

Opalesque Roundtable Series '17

MALTA

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Editor's Note

Malta has rapidly emerged as one of Europe's fastest growing and most stable and innovative finance domiciles, benefitting from a sound commercial infrastructure, and an English-speaking business community with a strong platform of professionals able to service the needs of fund promoters. Both the number of Malta based funds and fund managers operating from Malta have been growing steadily. *"It has been a highly pleasant experience to come here. Everything is synchronized and works well together,"* says Hakon Haugnes, COO of Andurand Capital.

Push and pull factors in favor of Malta

A number of distinct push and pull factors come into play when analyzing a jurisdiction like Malta. Brexit is an issue and that creates some uncertainty, however at this time, UK based fund managers can keep their options open and decide first quarter of 2018 if they are going to move or if they are not going to move. Most are nimble and it's easy for them to move. But, having a Brexit hedge in place already today may also act as an edge over competing managers (page 7, 21).

The second point is that the UK dispensed with the non domicile tax regime, which provided some tax advantages to those not domiciled in the UK and acted as a safety valve for very high tax rates. Malta's special tax regime for highly qualified personnel has been very successful – a **flat 15% tax rate for the first 5 million Euros and thereafter zero** – and will continue to be a key driver for more and more highly qualified individuals to move to Malta, so that's an important pull factor.

The key push factor is a tax regime aimed specifically at UK hedge fund managers and private equity managers called the **Disguised Investment Management Fees (DIMF)** that provides a strong motivation for founders to leave the UK. Insiders say that *"it's an extraordinarily bad piece of tax legislation, and as managers get to understand it, they are more inclined to leave the UK."* (page 9, 21). On a personal level, people are happy to live there and enjoy the attributes of Malta including the sun, the weather, and crystal clear sea, good food – generally a great way of living, particularly for bringing up a family.

Crowdfunding, Cryptocurrency funds and ICOs: soon to be regulated?

The Malta Financial Services Authority (MFSA) has built a solid reputation as a meticulous, yet accessible, supervisory body, ensuring that the local industry is closely monitored and fully compliant. Most recently, the MFSA issued a consultation paper regarding crowdfunding and also proposed a regulatory framework for collective investment schemes that invest their entire portfolio in virtual currencies, essentially outlining a separate rule book for these types of funds. The regulator is also looking at ICOs (initial coin offerings) and suggests to regulate the issuers of (crypto currency) coins as regulated persons (page 15).

The Opalesque 2017 Malta Roundtable, sponsored by Apex Fund Services, took place at the office of the MFSA in Malta with:

1. Professor Joseph Bannister, [Chairman, Malta Financial Services Authority \(MFSA\)](#)
2. Dr Christopher Buttigieg, [Director Securities and Markets Supervision Unit, MFSA](#)
3. Dr Isabelle Agius, [Senior Manager Regulatory Development Unit, MFSA](#)
4. Clare Farrugia, [Senior Manager Securities and Markets Supervision Unit, MFSA](#)
5. Monika Salomon, [Senior Manager Authorization Unit, MFSA](#)
6. David Butler, Founder, [Green Day Advisors](#)
7. Andrew Zarb Mizzi, [Chief Executive Officer, Swissquote Financial Services \(Malta\)](#)
8. Chris Portelli, [Associate Partner, EY Malta](#)
9. Nicholas Warren, [Senior Manager Financial Services, Chetcuti Cauchi Advocates](#)
10. Adam de Domenico, [Founder and CEO, Cordium Malta](#)
11. Hakon Haugnes, [COO, Andurand Capital](#)
12. Paulianne Nwoko, [Managing Director, Apex Fund Services \(Malta\)](#)
13. Omar Cascun, [Head of Business Development, Apex Fund Services \(Malta\)](#)

The group also discussed:

- Consequences of the ESA (European Supervisory Authorities) review for the asset management industry (page 6, 7)
- Changes to Malta's Notified AIF regime (page 8)

- Why Malta kept its Professional Investor Fund (PIF) regime when introducing AIMD - benefits for fund managers and investors (page 10, 11, 16)
- What are the risks of crypto currency funds from a depository perspective? (page 14)
- Substance versus outsourcing: In order to operate from Malta, fund managers need to have local substance (page 16-17)
- What is the MFSA looking for when conducting on-site inspections? (page 18)
- What could Brexit mean for Malta? (page 18-21) What should US managers know regarding Brexit? (page 21)
- The safety consideration: A safe place to raise children (page 23)
- Why Malta offers opportunities for all types of service providers (page 24)

Enjoy!

Matthias Knab
Knab@Opalesque.com

Participant Profiles



(LEFT TO RIGHT):

Andrew Zarb Mizzi, Dr. Christopher Buttigieg, Paulianne Nwoko, Clare Farrugia, David Butler, Monika Salomon, Chris Portelli, Isabelle Agius Hakon Haugnes, Joseph Bannister, Adam de Domenico, Nicholas Warren, Omar Cascun

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Introduction

Joseph Bannister
MFSA

Joseph Bannister, I am the Chairman of Malta Financial Services Authority.

Isabelle Agius
MFSA

I am Isabelle Agius, and I am a lawyer by profession. I am employed within the Regulatory Development Unit at the Malta Financial Services Authority. My work focuses mainly on transposition of European directives within the Maltese legislative framework, with particular focus on funds and investment services providers.

I was involved in the transposition of the Alternative Investment Fund Managers Directive, UCITS IV and V, as well as in the Notified AIF.

Dr. Christopher Buttigieg
MFSA

I am Dr Christopher Buttigieg, Director of the Securities and Markets Supervision Unit, MFSA. I am also a lecturer in the Banking and Finance Department of the University of Malta.

Clare Farrugia
MFSA

I am Clare Farrugia, Senior Manager within the Securities and Markets Supervision Unit, MFSA. I am responsible for the on-site inspection team which supervises collective investments schemes, fund managers, fund administrators and custodians.

Monika Salomon
MFSA

Monika Salomon, Senior Manager at the Authorization Unit, MFSA.

Paulianne Nwoko
Apex Fund Services (Malta) Limited

Paulianne Nwoko, Managing Director for Apex Fund Services (Malta) Limited.

David Butler
Green Day Advisors

David Butler, Founder of Green Day Advisors. I have been setting up managers in Malta for over 11 years. I was founder of Kinetic Partners in London.

Andrew Zarb Mizzi
Swissquote Financial Services
(Malta) Ltd

Andrew Zarb Mizzi, Chief Executive Officer, Swissquote Financial Services (Malta) Ltd. A member of the Swissquote Group and a fully licensed EU Custodian, Depositary and Brokerage firm.

Chris Portelli
EY

I am Chris Portelli, I am an Associate Partner at EY and in charge of the asset management assurance clients within the company.

Omar Cascun
Apex

Omar Cascun, Head of Business Development, Apex, Malta.

Nicholas Warren
Chetcuti Cauchi

Nick Warren, Senior Manager Financial Services Chetcuti Cauchi.

Adam de Domenico
Cordium

Adam de Domenico, representing Cordium a regulatory compliance support firm and Mirabella a hosting manager platform. We have been in the fund management space for the last 10 years.

Hakon Haugnes
Andurand Capital

Hakon Haugnes, COO of Andurand Capital, we are a commodities hedge fund specializing in oil and energy.



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David, you mentioned you have been setting up asset managers in Malta for eleven years now. What is Malta's attraction for managers to set up here, how has the jurisdiction developed?

David Butler: Over the eleven years I have been setting up managers there have been of course a lot of changes. The focus of my work is to help fund managers establish themselves and their operations in Malta. They are high margin businesses, and they have contributed significantly to Malta, and Malta has provided infrastructure, staff and education to allow more and more managers to move here.

I think more recent developments for the managers have been the introduction of a **special tax regime for highly qualified personnel moving to Malta**, which I think has been very successful and well received, and I think that's been a key driver for more and more highly qualified individuals to move to Malta and establish here and help grow the local economy and the local workforce.



Dr. Christopher Buttigieg: There have been many developments on the regulatory side, and a number of them have resulted from the European Supervisory Authorities' push for the strengthening of supervisory engagement at national level and the convergence of supervisory practices. We have increased the quantity and quality of our on-site inspections and off-site monitoring, in particular through on-going interaction with the board of directors and compliance officers of licensed entities. In the field of securities and markets we carried out seventy three on-site inspections in 2016 and completed nine enforcement cases. We are aiming to achieve higher targets by the end of 2017.

This has obviously translated into changes also within the industry and how asset managers conduct their business, also by reinforcing their presence here in Malta and their overall compliance culture. So this is a positive development.

There have also been changes in the way fund managers interact with us and the manner we communicate with the industry. We have recently introduced a procedure for the carrying out of supervisory meetings with directors of collective investment schemes, and particularly UCITS schemes. The idea is to understand how the boards are carrying out their business in practice and monitoring the scheme's service providers, and also guiding these boards on strengthening their engagement with service providers.

Other developments coming particularly from the EU which will eventually again have an impact on the way we operate as a regulator and ultimately also on the industry is the **ESA Review**. This will revamp the European Supervisory Authorities. For example, these Authority will be granted more powers to monitor outsourcing by licensed entities to third country operators.

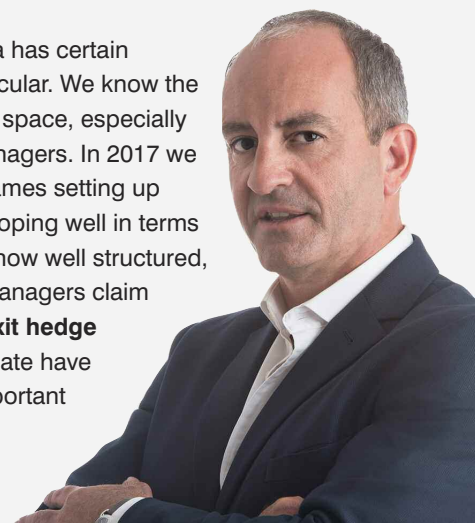
Triggered by Brexit, the Commission's proposal contains a new Article 31a which aims at amplifying the coordination function of the ESAs to ensure that national supervisors effectively supervise outsourcing, delegation and risk transfer arrangements in third countries. We will see whether this proposal will be retained in its current form further to discussions in the Council and the European Parliament. If this is retained, we expect significant changes in the existing regulatory and supervisory landscape. We have to be careful on what's coming from Europe in the future and also influence the process so that the existing structures, which have worked well, are not in any way disturbed in the future.



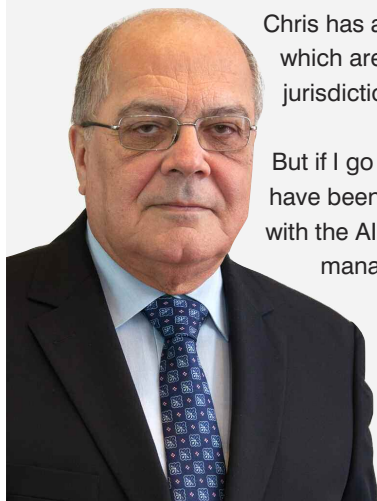
Adam de Domenico: I am a strong believer that Malta is very well-structured from a manager perspective. It also offers fund services, and Malta based funds are growing steadily. We have seen a steady growth in the number of fund managers operating from Malta over the years. I believe this growth is partly given the diverse service providers operating locally and supporting the industry for many years now thus having built a diverse level of experience. There are the Big Four accounting firms, various fund administrators, including Apex as sponsor today, and various other expected service providers including Cordium, a regulatory compliance support firm and its sister firm Mirabella, a fund manager hosting platform as a mirror image of Mirabella UK.

When you discuss a domicile such as Malta, we should of course also talk about **what Malta has to offer on a personal level**. People are happy to live here and enjoy the attributes of Malta including the sun, the weather, and crystal clear sea, great food and a general great way of living particularly for bringing up a family. It's fairly close to mainland Europe with direct flights including daily to London which helps to stay in touch with family and work requirements.

There is also the **tax angle**, part of which David mentioned, and overall I believe Malta has certain characteristics that will allow us to further develop the manager space in Europe particular. We know the other larger European jurisdictions which are also trying to get into the fund manager space, especially given Brexit, but I strongly believe Malta is ahead of other jurisdictions in terms of managers. In 2017 we have seen a steady yet contained growth in fund managers, and not only with new names setting up here, but also the original managers who have been here for a while have been developing well in terms of growth in AUM, employees and services carried out from Malta. Many of them are now well structured, and by being here they also have what I like to call an edge and a hedge on Brexit. Managers claim that investors want to understand that Brexit will not cause concern, so **having a Brexit hedge** today may also act as a edge over competing managers. Those who have set up to date have been able to hire good local talent which also helped them to be cost-efficient, an important consideration in today's environment and all the more in a startup scenario.



Joseph Bannister: I think we are right, there has been a lot of development, particularly since joining Europe.



Chris has also brought to notice the further regulatory developments that will happen driven by the EU, which are quite substantial and could potentially be a threat, not just to Malta, but to every other jurisdiction.

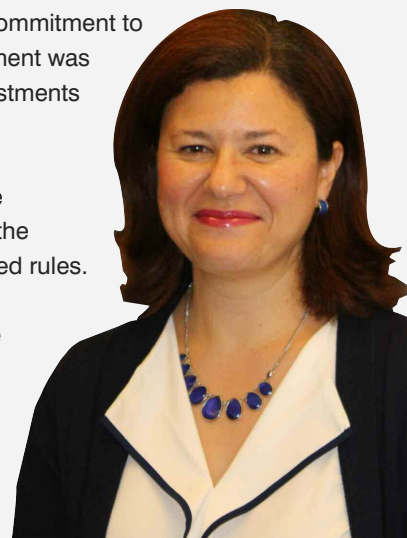
But if I go down to the nuts and bolts, the way the business is moving, the number of managers in Malta have been growing. This could be the influence of Brexit or not, but in reality this process already started with the AIFMD. What the industry is now doing is looking how we can improve the fund situation for the managers.

Managers need services, so our service providers here certainly keep working on increasing the level of services, but also, they need structures that they are comfortable with, and here perhaps Isabelle can say a few things about the **Notified AIFs**.

Isabelle Agius: A year ago we launched the Notified AIF regime, and the Authority took a commitment to review this regime one year down the line. Towards the end of August, a consultation document was issued proposing several changes to the NAIF regime and particularly in relation to the investments possible and falling within the scope of these funds.

From the feedback which we received, the decision was taken to widen up the sphere of the underlying investments of these funds. We will also be implementing changes in relation to the founding shareholders. The feedback statement will be issued jointly together with the revised rules.

The reason underpinning such changes and our promptness to respond to the needs of the industry comes mainly from the fact that we have seen a steady growth in the registration of these funds. And so, it was worthwhile for us to listen to what the industry is saying and to improve the regime given that there was scope for improvement.



Hakon Haugnes: We are an alternative investment manager and have been here in Malta eight years now in two guises, with Andurand Capital most recently starting operations here in 2012. It's been **a highly pleasant experience to come here.** Everything is synchronized and works well together. For example, the tax legislation is consistent with the regulatory framework, which in turn is consistent with the AIFMD, which was interpreted consistently here in Malta there with a very appropriate interpretation on to the manager level here.

So, we have just found Malta a really good place to do business over all these years.

Also Malta is sunny, the water is clean, the food is good, and it has easy access to the rest of Europe. Admittedly no one is particularly happy with flight KM 103, but it does leave at the right time in London from the right airport. I could also complain about the incessant and senseless fireworks in Malta. But overall it's a great change from London.

I think Malta has something real to offer to everyone on a standalone basis, and to me, there is just no better alternative for a fund manager within a three-hour flight of London.

Matthias Knab

How big is your organization now? How many people you have on the ground in Malta?

Hakon Haugnes

In Malta now we have 8 people, give or take, and a couple of people in London are thinking of moving here.

Hakon Haugnes

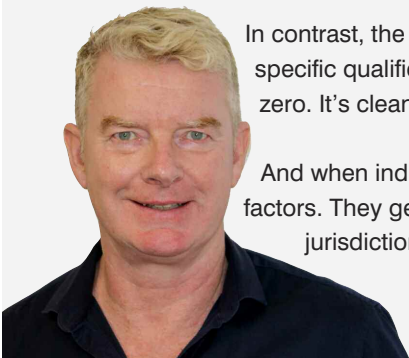
We have always been in Malta but are growing, and which eventually raises the question on how to get enough office space. Despite the constructions you see so many places in Malta, there is a bit of an infrastructure bottleneck which I feel that the people in charge of Malta's business development shouldn't underestimate, perhaps especially from small organizations like ourselves. It's hard to find good office space.

David Butler: I think it's important to realize there are **push and pull factors** when analyzing a jurisdiction like Malta, and Hakon just mentioned some of those in relation to the UK. Brexit is an issue and that creates some uncertainty. However at this time, I don't know any hedge fund managers who are looking to leave the UK because of Brexit. As of now they can keep their options open and decide first quarter of 2018 if they are going to move or if they are not going to move. They are nimble and it's easy for them to move.

The second point is that **the UK dispensed with the non domicile tax regime**, which provided some tax advantages to those not domiciled in the UK and acted as a safety valve for the very high tax rates that the UK has.

Again, at a personal level some managers are looking to move because of that, but that's not a great exodus. It depends on when children might finish school for example, and their personal situation generally.

The key push factor is a tax regime aimed specifically at hedge fund managers and private equity managers, called the **Disguised Investment Management Fees (DIMF)**. It a significant push factor for founders to leave the UK. I won't describe it in detail here, but it's *an extraordinarily bad piece of tax legislation, and as managers get to understand it, they are more inclined to leave the UK.*



In contrast, the HQP or Highly Qualified Person regime that Hakon alluded to, which encourages those with specific qualifications to establish in Malta, is a flat 15% tax rate for the first 5 million Euros and thereafter zero. It's clean, simple and very easy to understand. You couldn't make it simpler, and that is a pull factor.

And when individuals of significance, founders of firms and such, move to Malta, they look at these factors. They get pushed out of the UK and they get pulled to Malta, and that's of great benefit to jurisdictions like Malta.

Paulianne Nwoko: Since joining the EU, Malta has been in an accelerated and continuous development stage both as an economy and as a financial services jurisdiction. Being a small country, there is more focus from both the government and the regulator to ensure we always try to get the best results of any situation, and that has helped us as being seen and noticed as an attractive place for business.

Recent example of this was the transposition of EU Directives into local regulations. Whilst the MFSA ensured it was one of the first country to transpose AIFMD it also went a step further with the introduction of the Notified AIF regime. Another example is the decision by MFSA to keep the **Professional Investor Fund** or PIF regime. These factors ensure we remain competitive within a much larger industry.

Apex Fund Services has been active in Malta for the past ten years, throughout these years we have experienced continuous growth both in the type, size and quality of funds setting up in Malta. We have always had a diverse mix of fund strategies, so there isn't any particular strategy or structure that dominated, but certainly Malta was and currently remains mostly attractive to emerging managers and small to medium sized setups, for various reasons, however dominated by the fact that it is a **more cost effective** option that larger jurisdictions like Ireland and Luxembourg.

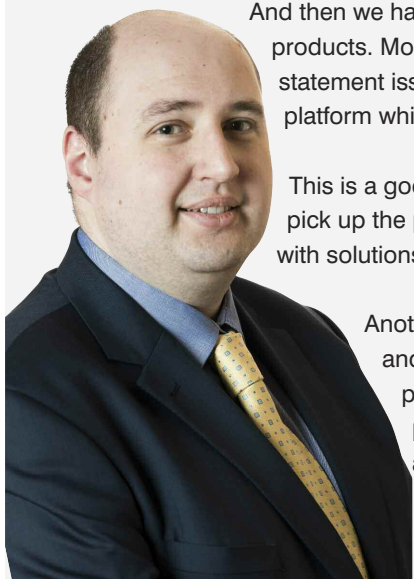


Nicholas Warren: The financial services industry in Malta scene has seen growth because it was always nimble and always able to innovate. As Paulianne mentioned, we had the Professional Investor Fund regime. So from one perspective you could argue that we already had a regulated environment and regulated managers in the past, and when the AIFM Directive came into place, Europe was in a way playing a bit of catch up.

And then we have a very active regulator with the MFSA, which is innovative and not afraid looking at new products. Most recently it issued a consultation paper regarding **crowdfunding** and we had the feedback statement issued just last week. There is a lot of interest by many promoters to set up a crowdfunding platform which is actually regulated to give investors more security towards type of investment.

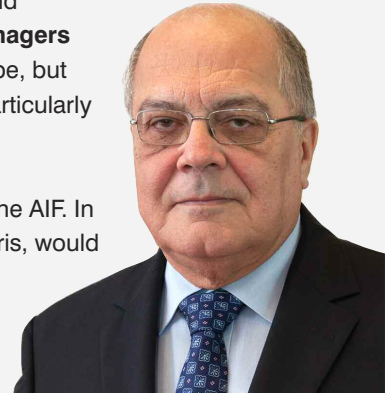
This is a good example how we work as an industry quite close with another. We know each other, we pick up the phone, we discuss things, even with the regulators, and so that helps a lot to then come up with solutions the industry likes.

Another example would be **cryptocurrency type of funds** where we also see a lot of interest and demand, and also there we are having informal discussions among ourselves as service providers or talks with regulators to see how can things be taken forward. The fact you can pick up the phone and simply discuss with regulator helps a lot, because you are a step ahead and you can put forward suggestions and products and solutions to your clients.



Joseph Bannister: Paulianne already mentioned an important factor which sometimes is missed is that when the AIFMD came in, we decided to keep the old PIF regime in contrast to other jurisdictions like Ireland and Luxembourg, who changed their QIF and SIF to an AIF. This has meant that **third country managers** can continue establishing these type of funds here, and obviously they can't sell them in Europe, but they have their own markets and they are satisfied that they are here in Malta as a domicile, particularly the Swiss.

In fact, I heard that Ireland now is trying to reintroduce back the QIF regime as separate from the AIF. In being innovative, we are now looking at tranche investing in cryptocurrencies and perhaps Chris, would you like to give some detail?



Dr. Christopher Buttigieg: Well, in a nutshell, we are proposing a **regulatory framework for collective investment schemes that invest their entire portfolio in virtual currencies**. Our starting point is that we need to ensure investor protection and financial market integrity. We have therefore looked into the potential risks relating to investment by collective investment schemes in virtual currencies. Specific type of risks relating to valuation, liquidity and the possibility of fraud. In this regard, we are proposing detailed regulation to address these issues. For example we will be proposing requirements on quality assessment which seek to ensure that the appointed Investment Manager carries out appropriate research in order to assess the “quality” of the VCs being invested into.

The idea is to have a separate rule book for these types of funds. These rule books are already being drafted. We are looking at PIFs, AIFs and potentially also NAIIFs. There are some areas where we need to look into more detail, especially in relation to depositary and how the depositary function can be fulfilled for this type of asset.

The topic is very fascinating and our staff are finding it very interesting. There is a lot of material out there, but so far, unfortunately, there's no one clear line of thought by financial regulators. In fact, jokingly we refer to it as the *virtual currency regulatory confusion*, as regulators across the globe are taking different approaches and there is no clear international methodology to the regulation of this field.

However, we understand that organizations like IOSCO and ESMA are looking into this field, so potentially there will be some form of regulatory convergence in the future. In the meantime, Malta is looking into virtual currencies as an area where there is potential for growth.

Andrew would like to add something on the issue of depositary? I understand Swissquote has been looking into this area as well.



Andrew Zarb Mizzi: Yes, Swissquote is a FinTech Online Banking Group headquartered in Switzerland with offices in London, Zurich, Hong Kong, Dubai and Malta. Swissquote Bank SA, a member of the Swissquote Group already provides Bitcoin trading online in partnership with Bitstamp, currently the only EU MiFID regulated exchange for cryptocurrency trading.

In Malta, Swissquote offer depositary and custody services to investment funds based in Malta and non-EU/EEA jurisdictions, as well as brokerage services throughout the EU. So Chris already hinted to the fact that there are some issues in terms of interpretation on how to handle cryptocurrencies, particularly the risk in respect of acting as a depositary of an Alternative Investment Fund (AIF).

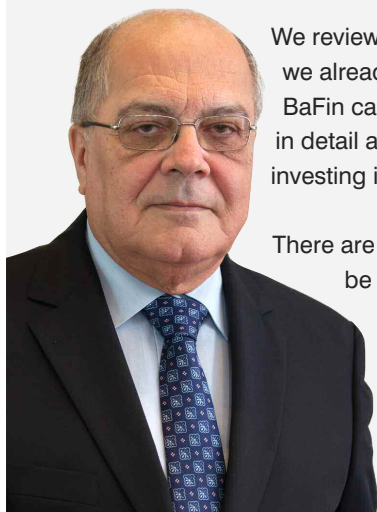
As custodians, we have received and continue receiving a significant interest for cryptocurrency fund depositary services. Provided the MFSA issues the necessary guidance and/or rules, this is a material opportunity for the island as a financial services centre. Right now in Europe there is no particular preferred jurisdiction for establishing cryptocurrency funds. This presents the potential for Malta to position itself as a home for such funds if, as a jurisdiction, we can act fast and put in place the necessary regulatory infrastructure.

I am glad to note Chris and Professor Bannister's mention that there is already an internal MFSA workgroup tasked with drafting guidelines specific for cryptocurrency funds and take this opportunity to offer my assistance to the Authority. It is fundamental for the Authority to determine whether cryptocurrencies are deemed 'Other Assets' or 'Instruments' under the AIFM Directive, since this determination would directly impact the nature of the services and risk imposed on depositaries, particularly in terms of the safe keeping and verification of ownership of the underlying cryptocurrencies. These are technical issues and there exists no pragmatic regulatory guidance as yet.

It is very important that industry comes together with a view to building knowledge and guidelines for depositaries, managers, promoters, administrators, and if done well, we can actually position Malta to perhaps become the preferred home or a jurisdiction of choice for European licensed cryptocurrency funds.



Joseph Bannister: Allow me to take a step back here. There is a government policy to develop the digital economy, and there are two sides to this. Unfortunately, sometimes there is a confusion because everybody talks about technology and bitcoins at the same time, but technology is not something we are involved with. We are directly involved with government policy on virtual currencies.



We reviewed what's happening in every European country and some others, like Singapore. There is, as we already said, confusion and a lack of clear ideas; however, more recently the German regulator BaFin came out saying virtual currencies are an investment security. We have investigated these things in detail and hope that in the shortly we will be issuing a rule book for Collective Investment Schemes investing in cryptocurrencies.

There are the issues that Andrew was mentioning, so I am still unclear in my mind whether they should be PIFs or AIFs. In fact, initially they might be PIFs and that will solve a number of issues. We would like administrators obviously to be involved with this.

But furthermore, behind all this, there is also a bigger project. Drafting has already been carried out for a framework proposal to regulate persons providing investment services in cryptocurrencies.

This is a much, much larger project. We hope to issue this proposed framework for consultation again shortly, maybe a week after the CIS show. It will take quite a bit of time, and after that, we need some good policy directions how we should be proceeding.

Chris Portelli: Also on our side at EY we are preparing ourselves and facing these challenges as a result of cryptocurrency, blockchain and handling mass data. This is also a challenge for us as auditors in terms of being able to ensure that all risks are adequately mitigated.

So currently we are going through a huge investment in developing specific tools which can handle and analyze mass data to assist us in our audit procedures so we can ultimately obtain the necessary comfort and ensure that all risk components are adequately addressed to support our opinion.

One of the main tool here is obviously data analytics where the data is fed into this tool and in turn is designed to allow you to analyze data and have the flexibility through specific dashboards to assess and analyze transactions in detail.



Omar Cascun: I am working in business development at APEX, and over the past six to nine months I can assure everyone that I have received at least two inquiries a week from people looking into cryptocurrencies. Until a few months ago, we were obviously pushing these funds either to other jurisdictions or trying to convince them to actually go into the regulated space.

I strongly believe that there is scope, so potentially we will have cryptocurrency in the future, and that we should now really grasp the opportunity with both hands.

There is knowledge in Malta as well – there are people who are dealing with cryptocurrency funds, either from a personal point of view or from a business point of view – so definitely this is the opportunity for us as a jurisdiction – auditors, lawyers, administrators, regulators, to get involved. Andrew, we have had very good discussions on the subject and join forces to make sure that we have a piece of legislation which comes out prior to other European jurisdictions.



Andrew Zarb Mizzi: I agree Omar, and of course as soon as we have our regulator's guidelines we'll start on the procedures to onboarding cryptocurrency funds.

Today, the issue is that there still are many uncertainties even in terms of regulatory interpretation. From the depositary angle, should the asset be considered an 'instrument' or an 'other asset'? This is a fundamental determination. I understand BaFIN have recently issued an interpretation deeming the asset an 'instrument'. However, it is believed that this interpretation was made in order to regulate the exchanges on which cryptocurrencies are traded. This having been said, an evaluation from an AIFM Directive perspective could lead to a different determination.

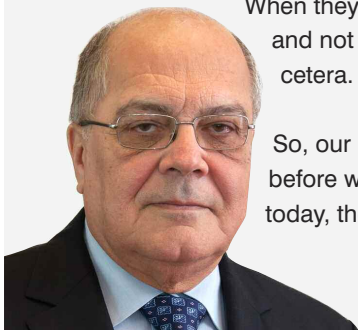
Nevertheless, irrespective of which definition one gives to the underlying cryptocurrencies, there are issues from a **depository perspective** which verge on risk. For example, and presuming the underlying are considered instruments, will they be held in the hot wallet and a cold wallet and therefore what will be the associated risks? There are fundamental questions which need to be addressed, we need guidance from the regulator as to whether there is a preference for the depository to take custody of those instruments through a hot or cold wallet.

If cryptocurrencies were determined 'other assets', as I mentioned earlier, what level of verification of ownership of an underlying cryptocurrency would be satisfactory to the regulator given that the block chain is anonymous?

So, provided the industry obtains the regulator's guidelines as soon as possible, then, as Omar said, we are positioned to onboard funds right away, and that could give Malta a head start on competing jurisdictions, attracting managers to domicile their funds in Malta, discovering the island's platform and perhaps also serve as an opportunity to relocate the manager's entire operation to Malta as a consequence.



Joseph Bannister: I think we have to first start walking and then run, and that we should take a beeline approach on BaFin. When they essentially declared cryptocurrencies as an investment security, I would rather stay with BaFin and not start giving different interpretations now, like whether it's an investment asset or another asset, et cetera.



So, our position so far is that it's an investment security and we have to see how that's going to work first before we start coming out with different interpretations, because rest assured, once we issue something today, then everybody starts querying from everywhere, so we have to be careful.

Nicholas Warren

The fact that regulators are taking this initiative is brilliant, and of course everyone in the financial industry is willing to help and contribute when it comes to giving input when drafting these regulations.

Joseph Bannister

I think initially we prefer to consult with people abroad and see how far we can take this, whether it can be a reality. After doing some research on my part, my conclusion was as well that it's worthwhile looking at it and to go ahead. We are in the fortunate position that in Malta we have an excellent expert pool to which we would then of course distribute our draft and get their reactions.

David Butler

I'd like to point out that beyond cryptocurrencies there's actually obviously something much more substantial and fundamental that Malta is taking a lead on, and that is blockchain.

Joseph Bannister

Right, but that is the technology side.

David Butler: Yes, but that technology will have a fundamental effect on every aspect of our business, from banking, administration, auditing, depository work and others. The development of the steps needed for legal and regulatory change and the testing of blockchain initiatives in controlled environments is very pleasing to see, and indeed an example of Malta's ability to be nimble. Malta taking a lead on these fundamental changes is really commendable.



Chris Portelli: I agree that cryptocurrencies are a good opportunity, but also, as Professor Bannister mentioned, we need to assess the risk adequately.

I'm sure that's none of us here wants to have our reputation tainted in any way or jeopardize what we have built so far, which could also easily happen. So, I think it is important to see the consultation paper also to be able to make us feel more comfortable and conversant with these type of innovative setups.



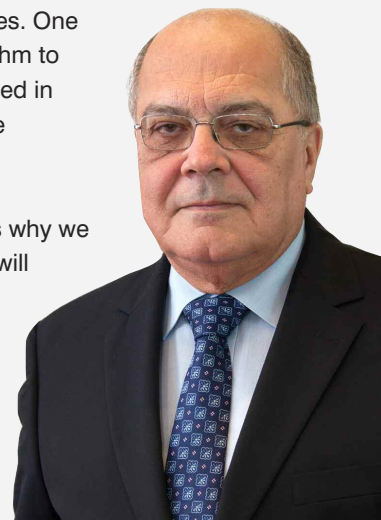
Matthias Knab

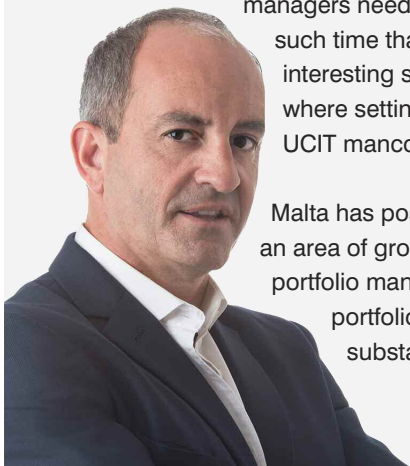
Innovation and change always starts off from a small base, but then keeps on growing and growing until a tipping point is reached from where on a broader penetration is happening exponentially. In the venture capital sector, there is now this new process called Initial Coin offering or ICO, which has become an alternative route for tech startups to get funding, and thus competing with traditional venture capital. Are you looking at regulating ICOs as well?

Joseph Bannister: Yes, this is part of the second program that I mentioned – this framework program will include issuers of cryptocurrencies.

However, when we look at the situation and what's going on, we are finding a lot of major issues. One example is secrecy - I can understand cryptocurrency or ICO issuers want to keep their algorithm to themselves, but the algorithm is the main stay of the whole thing. What seems to have happened in certain countries, there was fraudulent use of the algorithms, and this can happen because the operators don't specify directly what's going on.

So, we don't want any of this happening with people then disappearing with the money. This is why we are looking to have the **issuers of coins regulated as approved persons** which means they will have to pass through certain conditions before they can issue the currencies. Whether we will be able to get them to give us the algorithm to be reviewed by experts, that I am still a little bit unclear, though we may force them to do that. When cooperating with us as a regulator, the issuer may also be benefitting from the advantage to issue the currencies under the Prospectus Directive.





Adam de Domenico: To diverge from cryptocurrency, although I was involved in a related fund and it kind of links with what I am going to say. Another area from a domicile perspective, which links to the manager space mentioned before, are the **self-managed structures**, be it UCITS, PIFs, AIFs and particularly good for cryptocurrency. Essentially startup funds and managers need to manage costs. Setting up a self-managed fund allows one to manage such costs until such time that AUM is sufficient to have their own third party manager. This however also allows an interesting structure whereby one can manage regulatory aspects between example UCITS Funds where setting up a self-managed UCITS Fund will not require the manager to increase their licence to a UCIT manco. Furthermore, the self-managed European Fund may also benefit from a Brexit perspective.

Malta has positioned itself well in the past years for such self-managed structures and we have witnessed an area of growth. This was also driven by support from service providers across all aspects including portfolio management the latter for the likes of cryptocurrency, private equity and real estate whereby portfolio management for less active strategies could be carried out in Malta which also gives more substance and structure be it from a regulatory perspective as well as governance and oversight.

Monika Salomon: Adam's point about governance and the local substance is one of significant factors we are looking at from the regulator's perspective. As we know, with the help of technology it's very easy to actually operate from anywhere in the World. We have mentioned Brexit and other aspects which make companies established in the UK to relocate to Malta, but just establishing a shell company and still retaining the core operation in the UK or anywhere else is not something which we would be interested in and facilitating in Malta.

ESMA's Supervisory Convergence Network made it explicitly clear how the companies moving out from London should structure their operation and governance and we in the MFSA abide by that.

So in order to operate from Malta, fund managers need to have a **local substance**. As I said, we will be trying to avoid a situation of having a fund manager registered here in Malta and then the substance and the operation being somewhere else, be it the UK or any other jurisdiction. It is worth however to mention that we look at the proposed set up of an applicant and try to put it in perspective of practicality, so to not blindly follow numbers only.

And let me make this clear that this approach ties in also with MiFID II which will be implemented in January 2018. It is a significant change in the governance structure and management body requirements. It will have huge impact on the existing license holders who will need to upskill their game too. So these are things everyone needs to bear in mind.



Joseph Bannister

We should point out that these are not local requirements but European requirements. What I can sometimes hear abroad is that the Maltese regulators are becoming more stringent, but this is not the case as we are really all dealing with European requirements.

Isabel Agius

ESMA has issued recommendations in relation to setups which can particularly be applied to the Brexit situation with UK entities seeking to re-domicile in other EU member states. ESMA is stressing that the requirements stemming from EU Directives are applied in an uniform manner throughout all EU member states, and that a particular emphasis is placed on substance. ESMA fell short of specifying the number of full-time employees which a company should have.

David Butler: Having set up over 65 managers in Malta in the last 11 years, I think that the key points for those considering it are as follows. Many managers establishing in Malta want to be an AIFM-licensed manager. Malta requires that one of the two pillars of AIFM activity, **risk management or portfolio management**, must be in Malta, and that requires substance. There are no postboxes for that in Malta. There is an understanding that the development of local staff may take some time, but again there is real pressure on a manager and a commitment by the manager to have that presence for those functions. And for some this will mean having to move people to Malta.



This has always been the way throughout the years in my experience, and my advice to managers has been exactly that. I don't think anything that is being pronounced by ESMA at this stage is changing that at all.

ESMA is simply reacting to the idea that a lot of managers would want to leave the UK. The reality is, if they leave the UK, they need to set up substance in whichever EU jurisdiction they choose, so I don't see it as any different or a higher hurdle to meet. That hurdle has always been in place in Malta.

Andrew Zarb Mizzi

I see it in the same way as David and it is my interpretation that ESMA is seeking to avoid that any one jurisdiction attract any of the Brexit managers to set up in a particular jurisdiction as a postbox entity. The fact of the matter is that Malta has always held the policy that substance is required for the establishment of a manager on the island. There is therefore no difference between what Malta has done and what the country would continue to do as a jurisdiction irrespective of Brexit. ESMA may merely be seeking to ensure that jurisdictions do not offer attractive, yet shallow, sales pitches to win managers to their jurisdictions.

Dr. Christopher Buttigieg: As I mentioned at the start of this Roundtable, the conditions which are currently set might become tighter in the future. I highly recommend you have a look at the European Commission's ESA review proposal, which was issued in September, especially on the issue of **outsourcing**. The ESAs are about to get more powers in controlling what's happening at European level in relation to delegation, which may significantly change the existing regulatory and supervisory landscape for outsourcing. The ESA will in the future be in a stronger position to exert pressure on national financial supervisors on what type of structures they can accept.

There are other proposals within the review, for example the approval by ESMA of prospectus of wholesale securities. While this may not be directly relevant to the fund management space, I think it's still something which you might be interested in looking into. You should also follow the development of the proposal for European supervisory priorities, as in the future the MFSA and other national supervisors will, in addition to their national supervisory priorities, be required to achieve European priorities. The MFSA and other national regulators will also be assessed on the extent to which these priorities have been achieved.

Meanwhile, we are continuing to strengthen our supervisory engagement through the conduct of onsite inspections and supervisory meetings. Clare is heading the team responsible for onsite inspections within the securities and mark supervision unit and I invite her to give her views on this area.



Clare Farrugia: Over the past few months, the On-Site Inspections Funds Team has carried out a number of thematic and full-scope inspections focusing on various areas. These visits included, amongst others, UCITS management companies, authorized AIFMs and self-managed investment companies.

Two areas that we have looked into as part of these inspections were in fact how the local substance requirements are being addressed by fund managers and self-managed investment companies, and outsourcing. In this regard, we were pleased to note that our license holders are increasingly putting in more substance in Malta as they grow. The increase was particularly noted in the areas of risk management, compliance and operations.

For those fund managers and self-managed collective investment schemes which outsource critical activities, as part of the inspection plan for the coming year, the Authority may consider undertaking more focused supervisory work on the outsourcing obligations of their business. The aim would be to confirm that any outsourcing is justified and to monitor that such license holders would be effectively managing the risks associated with outsourcing, thereby also ensuring business continuity. Furthermore, we would ascertain that adequate oversight of outsourced functions to service providers is being carried out on an on-going basis by license holders, as part of the compliance monitoring programs.

With reference to delegation, further to the Opinions issued by ESMA in July, which have, *inter alia*, provided further clarity on the interpretation of the delegation requirements by asset managers, the Supervision Unit is closely monitoring developments to be issued by ESMA in this regard. In this context, as mentioned earlier, we expect license holders to continue giving the necessary importance to substance and proper governance structure requirements at all times. These are certainly areas that the Authority is committed to continue looking into as part of the supervisory process of our license holders.

Matthias Knab

Coming back to Brexit briefly, I wonder if there are any additional comments or thoughts what that could mean for Malta.

Joseph Bannister: Of course, we don't know where Brexit is going to end up. There are various indications. I think the British adamantly want to leave when at the same time it seems they can't really leave. When you read the wording clearly and see what they have been publishing and also some of their internal documents, the whole thing is very hazy, even when they talk about the transition period of two years. Now the UK seems to think that there is a way of being out but enjoying all the benefits, and that's why there is all this posturing.

On the other side, I think I have never seen any posturing from the EU side. Mind you, I prefer if the UK stays in, but it's very clear that unfortunately the whole situation is now reaching a very dangerous and critical stage.

After the referendum, a number of people thought that they would see, sense and stop the whole thing, but they continued further. Just last Friday I even learned that the UK Government had secret legal advice how they can stop Article 50, which was never published.

But the reality now with all the infighting at the higher echelons of government, unfortunately Brexit is likely to happen, and it will bring chaos. But that chaos could also bring political



instability which will then have repercussions on the rest of Europe.

In terms of what's happening around Brexit, unfortunately, some European jurisdictions felt the need to run after companies kind of trying to lure them into a relocation, but we haven't done that at all, I can assure you straightway.

There were instances where regulators have been calling institutions to their jurisdictions and discussed how they can quickly process applications, or where ministers and the regulators together visited companies in the UK having discussions such as, *"come here and we'll give you everything."* The situation, it seems that it takes different turns, so you can't sometimes understand it.

We are seeing a lot of insurance companies, although we tend to be quiet about these developments. At the end of the day, maybe some 15 companies will be moving to Malta, if not more, but then, suddenly we started seeing investment broken and some real high-powered firms, hopefully they will take decisions shortly. I know two of them are just looking at Malta and nowhere else, and also more recently some private banks have also started to look at Malta, which will be a benefit for our financial and banking landscape here as well.

Malta is not producing any publicity about such moves because it's up to the companies to advertise that, sometimes they come under a different name that is not recognized at all. So, from our side we are basically doing the same things as we've always done, and it's from the company's side to see if they want to come here and do business from here.

David Butler: On Brexit, I think the best analogy is that the Oxford Union Debating Society won the debate and first prize is to build a rocket ship to Mars. It's impossible. Professor Bannister alluded to a potential plan or ploy, but there is only chaos.



As I mentioned earlier, the segment of the industry that we focus on, the boutique end of the asset management industry – hedge fund managers, private equity, wealth managers – don't need to make a decision now, they can see how Brexit unfolds. They can make a decision in the first quarter of 2018. If then they want to move, which I am sure many will, they will still be able to move in an orderly fashion, get authorized in a jurisdiction like Malta and be up and running for business with access to the EU.

So, I have no qualms about that and there's no urgency for them. Obviously, there is urgency for large financial institutions.

Paulianne Nwoko: As a service provider based here in Malta and looking at Brexit from the outside, we will continue expanding our offering to ensure we can respond to any future demand, but as we discussed, we cannot really take a stand on what will happen.

We are also committed to continue communicating with the marketplace, also through forums such as this one, so that people are aware of what Malta can offer. This is something that we've been doing before and we'll keep doing now so that managers affected by Brexit are aware that Malta is another English speaking jurisdiction that has much to offer both in terms of personal lifestyle and at business level.





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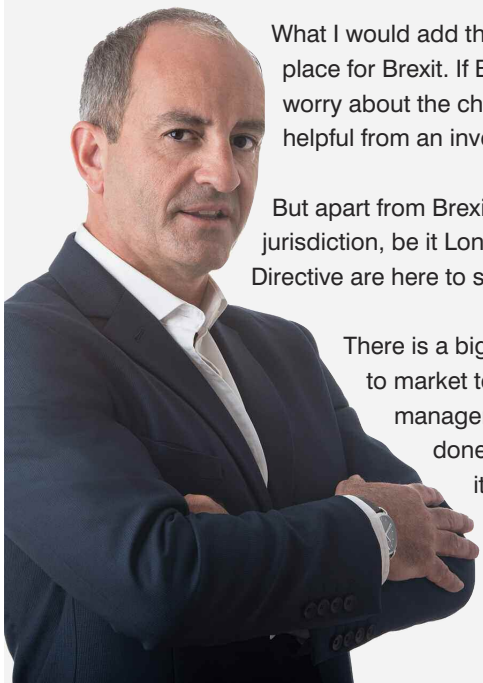
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Adam de Domenico: Surely managers have a lot on their plate, there is much regulation coming around that it's understandable they will be waiting to the last minute and not making a decision until final clarity on Brexit. Service providers like us, Cordium and Mirabella, can help them set up in UK while also giving them the option to immediately switch over to Malta if Brexit becomes an issue for them to operate from the UK.



What I would add though is that the large managers are interested in having at least a backup scenario in place for Brexit. If Brexit becomes an issue, then those managers don't need to scratch their head and worry about the changes. Having worked out a Brexit hedge will help them and I think will also be helpful from an investor's perspective.

But apart from Brexit, there is still opportunity right now. Fund managers set up businesses in any jurisdiction, be it London or elsewhere, and let's also not forget US managers. Things like the AIFM Directive are here to stay, and so is UCITS and the coming MiFID II, which has implications.

There is a big question mark around **US managers**. They will have to set up in Europe if they want to market to European investors, which remains a very important market from a global fund management perspective. Will US managers continue setting up in London, as they have done in the past, or would they consider various other jurisdictions, for example Malta, be it through a platform manager or their own manager or other, so that they will be able to seamlessly approach European investors while not having to set up today and be concerned with having to change should Brexit indeed cause a concern?

Hakon Haugnes: One thing that surprises me about England, where I have spent so many years, is how few people are aware of what their alternatives might be when it comes to their business location. It is my impression that most managers our size, so the smaller ones with say 10 to 30 people, don't really think carefully through this before it happens, because we are just too busy with our day jobs.

It's only thanks to good advisers that we think through these issues well in advance and we have been operating in Malta now since we started in 2012 and prior to that in our previous company. Often when talking to other managers they don't see any options other than London. They think about Brexit, but it's often "We don't know.", when considering the alternatives, or when you ask them about DIMF, they ask, "What's that?", and I think they haven't seen all the things that UK is throwing their way.

From that perspective I believe Malta has an important marketing role here. It's unfortunately not the case of "you build it and they come" – I think you have to do the classic marketing and go out and tell people, and surprisingly, you have to tell them again and again, and speak to the people that managers trust, their lawyer, accountant, auditor, etc. and address some of the knowledge gaps that tend to exist.

Chris Portelli: Just a small comment to add on what Mr Haugnes mentioned; and here I am speaking on behalf of EY and not on behalf of other Big Four companies. We at EY, and when I say “We” I mean through our London office obviously, have done specific sessions in conjunction with, our London office, together with, our colleagues in Luxembourg and Dublin, to address specific concerns which our London based clients’ have on what will happen post Brexit. Our clients had the opportunity to understand what alternative jurisdictions like Malta, Luxembourg and Ireland have to offer, so they can assess which may be an option post Brexit and take an informed decision of which jurisdiction they can shift to. This was more to give our clients the optionality of where they can or cannot go.

The feedback we had was more in the form of, “Thanks, we’ll wait and see,” but at least it was a good initiative that we talked to our clients, to give them some more information on what Malta has to offer.



Hakon Haugnes: I don't think people understand how bad it could potentially get with all these little pieces of proposed and actual legislation that are sitting out there quasi hidden and not well understood or well defined by legislators and authorities.

With Brexit, who knows indeed, but there are significant marketing opportunities for Malta to London firms. You need to point out what's coming and how this will affect them, so it's not about putting out a vanilla message “Come to Malta!”, but tell them about specifics and how Malta is solving a lot of complex inconsistencies.

Adam De Domenico

I agree, it is important to engage. So we do invite people to come here, it's mostly the COO of a manager who comes to Malta, looks around and meets all the key service providers and the MFSA. They can also visit and talk to managers who already operate from Malta.

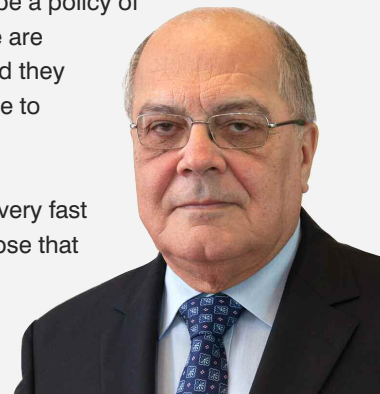
Monika Salomon: The climate in Malta is **business-friendly** and rather efficient. Any Maltese person is probably taking a lot of those positive aspects for granted, but I have found that especially for those who have come from overseas with business, they can appreciate the environment in Malta. As the Regulator, whenever we meet potential applicants we are trying to accommodate the difficulties of setting up the company and assisting our applicants to set up a business from scratch. Where possible and permitted by the rules of law, we are flexible and accommodating. So, I can say that Malta is a very business oriented country, small enough to make changes reasonably quickly and big enough to make a difference and influence.

The regulatory framework is robust and prudent and the team I work with is highly knowledgeable.



Joseph Bannister: I'll just add a point to that. One is, there has never been and there will not be a policy of numbers, so we are not out there to attract say every Tom, Dick and Harry. Unfortunately, there are sometimes critical voices in the press or elsewhere where the press pick up the big names and they say, "The big names are not here. How is it that they are not here, do you have no infrastructure to accommodate them?"

Well, size is certainly a consideration, we're just 246 square kilometers (95 sq miles) and also very fast running out of people, so we have to import people. I think the companies that are here are those that feel comfortable that they have found a fine operational base.



Andrew Zarb Mizzi: When relocating to Malta, apart from the **work-life balance** and climate, a reason we often hear from people who have moved to the island is the safety aspect. In other words, when compared to major metropolitan cities, it is safer to raise children in Malta, and quite a few people have shared the view with me that there is a significant positive difference in raising children in Malta when compared to London, for example. It is a bit like Monika said before that, as a Maltese, you take such aspects quite for granted. Thus, I was indeed surprised to learn that raising children in a very kind of safe and English speaking environment with excellent educational facilities is a consideration. But this indeed adds some attractiveness to Malta as a working destination from an employee perspective, apart from the managers and entrepreneurs considering using Malta as a new operative base.



Hakon Haugnes

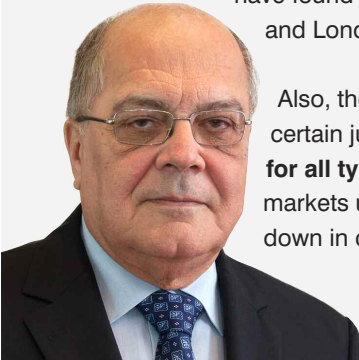
If you are looking for a key non-business marketing point, just look at the acid attacks in London this year. I think so far there were 600 acid attacks in London, and zero in Malta.

David Butler: When it comes to infrastructure, the key theme is controlled growth because it's not just about the boutique asset management sector and boutique insurance coming to Malta, but also other sectors within financial services where there is growth. Outside of the traditional financial services segment, there is also a lot of growth in other areas in Malta as well such as in tourism, iGaming and FinTech generally.

Therefore, the great challenge is to maintain controlled growth, focus on high margin industries and keep the infrastructure being built – adding more schools, more roads, et cetera. So that is very much a necessity and it needs to continue to happen to ensure that everyone has a positive experience, as my managers have had to date when moving here.



Joseph Bannister: I'd like to come back briefly on the financial industry in Malta as there are sometimes concerns that it has grown to a size that is unproportional to other sectors of the economy, and thus an inherent concentration risk. So we undertook a detailed scientific study on the input/output of the financial sector, which should be published shortly. What we have found is that the contribution to GDP is just over 10%, which is more or less the same size as Dublin and London.



Also, the financial services industry in Malta is not concentrated on one area, same as you can see in certain jurisdictions, like the funds or the insurance industry, but it's diversified. There are **opportunities for all types of service providers** not simply in the funds sector but also around the developing capital markets union, securitization, or overseas pensions. As many other sectors, also finance goes up and down in cycles, we have to be mindful of that, and on certain other limitations we have referred to here.

Adam de Domenico: We talked about substance and that it's critical to operate from Malta, and we also have high standards when it comes to governance. But generally within finance and asset management, I think Malta is building itself, not only from a fund manager space, but also from a risk management perspective where we are building a strong talent base and a general infrastructure around it.

Of course, this starts with juniors who are being trained, so it will take an element of time, but with the university and other bodies behind it, the know-how and the expertise in the jurisdiction is expanding continuously. Functions like portfolio management or research can be carried out from wherever it needs to be carried out. We know that portfolio managers tend to travel a fair amount to meet investors, manage investments and carry out research. At the same time, the regulatory framework is also developing towards more governance oversight and risk management. Therefore, having strong risk management structures in the jurisdiction serves Malta really well.





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