malta's cost-effective offering has an edge over comparable European financial centres. In this regard it is relevant to note that this class of fund is exempt from Malta tax, and investors are similarly exempt from Malta tax on any dividends distributed by the PIF and from the payment in Malta of stamp duty on the issue, transfer or redemption of units in the PIF.



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How has the MFSA's strategy and the procedures put in place aided PIFs and their accessibility to investors?

The MFSA, with its ongoing open and outward-looking approach, is eager to welcome new entrants to Malta. Pragmatism continues to dominate its regulatory approach, permitting the legislative and regulatory framework to evolve with the industry's requirements. In this vein, and by way of example, the MFSA is currently considering amendments permitting the cross-investment by a sub-fund of an umbrella investment company to acquire, hold and dispose of shares in another sub-fund of the same investment company to accommodate promoters seeking to avail of economies of scale within their own investment structures by avoiding the need to establish separate investment companies for each asset class.

Another notable development in the regulation of PIFs was the introduction of PIFs targeted at Extraordinary Investors, that is investors having assets of eur 7.5m, who are bound by a minimum investment threshold of eur 750,000 in the PIF. This class of PIF was introduced in January 2007, some 10 years after the introduction of PIFs, and following on the experience gained in relation to the attractions of these alternative investment funds over the years. This new class of PIF served to provide fund managers and heavy-weight investors with an alternative, lighter-regulated structure for their investments, and are proving to be very popular amongst promoters seeking structures subject to nimbler regulation.

When it comes to PIFs, what role does the Board of Directors play?

The Board of Directors of a PIF is typically composed of at least two directors. The PIF could either be structured as an externally managed fund on the one hand or as a self-managed fund on the other. In those structures where an external fund manager is appointed to manage the PIF's assets, the Directors of the fund are responsible for monitoring the fund manager's performance in the interest of its unit holders on an on-going basis. If, on the other hand, the fund is designed to be self-managed, the responsibility of managing the fund's assets is placed squarely on the Board of Directors and/or on an Investment Committee bound by formal terms of reference which must be reported back to the Board by Committee. In these cases, the responsibility placed on the Board increases substantially, as the directors are expected to implement and monitor the fund's organisational and control structure, ensuring that adequate operational, administrative and financial checks and balances are maintained in the day-to-day management of the PIF and its assets.



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How are PIFs taxed and can they be passported?

A fund which has less than 15% of its underlying assets situated in Malta is referred to as a Non-Prescribed Fund and is exempt from Malta tax. This 15% threshold should be satisfied by the fund at all times if the company is to benefit from the tax exemption. Capital gains made by the fund would also typically qualify for exemptions from Malta tax. The issue of units in the fund is not liable to stamp duty in Malta, while the duty due in relation to the transfer or redemption of units is subject to a specific exemption which is applied for and obtained concurrently with the licensing process.

Insofar as passporting is concerned, PIFs do not comply with the provisions of the UCITS Directive and, consequently, they cannot be passported to other EU jurisdictions. However, the intention underlying funds of this nature is that they are offered to a relatively limited number of high net-worth, sophisticated investors and therefore the importance of marketing such funds is clearly not as central as it would be in the context of retail funds.

What challenges and opportunities do you see the PIF market presenting over the coming year?

There is no time like a time of crisis for anyone to question the *status quo* and re-evaluate priorities. For better or for worse, the entire global fund management industry has been put in the spotlight as a result of the unfolding global situation, causing investors to be far more vigilant in establishing a suitable investment strategy and building the required trust to part with their money. As part of this re-evaluation, fund managers continue to seek reputable, solidly regulated jurisdictions which provide sufficient flexibility and a solutions-based regulatory approach. I believe that it is this solutions-based approach, coupled with the approachability of the regulator and the efficiency and specialisation of service providers that have proven to be the keystone of Malta's successful development as a centre for the regulation of hedge funds. Besides, the country's infrastructure has improved notably over the past five years, with quality office buildings and flexible managed office space, such as Regus, becoming widely available to operators looking to set up a permanent local presence.

These considerations have placed Malta high on the list of alternative jurisdictions for the establishment or the redomiciliation of hedge funds. Indeed, over the past six months we have witnessed significant new interest in Maltese PIFs from managers based in a number of different jurisdictions, and do I expect that this interest will pick up over the next twelve months as fund managers reorganise their affairs in anticipation of an economic up-turn forecast for the first half of 2010.

In the longer term, and in-keeping with the Maltese Government's vision of having Malta become the leading regional centre of excellence in financial services by 2015 and of raising the sector's contribution to GDP from the current rate of 12% to 25%, I feel that Malta's future as a financial services centre bodes well.



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