

Developing new sources of growth

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Malta is well-known for its business-friendly approach – particularly to the fund sector which it sees as critical to the future growth of the island. However, launching a fund without understanding fully the role of the Malta Financial Services Authority and of local rules is misguided.

Of course, funds are free to hire a lawyer anywhere in the world, but it is important for fund promoters to be able to understand the local environment and the mindset of the MFSA, says Andre Zerafa, a partner at Ganado & Associates. He points out that while the regulatory framework is flexible, it must be followed closely in the drafting of launch documents.

Equally, the appropriate structure must be adopted and acceptable board members and service providers must be selected before the MFSA will be sufficiently satisfied to authorise the fund.

The increasing popularity of Ucits funds can increase the challenge still further. Eligibility of the assets in the Ucits structure can get complicated, says Zerafa. We may need to meet the MFSA or at least conduct a conference call to talk through the issues.

The MFSA itself has recently been restructured so that authorisations are handled by a single team, improving the efficiency of the process.

A resurgence in volumes has also put the regulator under considerable pressure. But Zerafa warns that the MFSA has also hired new staff and is unlikely to take its eye off the ball or ease the authorisation process in any way.

Demands on funds do not just emanate from the MFSA, but from the increasingly elevated levels of due diligence on the part of investors.

Drafting has to be ever more careful and considered, says Zerafa. The difference from the past is that investors read every line of the documents now.

This includes information about the subscription and redemption process, anti-money-laundering regulations, the segregation of sub-funds, side letters and other clauses relating to liquidity and transparency.

The MFSA's rigour is one of the main reasons that Malta is flourishing. But what is likely to be the source of future growth? Zerafa points to a number of distinct areas.

"Many of the structures currently have a European connection, particularly those that are managed in London. There are not a great many US funds here, but this could change with the Alternative Investment Fund Managers directive and with the conclusion of the US-Malta double taxation treaty. That will put us on the US's radar screen."

Ucits funds are also likely to flourish but this requires the presence of more custodians on the island, as stipulated under European Union rules.

"We do need development in the custody industry," says Zerafa. "I'm hopeful that will happen in the next couple of years, but the experience of custodians over the last few years means that setting up in a new jurisdiction is a tough decision for them."

In the longer-term, there appears to be an opportunity to attract private equity funds from their current domiciles, which have offshore regimes. Zerafa says: "I think the AIFM directive will impact the private equity industry. There has been a psychological shift towards transparency and disclosure, and private equity funds are looking to come onshore."

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