



# Leading Malta's Success Within the Funds Sector

**GANADO Advocates is a full service law firm with offices in Malta. It handles the full range of legal services, including corporate, tax and IP, with a particular focus on maritime and financial services. The financial services department is divided into three teams: Banking, Insurance, and Investment Services and Funds.**

André Zerafa heads the Investment Services and Funds team, specialising in structuring and establishing alternative investment funds and retail funds. Dr Zerafa advises promoters on corporate and regulatory matters, including capital raising issues, and he is involved in setting-up asset management firms, administrators, custodians, prime brokers and advisers. He also chairs the Investment Business Committee of the Institute of Financial Services Practitioners.

Dr Zerafa stated that the depth of experience in the Investment Services and Funds team and the resources it has available are its key distinguishing feature.

"There is no other service provider in the jurisdiction which has ten fully dedicated professionals, all focusing on investment services and funds," he said. "Other service providers tend to have a diverse practice within their funds team, whereas my team is focused purely on that. At the same time, being a full service firm, we really are an A-Z legal service insofar as our investment services and funds clients are concerned."

## Evolution in Malta's Fund Industry

According to Dr Zerafa, the funds industry in Malta has evolved from being heavily focused on hedge funds to being much more diverse, with most funds being set-up in private equity or real estate.

"That's for a number of reasons," he explained. "Hedge funds have not performed that well over the last few years; even internationally, the launches of new hedge funds are few and far between. More importantly, it is also because of the type of fund managers which the jurisdiction has attracted over the last decade."

Previously, hedge fund managers were attracted to Malta to set up fund management

operations, however the fund itself would remain in the Cayman Islands. Today, private equity or real estate fund managers will set-up both the management operation and the fund structure in Malta in order to benefit from the passport available under the AIFMD. These funds are primarily investing in targets in continental and Eastern Europe, as well as certain Mediterranean rim countries.

## Legal and Regulatory Developments

Malta's regulatory environment is based on European directives and the approach of the MFSA has been to implement and transpose directives nearly immediately once they are issued. The MFSA's latest initiative is the introduction of the Notified AIF framework. Under this framework, an Alternative Investment Fund would be able to launch within 10 business days from when it files its notification with the MFSA.

"This wouldn't be a licensed product as we've had traditionally – until today all funds of collective investment schemes in Malta need a licence," said Dr Zerafa. "With the notified AIF regime it would be a simple notification with the submission of documentation to the MFSA. So the MFSA is still involved in reviewing the documentation, but at a general high level rather than on the nitty gritty detail, thus reducing time to market."

Discussing Malta's legal system, he stated that it is a mix of Anglo-Saxon and civil law, with constructs on insolvency, company law and security arrangements which any Anglo-Saxon operator is used to.

"The Anglo Saxon law is known to be creditor friendly rather than debtor friendly, thus making Malta attractive for banks and prime brokers doing business with Maltese operators and Maltese domiciled entities," he added.

## Developing Trends

The funds industry in Malta is moving towards more complex and more sophisticated strategies, and Dr Zerafa believes that, as a result, more attention is required from fund promoters and service providers.

"There's much more to do today and much more to focus on, particularly on valuation, which is swiftly becoming one of the main issues which is facing the fund industry globally," he commented. "I think the trend will be that the auditors and the accountants together with the fund administrator will be more and more involved in the valuation of the fund structures."

Another trend highlighted by Dr Zerafa is the use of securitisation vehicles by fund structures, either in parallel or for one to invest into the other.

"We're seeing convergence of the capital markets with the fund markets," he continued. "Two elements are helping this convergence in Malta specifically. There is the European Wholesale Securities market, which basically allows for the listing of debt securities or asset backed securities promoted solely on a wholesale basis. This EWSM is a regulated market under the MiFID and I think it has put Malta on the map of the capital markets world. That is coupled with the Securitisation Act, which allows for a high level of flexibility in the setting-up of securitisation vehicles in Malta."

## Priorities for Malta

In Dr Zerafa's opinion, the jurisdiction's priority over the next year is to consolidate its depository offering and its banking infrastructure. He believes there is a need for more players to operate in Malta, both on the banking side and the depository side.

"The big names are present in the jurisdiction through servicing of Malta funds from outside of Malta, without an actual operation on the ground here. Because of certain deadlines which are embedded within the AIFMD, we would expect this to change.

"We're reaching a stage where we have achieved a certain level of sophistication in our thinking as a jurisdiction and I think that it is the right time for international operators to look at Malta not only as a jurisdiction where they can service clients, but also as a jurisdiction where they can have an operation to be closer to the market. We have achieved that on the fund administration side over the years as well on the fund management side. I think the next step is going to be on the banking and depository structures," he concluded.

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