



Opalesque Roundtable Series '15

MALTA

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Editor's Note

Malta's reputation as a **hedge fund domicile** was established with the island's accession to the European Union in May 2004. Malta regularly receives high rankings in benchmarking reports and the World Economic Forum ranks Malta above average for almost every metric in financial market development. Oliver Wyman recently analyzed all European fund domicile jurisdictions, and Malta came out as the one with the strongest growth.

Flexible regulation, transparency and good governance have long been some of Malta's key advantages, as well as its status as a cost-effective domicile for funds, asset managers, fund administrators and for custodians catering to the thriving fund industry.

Malta's banking system is well regulated by the Malta Financial Services Authority (MFSA). On 1 May 2004, the Central Bank of Malta joined the European System of Central Banks (ESCB) and on 1 January 2008, it became part of the Eurosystem.

While this Roundtable highlights some of the strong points for Malta like geography, low labor costs, etc., what fund managers and fund promoters are really interested in is **how the regulator works**. Here Malta stands out for its approachability of the regulator and a strong drive to innovate, obviously within the larger European framework.

Passporting Opportunities for Funds and Fund Managers

EU membership positioned Malta on a level playing field with other European Union countries, and introduced passporting rights so that investment services and UCITS schemes may be registered in Malta and passported to any EU country.

The basic structure used for collective investment schemes is the SICAV, which offers a variable capital nature and the possibility to establish sub-funds. To date, this is the most widely used vehicle, particularly in the non-retail sector and it can be structured to include master feeder funds and umbrella funds with segregated sub-funds.

Professional Investment Funds (PIFs) retain their popular regime, targeted at increasingly financially literate investors. PIFs refer to the Experienced Investor Fund, the Qualifying Investor Fund and the Extraordinary Investor Fund. The PIF regime is a very attractive structure for non-harmonised Funds of 1 and Family Office Funds.

From licensing regime for de minimis managers to Recognised Incorporated Cell Companies, Loan Funds and SME financing

The creation of a new regime for Alternative Investment Funds (AIFs) is one of the biggest recent developments in Malta. But Malta also created a licensing regime for de minimis managers. **The MFSA decided to regulate de minimis managers** with a stricter regime than what is prescribed in the Directive. In the interest of investor protection and financial integrity, a licensing regime was seen as more preferable than registration.

Malta's legislation also provides for the setting up of UCITS and non-UCITS retail funds. It has also created a private collective investment scheme structure, in terms of which the private CIS is subject to recognition by the MFSA. These structures are exempt from the AIFMD.

Moreover, a new vehicle was added to Malta's repertoire of cellular fund vehicles in 2012, called the **Recognised Incorporated Cell Company** (RICC). Directly targeting fund platform providers, this is a structure which allows the RICC to provide, in exchange for payment of a platform fee, certain administrative services to its Incorporated Cells (ICs). This cell structure is meeting a lot of interest, more and more securitization transactions and structures are now set up in Malta.

In 2014, the MFSA issued — again, as one of the first jurisdictions in Europe — a **Loan Funds regime** where funds may originate loans to unlisted companies and SMEs, and may also buy loan portfolios. At the moment the MFSA is working on finding new ways for SMEs to go directly to the market and raise funding themselves without having to go to the banks or prepare huge prospectuses. Sometimes the companies only need a little bit of money, and the professional fees will be more than the actual amount of money they need to raise.

The Opalesque 2015 Malta Roundtable, sponsored by Eurex and IDS, took place in May at the office of the MFSA with:

1. Professor Joseph Bannister, **Chairman, MFSA**
2. Dr. Christopher P. Buttigieg, **Director of the Securities and Markets Supervision Unit, MFSA**
3. Charmaine Baldacchino, **Senior Manager, MFSA**
4. Andrew Zarb Mizzi, **Senior Executive Officer, SwissQuote**

5. Ian Hamilton, [CEO, Investment Data Service Group \(IDS\)](#)
6. Markus Alexander Flesch, [Head Sales and Marketing, Eurex](#)
7. Joseph Saliba, [Partner, Saliba Stafrace Legal](#)
8. Sylvan Sapiano, [Senior Executive – Compliance Services at Active Services \(Malta\) Limited](#)

The group also discussed:

- Why Malta retained the Professional Investor Fund Regime (PIF) after AIMF. Benefits for fund managers.
- Doing business in Malta: High employee loyalty, low comparative costs, diversity of languages
- Malta's new private equity structure
- Benefits of a real compliance culture
- How to avoid having regulations going against their own objectives
- Who is coming to Malta: An influx of people and companies - educational initiatives, quality of life

Enjoy!

Matthias Knab
Knab@Opalesque.com

Participant Profiles



(LEFT TO RIGHT)

Matthias Knab, Sylvan Sapiano, Markus Flesch, Ian Hamilton, Joseph Saliba,
Charmaine Baldacchino, Christopher Buttigieg, Joseph Bannister, Andrew Zarb Mizzi.

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Introduction

Joseph Bannister

Malta Financial Services Authority.

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

Andrew Zarb Mizzi

Swissquote Financial Services
(Malta) Ltd.

Andrew Zarb Mizzi, as Senior Executive Officer I am the Head of Swissquote Financial Services (Malta) Ltd, a member of the Swissquote Group and fully licensed custodian.

Ian Hamilton

Scotstone Group

I am Ian Hamilton, I am head of Scotstone Investments and Scotstone Group which has multiple incubation and hosting platforms in Malta. I also have other interests in the form of the IDS Group which does administration, finance administration here in Malta. It is a \$10-billion group that's extended around in other jurisdictions as well.

Markus Flesch

Eurex

My name is Markus Flesch. I'm heading the Eurex service and sales office in Zurich and Malta belongs to my "sort of client universe" to expand our derivative market offering even into the Maltese financial industry.

Joseph Saliba

Saliba Stafrace Legal.

My name is Joseph Saliba. I'm a Maltese lawyer who has practiced law for the last 18 years. I am also one of the founding partners of the recently started law firm, Saliba Stafrace Legal.

Sylvan Sapiano

Active Services (Malta) Limited.

My name is Sylvan Sapiano. I work with Active Services (Malta) Limited which is part of the Active Group of companies. The Group offers a broad range of services through a team of specialists in Guernsey, Jersey, Isle of Man, Cyprus and Malta. Our core activity in Malta targets compliance services. We assist companies through ongoing regulatory and compliance consultancy. Each staff member is also individually appointed to act as the compliance officer for various license holders that are authorized and regulated by the MFSA.

Charmaine Baldacchino

Malta Financial Services Authority.

I am Charmaine Baldacchino. I am a Senior Manager within the Authorization Unit at the MFSA responsible mainly for the licensing process of securities-related applications which also includes the due diligence on individuals involved with prospective license holders.

Christopher Buttigieg

Malta Financial Services Authority.

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.

70

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Joseph Bannister: We consider innovation important now. One of the problems of the financial crisis was that innovation was outstripping regulation. Therefore, what we as regulators are trying to do is create innovative structures. Of course, we don't create products, the industry has to do that, but we can essentially give the industry more freedom to operate.

In that way, we also try to avoid prescriptive regulation because with prescriptive regulation people tend to focus on what is written down. Then the question is, do you just simply apply what is written down in the laws and regulations, or will you then also be able to focus on how to best address the market's needs within the existing framework, how to still move things forward? The answer we found is to focus on just that and create structures within existing European regulations.

The two areas where this could be done is in investments and in insurance. I think in the case of investments, it wasn't so difficult creating these different structures, the incorporated cell and the recognized incorporated cell companies. In the case of insurance, it was a little bit more difficult, particularly the introduction of cell companies for insurance, which is actually a very old offshore concept.

However, we decided to introduce the insurance PCC (Protected Cell Company). We also engaged a team of consultants. They worked on it and they found it to be compliant with both Solvency I and Solvency II. So we had no issues with that.

We were then next focusing on the reinsurance side, but there we were kind of taken by surprise, because as we were thinking about it, suddenly EIOPA circulated the Omnibus Insurance Act and we find the regulations they were issuing mentioned the PCC. So we said, "Well, we've made it now. We can continue and move forward with the reinsurance PCC."

We saw a real need for solutions in this space. As I was saying at the FinanceMalta conference yesterday, since the financial crisis, securitization was kind of a taboo, but actually securitization forms parts of these new reinsurance solutions. Now, actually Mr. Draghi himself is saying that we need to develop the securitization market for the countries of Southern Europe.

So again, we carried out an analysis to find out what is really the problem with securitization? We also spoke with many lawyers in different jurisdictions, testing the law, in a sense. So we found that creating a vehicle with compartments opens the possibility of contamination. That is why we decided to go ahead applying a cell structure.

So what you've seen, essentially, is that we've taken the cell structures really to the hilt. Can we take it further? I have to say I don't know. Sometimes you have to stop and think. Certainly, we will not allow the cell structures to be used for unlicensed entities or unregulated entities.

What we're looking for in the future, how innovative we will be or not, I don't know. But certainly, under the Capital Markets Union, we are coming up with ideas how actually SMEs can go directly to the market and raise funding themselves without having to go to the banks or without having to prepare these huge prospectuses and all that. Sometimes they only need a little bit of money, and the professional fees will be more than the actual amount of money they need to raise.

I am not talking about crowdfunding here, because crowdfunding is unregulated and there is a bit of a mess in the various jurisdictions. It's not passportable; there are no guarantees, et cetera. But I think we'll be dedicating the next two years to working in this area.



Andrew Zarb Mizzi: Viewing innovation from a micro level and considering our need as an international financial services jurisdiction to maintain a competitive advantage in the years ahead, perhaps a consideration should be made on the possibility of adding further language skills to the skill mix.



Although Malta offers excellent professional human resources, which are qualified within their own respective fields of specialization, and speak perfect English, we may lack the ability to communicate in other dominant European languages, such as French and German. Perhaps the next generation of professionals could also be trained to speak an additional foreign language (other than English). This, in my view, would add even more attractiveness to Malta as an international financial centre.

Ian Hamilton: I'm not so sure if languages are really a shortcoming here on Malta. I'm an English speaking person and it's easy for me to do business here. It's easy for me to do business in Switzerland or in France. English is such a universal language for business and particularly for finance. Sure, we can learn a foreign language, but then for the financial technical terms we tend to revert back to English.

I was once asked to do a presentation in another language that I speak which is not up to date, everything is still English. So I did a literal translation and my presentation actually turned out be a very embarrassing but correct translation in the other language. The person who had asked for the translation was very embarrassed and said, "Please continue on in English."

So I don't think Malta should worry too much. There should be more emphasis on the actual skills that we have here rather than on the language ability. You're putting another burden on Maltese students who have two languages already, and most of them can speak Italian and various other languages as well. I speak other languages but there's no way I can use them to do any technical presentations in our particular fields.



Joseph Bannister : I think this question of languages arises in the retail business and the direct client interface. Although having said that, Charmaine and I were talking to someone in Italy, and we in fact had to use technical Italian for them to really follow us. Even though colloquially they may talk to you in English, but listening to a presentation, they mostly prefer it in Italian.



Ian Hamilton

I think if you really want to learn another language, it should be Mandarin because that's where the future is and not necessarily Southern Europe.

Matthias Knab

Markus, we spoke about innovation, what are your comments from Eurex' side regarding innovation or broadly changes you see in the industry?

Markus Fleisch: From our perspective as an exchange, the key question of to what extent an exchange – or better an infrastructure provider – can accommodate to innovation, is pretty much dependent on the take-up of our clients. Market structure providers like us can try to adopt to technical or functional changes, but the final take-up is with the clients, or the clients of our clients, as we need to increase our offering according to the risk appetite of the real end customer. Therefore, from our perspective, the end client determines whether innovation will successfully shape our industry.

Innovation on our end needs to come as a joint effort between market regulators, infrastructure providers, as well as sell side banks. Only in such a set-up, and nowadays in consent with regulation, innovation has a chance to be well adopted. But without the support by the value chain, new services or products are deemed to fail, even knowing that they might be smart.

However regulative prescriptions today turn out to be very time consuming, costly and operationally a burden just to implement them. To incorporate new innovative products and services is almost only contingent upon the regulator. The time to market of innovative products today experiences a bottleneck on the regulator side, driven by time constraints and/or lack of experience. As the regulator runs a mandate to protect vested investors interest in a complex derivative world, innovation will naturally slow down, just for the sake of the enforced regulation.



Joseph Saliba: I think this year has had its own fair share of innovations when it comes to innovative products and structures. I concur with Chairman Bannister that we have seen notable innovation and a growing interest in securitization vehicles, which was supported mostly and recently by the cell structure that was created in Malta. More and more securitization transactions and structures are set up here in Malta, which is a good thing. I think this new sector still needs to be tested, even in terms of new regulation coming up like PRIPs, for example, but so far it is attracting a lot of interest.

Another notable innovation which I think hasn't been well exploited as yet is the recent revamp to the legal rules governing the private equity structure, the typical limited partnership structure, driven by MFSA, which came into force last December. Finally there we can pride ourselves to have a legal structure which compares very well to the traditional limited partnership used by private equity houses and also the relatively recent Luxembourg limited partnership which is proving to be a real success for Luxembourg. And so, I only wait for the moment to see everybody starting using and pushing that more and more.

From the legal practice side, we see clients asking for more innovations in terms of structures vis-à-vis AIFMD and funds. Some of them just want to be called AIFMD, others just want to stay out of it, and this gives rise to various requests for innovative structures.

I believe there are still a few proposals which need to be assessed there, one of which – and this is based on the type and nature of inquiries that we receive (inquires coming out of Switzerland and other jurisdictions) – relates to the use of funds as family wealth planning structures.

One thing I really wish to see happening is the family office exemption (which currently applies with respect to the requirement to get a collective investment scheme license in general) being restricted solely to the AIFMD regime.

Thus, it would be desirable to find a way how to allow a family office to structure its own succession and family wealth planning through a fund, through the PIF structure, without going into AIFMD. At times these proposals concern assets under management which exceed the thresholds, the 100 million benchmark prescribed by AIFMD, I think it would still be in line with the Directive to exempt them from the AIFMD regime and yet still offer them the opportunity to be licensed as collective investment schemes, namely as PIFs.



That would still make them eligible to the tax treatment of collective investment schemes under Maltese law and at the same time eligible for the exemption from the more onerous regulatory regime of the AIFMD.

Christopher Buttigieg

Malta has a private collective investment scheme structure, in terms of which the private CIS is subject to recognition by the MFSA. These structures are exempt from the AIFMD. Perhaps, setting up a recognized private collective investment scheme could address Joe's concerns regarding family offices.

Sylvan Sapiano: What's interesting from a compliance perspective is that innovation is becoming mostly a mindset. Effective compliance is moving away from the checklist approach. We also need to move further away from the silo mentality. A compliance department that shares regulatory information with other departments of a firm would be assisting in building a compliance culture within that firm. Naturally there needs to be positive communication with the board of directors who are ultimately responsible for embedding such culture within the relevant entity.

I believe that regulators are nowadays placing more onus on the compliance officers. For example, in case of AIFM reporting it is the compliance officer of the company that actually has to file the report. In practice this promotes communication between different departments or different service providers to ensure that the final report is ultimately compliant with ESA's standards.

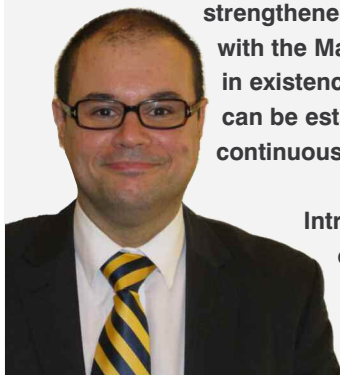
What has also changed is that today a compliance officer needs to possess a diversified set of skills. This is an important aspect particularly for companies building a compliance department, where additional human resources can provide a more diversified skill set. During the past year it became evident that even a certain level of IT skills can be helpful to achieve compliance goals. This became apparent particularly through various new standards of reports such as the obligatory AIFM reporting.

Traditionally, compliance may have been seen as a stumbling block for financial services firms, but in my opinion that is changing as well. Previously, compliance individuals would intervene to halt a project from moving forward due to non-compliance. Through the promotion of compliance culture, *the compliance function is being more actively involved during the decision making process*. Hence a compliance officer nowadays assists a license holder in creating solutions that are fully compliant and therefore already in line with the regulator's expectations.



Christopher Buttigieg: For us regulators, the compliance department is fundamental. The compliance department is the Supervisor's eyes and ears in the industry.

The MFSA is currently considering various ways in which compliance departments within the industry can be strengthened. The possibility of creating a College of Compliance Officers is activity being discussed with the Malta International Training Centre, which is MFSA's training arm. Similar colleges are already in existence in other jurisdictions and we are currently considering how something similar, if not better, can be established in Malta. This would be a first step in the direction of eventually creating a continuous professional development regime for compliance officers.



Introducing a CPD program is fundamental if we are to ensure that the role of a compliance officer becomes a profession in Malta. In today's financial world, where regulation is continuously evolving, monitoring compliance has become a task which requires very specific knowledge, experience and skills.

It is therefore important for the further development of Malta's financial centre that the required tools are provided for the compliance profession in Malta to evolve to the next level.

The idea is to kick-start this project with the Malta International Training Centre as a first step. In due course we would expect the College to become an independent organization.

Ian Hamilton

In South Africa, we have a compliance institute which is an independent party. I'm happy to organize for discussions between you and them as to how they operate. The only thing is I would like to say I hope it operates a lot better than the fund managers association that we have here in Malta, which is not going to get on well, if I say so. It hasn't met for two years even though people are members, et cetera. There needs to be a total revision of its structure.

Markus Flesch: Coming back to innovation for a moment, I personally believe that innovation is the only driver of a successful business model or market. However parameters have changed, influential forces have changed as well, since limiting factors are not capacity or technical progress any longer, it is, quite simply, regulation. Of course there are enough reasons why this is the case, but I happen to know – just as a little example – that several institutions have strict on-boarding constraints for new products and services, as they are still on a backlog to implement required regulatory restrictions.

Especially MiFID II and MiFIR will have a profound impact on exchange-traded as well as OTC traded derivatives. Although not effective yet, there will be a significant interaction and compounded effects on the competitive landscape for both markets. Despite the fact that it is still in a consultation phase around technical standards, be it RTS or ITS, it is keeping us very busy to bolster unintended and negative impact on the market infrastructure. These proposals that we have seen will shape the derivative industry, but not to the better, but towards higher cost and less transparency, and therefore even against the regulator's mandate and intention. The good thing though is that Eurex is using this consultation phase – understanding the direction this is taking as well as the mandate of the regulator – to express our concerns and to start a constructive dialogue to achieve our common goal to increase transparency and to protect investors' interests.

The current level 2 consultation on technical standards with different layers of complexity is our last chance to have a positive influence on the drafts directly, and Eurex will take this opportunity.

It is needless to say that Eurex fully supports the Level 1 intentions to increase transparency, but the proposals under Level 2 will render the contrary for ETDs (exchange traded derivatives). Examples are the thresholds and inferences proposed by ESMA that will lead ultimately in lower transparency for ETDs. The threshold for "Large in scale" are substantially lower for futures, but set too high for options, and all ETDs are determined "liquid" which does not allow for flexibility or the use of waivers. These are only two small examples, but there is a misconception regarding exchange traded instruments which will lead to negative effects on transparent order book trading and contradict the intentions of MIFIDII/MIFIR and G20 goals. In consequence all these regulatory requirements will block innovation as the engine of progress.



Christopher Buttigieg: I agree that MiFID II and MiFIR will introduce significant changes to the regulatory framework applicable to trading platforms. However, one has to see this regulatory change as a reaction to the developments in financial markets. The European Regulators are trying to create more of a level playing field between different types of markets/trading platforms.

ESMA is working hard to establish a framework which, on the one hand achieves the market integrity and investor protection objectives of securities regulation, while on the other hand is workable for the industry. ESMA is known as an organization that listens to the industry and tries to adapt its proposals in a way that make them workable and are cost efficient. Various mechanism are used to consult the industry, including the publication of discussion papers and consultations and the organization of open hearings. In addition, ESMA has various consultative working groups and stakeholder groups which also participate in the discussion and these mechanisms are working effectively to ensure that the voice of both industry and investors is heard throughout the regulatory process.

In addition to the European procedures for consulting the industry, there are also mechanisms at national level. The industry also has discussions with national regulators. National regulators are present during the ESMA Standing Committees. This obviously leads to further debate at European level as the points made at national level are eventually filtered in the ESMA discussion.



However, the industry must not forget why regulatory development is taking place. Just a few years ago, we experienced a financial crisis which was without precedent in post-war economic history. It is therefore not surprising that politicians have given clear direction that areas of finance which create financial risk within the industry need to be mitigated through the development of a more sound and robust regulatory framework. This is what ESMA is currently doing in its role as Europe's Regulator in the field of securities and markets. My experience of the European regulatory process is that ESMA is performing its functions professionally and in a timely manner even though it has a limited budget and resources.

Markus Fleisch: Yes, I agree this seems the right approach, but the consultation with the industry is a "Must". As elaborated earlier, ESMA's perception of all ETDs being liquid shows a professional "distance" to reality. In order to bridge such a knowledge gap, ESMA needs to involve all different players, coming from the sell side, the buy side, from clearing houses, as well as the market operator side. We all know that to determine "liquidity" seems not easy and sometimes the definition liquidity as "building up a position and get out of it at any point of time without creating a unintended adverse price move movement" is not always the reality. However the liquidity conception is one of the foundations within MIFID II/MIFIR and therefore needs to reflect reality. Misconceptions in this regards must be corrected, as this will lead to wrong consequential requirements. Derivatives must be analyzed according to their market structure. Especially OTC and ETD derivatives have a different trading behavior, which is reflected in the respective trading models and ultimately the data used for analysis.

Beside the controversial liquidity perception, the current proposal has potential for reduction of liquidity for trading venues in the case of breaches of regulatory requirements and for systematic misclassification of trading firm's activity.

There are also challenges around ESMA's views on "market maker agreements" as being almost imperative to offer quotes, and the scope (all instruments) and the definition of trading phases seems debatable. The draft legislation for "exceptional circumstances" under which market makers are not obliged to quote is limited to the severest political and macroeconomic events and situations. Such a qualification as a pre-requisite for market makers will negatively affect the function of liquidity providers, who are essential for price guidance and liquidity, particular in either new instruments or illiquid products.



Therefore, I think that this will in consequence lead to a reduction of market makers and to a deteriorated price discovery in certain products. Nevertheless I'm confident that the necessary dialogue between ESMA and the market protagonists will lead to an improved proposal and will then at some point meet the clear initial regulatory objective of MIFIR/MIFID II.

Charmaine Baldacchino: Going back to innovation on the securities side, there have been amendments to Schedule 10 of the Companies Act to make the Limited Partnership regime more attractive, in particular for private equity funds. The MFSA will soon be issuing a brochure / guide on private equity funds which will help the industry in the setting up of funds under this particular regime.



In 2014 the Authority has also issued the Loan Funds regime. This is something the MFSA has worked on over the last years in order to provide alternatives for financing. Loan Funds are closed-ended funds that are subject to special conditions to safeguard against risks to the financial system. Loan Funds may originate loans to unlisted companies and SMEs and may also buy loan portfolios. These types of funds do not allow leverage or the reuse of collateral while redemptions are only allowed under exceptional circumstances. Interest has been picking up for this type of activity.

Matthias Knab

Yesterday at FinanceMalta conference, Christopher skillfully moderated a panel where I took a notice of a statement by James Farrugia that one of the competitive advantages of Malta would be that Malta still has kept some of the older onshore structures to increase the choice of investors and asset managers. Could one of you please elaborate on this?

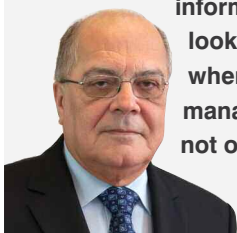
Christopher Buttigieg: As part of the AIFMD implementation process, we wanted to allow a certain degree of flexibility for third-country fund managers and also for de minimis fund managers, so we retained the Professional Investor Fund Regime (PIF) for the setting up of funds by these managers. The regime regulates the governance and transparency of funds which target professional investors. Therefore, these type of fund managers can set-up funds, which although not fully compliant with AIFMD requirements (as this is not required by the directive for these type of fund managers), are still subject to regulation and supervision, which should give some degree of comfort to the investors.

As Mr Farrugia mentioned at the conference yesterday, this has worked well in the sense that managers have continued to establish these types of funds which, as I mentioned before, are regulated funds but are subject to a different regime. They still need to satisfy requirements on transparency, on governance which applies to the board of the fund, and are also required to have a compliance officer and a money laundering reporting officer, but which do not go into the detail of requirements as stipulated in the AIFMD.

Another interesting point which I would like to mention is the fact that we created a licensing regime for de minimis managers. The MFSA decided to regulate de minimis managers with a stricter regime than what is prescribed in the Directive. In the interest of investor protection and financial integrity, a licensing regime is preferable than registration. The licensing regime ensures that all investment fund managers are subject to a robust yet proportionate regulatory framework. Registration without regulation and supervision does not give comfort to investors that they are being treated fairly and that their investments are being conducted in line with the general good principles of market integrity.



The idea was to create a regime which would allow de *minimis* managers to gear up for eventually becoming a full AIFM if they decide to move to the next level, plus also to give comfort that these entities are regulated. In addition, to adhere to international commitments on the prevention of money laundering and financing of terrorism, it is important that these entities are subject to some degree of supervision.



Joseph Bannister: We have developed this licensing regime for de minimis managers after we have had a number of informal discussions with those managers. While in other jurisdictions they may hear advice like, “Well, look, you don’t need the license now, so you also don’t have to report, and all of that!”, the reality is that when those managers are facing a client or a prospect, he will be asked, “Who’s your regulator?” The manager then does not really want to answer something like, “I don’t have a regulator.” So, being licensed not only ensures a certain governance and oversight, but it is also helpful when it comes to marketing and communication.

Ian Hamilton: I actually welcome the fact that Malta has PIFs as well AIFMD. I represent a number of fund managers outside of the EU. The issues around AIFMD was making Cayman once attractive again. Now that Malta is on equal footing again for places like Cayman, I think a lot of people would actually prefer to be in Europe. Cayman and BVI have stepped up their regimes to attract fund managers and investors back to their respective jurisdictions.



Joseph Saliba: I want to support this view and policy to have both PIFs and AIFMDs. Personally I’m in love with PIFs simply because my clients are in love with them, so I fully agree with MFSA’s approach. I think it was a very positive and sound approach to actually give a license to de minimis managers because they find it very useful to be regulated and to demonstrate that.

But there is still one thing which still worries me a bit about de minimis and PIFs. These have worked very well for Malta because Malta, in the most natural way and not necessarily by choice, has somehow placed itself into a niche market, the small and medium-sized managers and small and medium-sized funds sectors. There are surely some exceptions and a few big names, but still it is my view that Malta is mostly known for the small to medium-sized alternative investment sector.



I am actually worried what approach will our European counterparts take vis-a-vis these de minimis managers and PIFs managed by them. I suspect that in some European jurisdictions these small managers and funds have not been taken into the equation when it comes to their national private placement rules, including the revisions to these rules that they have carried out as a result of AIFMD. I’m even more worried about what will happen after 2018 if and when there will come a decision of the European Commission driven by an ESMA positive opinion to phase out the private placement rules.

I hope that these de minimus managers and funds don’t get inadvertently caught up by the phasing out (which was not really meant by the Directive to apply to these de minimis entities). And I think Malta should do more to create awareness about this reality and potential danger with its European partners.

Ian Hamilton: Yes, what Joe Saliba has mentioned is of concern, and I often have to mention to potential clients that in years to come, they might have to become a full AIFMD. However, we do have a number of steps in place to make sure that we can assist the clients.

In my view, the industry and in a way also the global regulators, must refocus on the smaller fund managers. It is so difficult to start up funds; it has become very costly. It is of major concern that, with all of the regulation we have, future hedge fund managers are not going to be developed and we will just end up with huge hedge funds which may end up being inefficient, or pose big systemic risks, à la Long Term Capital.

And regulators, and I'm not pointing here to Malta regulator, but basically Brussels is creating an environment that is going to be "too big to fail" again. There is a regulatory overkill whereby investors are having their choice curtailed and the industry having rules and regulations that favor only large companies and not the smaller innovative fund managers.



Christopher Buttigieg: I agree with Ian that if we're not careful, regulation will push for more consolidation and we'll end up with more large and less small entities.

There is an emerging debate on whether we are creating a regulatory framework where entities are "too small to comply". So we may have come to a point where regulation which aims at addressing the risks of "too big to fail" creates an environment where the smaller firms end up not having the capability and resources to comply, when, ultimately, we should be encouraging small entities and small startups.

This is of concern to the MFSA. Proportionality is important and needs to be addressed effectively. In my view the solution is not that of attempting to tweak existing regulation to make it applicable to the small operators, but by starting off with a clean sheet of paper, "What is the business that these entities are doing? What are the specific risks which could emerge from such business, and how can these risks be addressed effectively?"



One of the debates that have already started is in relation to investment firms and CRD IV. CRD IV regulates both banks and investment firms in the same way. Well, it includes some degrees of proportionality, but more or less, the same rules apply.

Now, we all know that investment firms are engaging in a different business than banks. So the debate at the moment is, "What are the specific risks of these types of firms in terms of the activities they are doing, and how these prudential risks may be addressed specifically in a Directive which calculates their capital depending on their specific activity?"

Ian Hamilton: I just want to say that the current framework in Malta and some of the innovations do make it easier for the smaller fund manager. It's definitely a regime that likes setting up funds and assisting other fund managers.

So currently, it's not an issue, but if AIFMD comes right across the board, that is where we are going to have issues. The PIF regime is excellent – being a client, I'm in love with the PIF regime. I also think it gives adequate protection for the investors. I'm very much also a person who champions investor protection. So in essence, I'm very happy from the Malta point of view to operate in this jurisdiction.

There are some issues, but I'm glad to see that we have people around the table here offering the services that can support smaller companies, like in compliance.



When we came in there were no external compliance firms within Malta. We also have custodians now starting to set up which makes things a lot easier. The only thing, or one of the things that should get sorted out, is banking because it has just become a total nightmare.

In general, the only thing against Malta is the low profile. Andrew mentioned it to me before, even in Switzerland people say, “Malta? Where is that?” I can just throw out one idea to the MFSA, Opalesque is one of the best ways of promoting your information out to the marketplace. It’s read by hedge fund managers around the world. Maybe you should have your press releases sent immediately to Opalesque.

Andrew Zarb Mizzi: Speaking to my peers in the industry, it seems clear that Malta, as an international financial services centre, is at the juncture and in need of a quantum leap. The centre has developed progressively and without any major set-backs, notwithstanding the events following 2008.



There is such potential and opportunity in knowing that major stakeholders in Asia, for example, when presented with information, are entirely surprised to realize what a great package Malta’s service center presents. Although a considerable effort is made already, much more needs to be done to deliver this message and present Malta’s value proposition as an international financial centre.

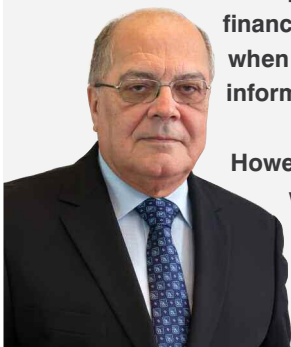
Joseph Saliba: The example of certain jurisdictions is very notable, and some jurisdictions have the benefit of having governments putting money into sponsoring certain promotional initiatives, even at a national level. In Malta, I believe that so far it has been mostly the MFSA and the private sector which have driven and sponsored activities to promote Malta as a financial services centre. I believe the government should get more involved in this, even through more structured and industry-wide activities.



Joseph Bannister: The question here is really, what does promotion mean and two, how far do you take it?

But let me also ask that what promotion of the financial sector means, because companies are not interested in learning about promotions, like we’re flying into a place and do some marketing there. Rather, they all want to see how the regulator works. And therefore, sessions and meetings with the regulator have become extremely important. I am noticing that regulators in all jurisdictions are coming out to meet companies. The companies are saying, “We should meet the regulator!”, and now also the regulators are starting to say, “We should meet companies!” This is a policy we have followed for the last 10 years, and it’s very valuable for both parties. The promoters can make better choices.

Another point is that recently, when I was in London, there was a meeting of the international group of financial centers which used to be old offshore group. While we are not members, we tend to attend when they meet in London to give them them a European perspective. Also, since we exchange a lot of information with the offshore jurisdictions, it’s good to put a name to a face or a face to a name.



However, some of the people I know very well, and one of them said, “Joe, I can’t understand how we’re losing business. You’re getting a lot of business, why is it coming to you?” I said, “I don’t know.” All I know – and this brings me to the third point – is the fact that there is plenty of business around. Do you want more, and then it becomes a policy of numbers, or do you want to remain selective?

That's a question that we really have to do a bit of soul-searching. I think the expansion in Malta has been quite timed in the sense that we can absorb what is coming to us. So, in his case, I said, "Well, I don't know. Is there something you should be doing that you're not doing?" He said, "Well, we opened offices in Dubai, in Shanghai, and all over the place, but they're not bringing in any business. It seems to be coming to you." I said, "I don't know..."

The point there is that also with recent events where suddenly Malta becomes known in the wrong direction, like, "if you can't go to this or that jurisdiction, then go to Malta." This is causing us a lot of heartaches in the sense that we do an extensive due diligence. No due diligence, no license. We go into great detail to basically to stop these people from coming to Malta which we don't want. We want to keep it as a reputable jurisdiction.

I think we have sufficient business. I've never heard anybody complaining since I've been here that they don't have enough business. I think what we need now is to move slowly. We have been doing what I call small quantum leaps. I think we are at the stage where there should be a bigger leap. Yesterday, I was in conference with a very large custodian, a firm right at the top. They don't handle small funds but rather large and complex funds. They are revisiting Malta in detail and hopefully will come to a successful conclusion, but this means that we may start seeing the billion-sized funds, and this is what is required.

The question of banking Ian brought up is a headache everywhere and also the question of taxation by other jurisdictions when companies are going outside their jurisdiction and all of that. We are handling at the moment some complex cases that have to be resolved.

But, think about it, in a way we are living in strange times. When there are bad economic situations in all the major countries, suddenly, there's no more single market. Everybody becomes protective.

Andrew Zarb Mizzi: I concur with Professor Bannister's view. Major players like a large custodian are very welcome. Large players deepen the market and attract interest from their peers. For example, Swissquote Financial Services (Malta) Ltd, as a custodian/depository, is not targeting the multi-billion funds. However, should a multi-billion fund redomicile to Malta, it will surely bring with it much interest from other similar players.



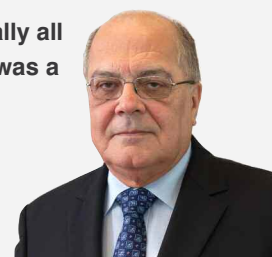
Ian Hamilton: I believe firmly in sustainable growth. That's the way I operate my company and I think Malta also at this stage and shouldn't grow too fast. You need to do things in a sustainable way. It is good for Malta to reach very low unemployment rates, but of course there is the danger that if Malta grows too fast you end up with what happened in Dublin where the businesses grew too fast and were facing labor and staffing issues. Also Malta could get a bad name from that.



In my view, I think the growth for Malta, and also the sector to go for, is the smaller fund managers. They remain loyal, and they will grow over time. These funds that we are dealing with today are the big funds of tomorrow, and that's what Malta needs to encourage.

Joseph Bannister: I'll just say two points here. One, which we found very interesting, is that basically all the managers that were here in Malta also became an AIFM here, which was very good. That also was a sign of confidence in the country.

And not only that; now we are seeing more managers than we have been seeing before. Since you mentioned Ireland, I have a detailed statistic of my own which I will not reveal,



but looking at their capita in terms of licensed entities we are at the same level as Ireland, if not slightly ahead.

Christopher Buttigieg: A recent report by Oliver Wyman on Domiciles of Alternative Investment Funds referred to the attractiveness of Europe, particularly after AIFMD was introduced, and it did conclude that Europe has become more attractive as onshore center for fund domiciles.



Oliver Wyman analyzed all European fund domicile jurisdictions, and Malta came out as the one with the strongest growth. This may also be an indication that this growth will continue. As Professor Bannister was saying, we welcome business which is done by persons who are honest and competent. We have a very robust due diligence regime for this purpose which my colleague, Charmaine, could perhaps outline briefly.

Charmaine Baldacchino: Sure. I was going to comment on Ian's statement before, as I fully agree that sudden growth can result in issues with resources. Licensed entities are required to have the right complement of competent people, and as the business grows staff resources need to increase proportionately also in line with regulatory requirements.

With respect to the licensing process for AIFMs, for example, the MFSA would go through the competence of a number of professional people, specifically in relation to the risk management and valuation functions as well as the portfolio management function. Sometimes it can prove challenging for companies to find the right set of skills to occupy key areas like risk management and valuation. A positive effect is that we have also seen experienced people coming to Malta to work here, and to train staff who may have the right set of academic background but could lack experience, so that in the future they could take over these roles.

As Chris was saying earlier, the MFSA carries out a very detailed due diligence exercise on all key senior management positions as well as directors and shareholders. On top of this due diligence process, where the integrity of individuals would be assessed, as I mentioned, the MFSA looks very thoroughly at the competence aspect, particularly for key roles such as portfolio management, risk managers and compliance officers.



Christopher Buttigieg

We are sometimes criticized that we might be taking a bit long in processing applications, however the reason is that we do a very thorough due diligence process, and that process is being done in order to ensure that only professionals who are honest and solvent are allowed to enter and form part of our financial system. We are trying to ensure from the very start that persons who are not fit and proper do not become part of our financial system. The reputation of the jurisdiction is sound and that is how we want it to remain.

Charmaine Baldacchino: Correct. In fact, this may be a long process given the comprehensive nature of such exercise which involves various checks. Other factors which are taken into consideration in our assessment are the adequacy of the proposed operational structure, governance and dual control arrangements, as well as the complex nature of the products including new areas of business such as, for example, binary options, online FX platforms, etc. As regulators, we need to ensure and assess that the right people within the proposed structures are competent for their particular role.



Joseph Saliba: I personally take comfort in the fact that MFSA conducts a thorough due diligence on new applicants. I would have done due diligence on customers myself. We obviously are obliged by law and I feel morally obliged, like I'm sure my all other colleagues in the legal profession, to do due diligence, but it's not a secret that my search systems and the resources I have available are less sophisticated than those used by MFSA, even in terms of information which is made available to MFSA through co-operation arrangements it has with regulators in other jurisdictions.

Personally, I believe that MFSA should continue with its efforts in making the licensing process as coherent and efficient as possible, including ensuring that the same clear policies are adopted by all its officials dealing with license application files (which policies should be clearly notified to the industry), and coordination in terms of questions raised and responses given by different MFSA officials in the course of the licensing process. In general, however, I still praise this jurisdiction in terms of approachability of regulator and time to license achievements.



Matthias Knab

Just anecdotally, yesterday at the FinanceMalta conference I met three people who in the last three weeks have all taken up residence in Malta and are involved with setting up a business here.

One was a trust company, the second was a family office, and the third person came as the risk manager for a mid sized continental European hedge fund who are also setting up operations here in Malta.

Andrew Zarb Mizzi: Yes this is correct, over the last 10 to 15 years Malta has seen a marked improvement in its cultural fabric. Perhaps a major contributor was the gaming industry where a greater number of employees and operations from northern Europe were relocated to Malta, which contributed to the cultural mix within the local economy. As a matter of fact, it is notable how more and more of the restaurant and entertainment establishment patrons are foreign nationals employed in Malta.



The presence of an international workforce is welcome and contributes to our continued evolution as a financial center.

Ian Hamilton

One of the issues that I have encountered in the past that may actually have been addressed already, is the question of retired people coming here who are highly qualified to act as directors but have not been able to do so. Has this been amended and changed?

Joseph Bannister: It depends under which program they come in. Having said that, those under the original program, the one of the 1980s, were not allowed to work. Having said that, there was one person who came under that program who wanted to set up a fund management company, and after consultations with different ministries, a work permit was granted.



Matthias Knab

In this context it was also interesting that one of the three afternoon sessions at yesterday's FinanceMalta conference was actually dedicated to immigration. I didn't check out how many people were attending that stream, but there seems to be real interest, and as we discussed, people do come here.

I wonder, if we are looking at availability of office space and options for residential real estate, as well as infrastructure, high-speed Internet, et cetera, how does Malta compete on that side?

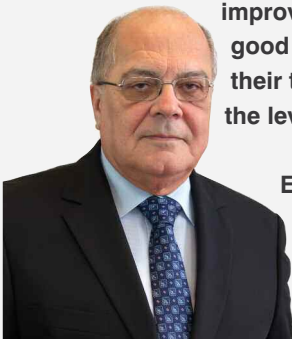
Joseph Bannister: Let me start by looking at the financial market infrastructure, which in fact we continue to develop through new exchanges being set up.

We have one already in operation for wholesale markets. We're seeing another one now, an MTF being set up separately, all international. The next we need to that is that there is a need for an international CSD. There is only one at the moment which simply links to Deutsche Börse, but we need a bit more. We are also working on that front, so hopefully it will move forward.

On the infrastructure side, internet now is available everywhere, there is high-speed internet too. Office space has really come up to speed. I remember in the old times when people would come around and they're saying there is difficulty finding office space. There were times when I went there myself and I was absolutely horrified because all could see was that they were building showrooms. So the space was unfinished, and they would say, "Well, we'll arrange it in three months," but the fund manager is telling them, "I need it next week!", that sort of thing. It took some time convincing developers to get involved with this because their whole idea was always a showroom or a supermarket and some residential accommodation on top.

By now, I think we have overcome that. We see quite a number of good developments in different places. For example, the old brewery is becoming remodeled, and there was recently an announcement that three big office towers are going to be built just down the road. So I think that's going to take care of that issue.

In terms of people, one of the first things they look at is health and education. Restaurants are aplenty. Quality has improved as well, because we get a lot of Italian chefs. But in terms of health, Malta can offer a very good health service, even the private health service is extremely good. Essentially, everybody gets their training in the UK, so they are good quality people. They come back to Malta when they reach the level of becoming consultants, so they have done a fair amount of training in the UK.



Education seems to be a little bit of a problem particularly in terms of multilingual schooling. There is an international school, but the other day I met an Italian who's relocating here and essentially he seemed to be having great difficulty finding a school for the younger children. Here, sometimes, the parents register a child during pregnancy for the school.

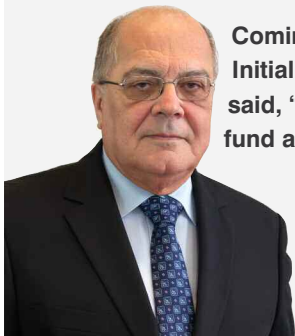
Charmaine Baldacchino: With respect to resources for the industry, I think we already have a good resources pool – qualified people from the legal side, accountancy, banking and finance. The University of Malta offers a number of degrees in this respect. The Malta International Training Centre also offers training and courses specifically to cater for compliance and now risk management. But again, I think there is still room for improvement in highly specialized areas like risk management, for example.

Perhaps if educational organizations in Malta manage to organize focused, hands-on training on specialized areas, it would definitely be a plus. But again, in general we do have a good base of professionals.



Joseph Bannister: Over the last, I don't know, years and years, successive governments have put in a lot of money in the University and I think the rationale behind their thinking was to develop more technologies, but instead students became lawyers, accountants, businessmen, engineers, economists, and high-quality job. What's interesting is that I can remember that in the past, before I joined here at the MFSA, everybody is saying, "Where are all these economists going to find jobs? Where will the accountants end up?"

So in the end somebody came up with the idea of establishing a finance center which apparently started in the '70s. Unfortunately, they went the wrong way. But that was the trend, so they established an offshore center. As a side note, the last time when I was in Milan, I was asked: "Are there any problems in Malta?" I said, "Yes. Malta did one big mistake, they established an offshore center." Because now, everybody keeps thinking it's an offshore center when it's not. That label somehow remained..



Coming back to education, the University is the institution at the top, but you still need foot soldiers. Initially, the fund administrators were hiring accountants and then they say they are too expensive. I said, "You don't need accountants. You need accounting technicians or people who get a diploma in fund administration or accounting."

So we got the training institutes together and they started creating programs and develop such solutions. In 2007, we did a skills survey. We repeated the survey this year. I think the results were announced yesterday. I haven't seen the reports so I can't tell you what the skill gaps are.

Ian Hamilton: While having operated administration here over five years, I have found the infrastructure is constantly improving. I must say the cost of living versus all of the European places is apples and pears. It's definitely cheaper here. The quality of staff is improving. We have hired some of the young graduates coming out of our Malta University. They are all loyal. They work hard. The infrastructure is constantly improving and is adequate to support the growth that our own company expects to happen over the next couple of years.

Productivity is good as well. It maybe not quite up to a speed that I have in other jurisdictions, so this is on the administration side. One of the issues, labor law here is actually very, very lenient and it's very much favored for the employee rather than the employers. So it's just quite difficult to sometimes enforce what would be good discipline in the office. But we overcome that through establishing loyalty with the staff and that works very well for us. Interestingly, we have lost staff who have gone to Luxembourg. But knowing them, they will get extra skills there and come back, and the first thing they'll enjoy if they come into back is the lower cost of living.



Joseph Bannister

One thing we have done was to encourage staff to get experiences overseas, and that has been one of the effect of the membership of the EU.



Joseph Saliba: I am actually seeing a growing trend of employees of local entities being seconded with entities and institutions overseas, particularly in the audit firms. I hope to see more of these, even for longer periods, and also in more granular sectors, not just in accountancy, but in other sectors, including risk management and the actuarial sectors.

I think it is very important for us to focus mainly on having the local workforce gaining more experience, because ultimately long-term planning depends on the local resources.

It's good to have foreigners coming over and to make sure that they can find good accommodation, good schools for their children, and health services. All of that is good; we should continue planning for that. We should however make sure that the country and the economy grow in a sustainable fashion as the volume of business is growing, and that surely involves an organic and steady development of a local experienced and professional human complement, also because the prospect of foreigners moving to another jurisdiction to bring over their know-how in that jurisdiction on first hand basis, whilst possible, is not always easy.

Do you remember two or three years ago when the UK pushed up its personal income tax rates to 50% plus; everybody thought there would have been an exodus of fund managers from London to Switzerland. That did not happen, simply because uprooting someone and his household from his hometown and sub-planting them in another place is always difficult and a great challenge for anybody. So again, we should really focus on the locals and help and support initiatives which allow them to gain the best possible experience and expertise.

Andrew Zarb Mizzi: As it is understandable that foreign national employees tend to be more mobile in their employment and, generally, based in Malta for a defined period to subsequently move on. Similarly, Maltese nationals working abroad may at some point return to Malta. For a number of reasons, local employees tend to become part of the wallpaper; part of the fabric of an organization.

A very positive characteristic of Maltese employees is their loyalty towards their employer and industry within which they work, as Ian also pointed out. There is an incredible affinity and professionalism towards the company that employs them.



Joseph Bannister

Also, we are an island. We are not Luxembourg, where Germans and French can easily go in and out without any difficulty and have a lifelong employment experience in Luxembourg without actually living in Luxembourg. We don't have really that luxury. Okay, there are flights and whatever, but that's of course an impractical daily commute to work.

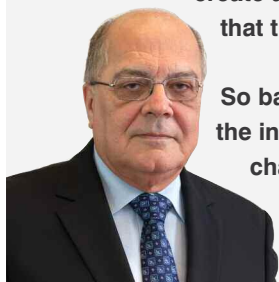
Matthias Knab

We have had a great discussion. Are there any final comments or questions?

Joseph Saliba

Yes, maybe just a small word by Professor Bannister or Chris or Charmaine about this new emerging development within the internal infrastructure of MFSA in terms of conduct of business supervision, where it is heading to?

Joseph Bannister: We have to wait a bit more. Well, obviously, as you were saying, it's a small country and we can't create a new authority as the FCA in the UK. Certainly, there was a requirement under Article IV of the IMF that there has to be the introduction of conduct of business.



So basically we're starting slowly. First, a unit is being established. It mainly concerns investments and the insurers. They have been preparing rule books, manuals, whatever; progress has been slow, and chapter by chapter has been coming out for consultation. Let's finish that process and then we'll see. But certainly, there has to be a physical separation between prudential and conduct supervision.

In other organizations, you see the conduct being established within, but having separate lines of reporting from enforcement because one of the issues was that the supervisor was acting as the policeman, the investigator, the judge, prosecutor, defense lawyer, everything. What is disserving actually is a recent judgment in the courts here where the courts somehow decided that essentially an authority imposing a fine have no powers to do so, because once you impose a fine it becomes a criminal case. Therefore the judge was saying that fines should only be imposed by the courts. I said, "Oh, my God!" So we'll have to see.

Similarly, there have been other issues in terms of the audit office. We'll have to see how we're going to move on that. Next year we are facing a full FSAP, so we have to have everything in place.

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