Insurance captive companies in Malta

Malta provides the opportunity for companies to locate their captive insurance business and insurance management activities within an OECD-recognised tax environment that combines tax efficiency within a robust regulatory framework. Captive insurance companies enjoy exemptions from certain licensing and regulatory criteria as well as an expedited licensing procedure.

What is the treatment of captive insurance under Maltese law?

Under Maltese legislation, captive insurance companies are referred to as “Affiliated Insurance Companies” (AICs). “Affiliated Insurance” is defined as the business of an insurance company which is registered in Malta and whose business of insurance is restricted to risks originating with shareholders or connected undertakings or entities.

In practice, an AIC may insure risks originating from a wide range of persons including: parent companies; associated or group companies; individuals or other entities having a majority ownership or controlling interest in the AIC; and members of trade, industry or profession associations insuring risks related to the particular trade, industry or profession. AICs can be authorised to carry out general or long term business of insurance or reinsurance or both.

General business and long term business

The term ‘business of insurance’ means the effecting and carrying out of contracts of insurance of such class or classes of long term business (including life and annuity, linked long term, permanent health) or class or classes of general business (including accident, sickness, motor vehicle liability, general liability) as specified in the Insurance Business Act.

Conditions for carrying on the business of insurance

Authorisation to carry on the business of insurance in or from Malta is subject to the following licensing conditions:

- The objects of the company must be limited to the business of insurance;
- All qualifying shareholders, controllers and persons directing the business must be fit and proper;
- Any close links that the company may have with any other person must be disclosed; and
- The own funds requirement must be met.

Solvency II

As with all other EU jurisdictions, companies carrying out the business of insurance in Malta will be subject to the new 'Solvency II' regime which was transposed into Maltese law under Chapter 403 Insurance Business Act.

Licensing requirements and fees

Companies carrying on the business of affiliated insurance in or from Malta must be licensed by the MFSA under the Insurance Business Act. An application for authorisation is processed within a statutory period of three months. Licensing considerations include inter alia: the submission of a scheme of operations, appropriate own funds; exclusion of other commercial business from the company's objects other than the business of affiliated insurance; and operations arising directly there from.

The fees applicable to affiliated insurance companies are:

Application stage	
Submission of application	€1,800
Acceptance of application	€2,500
Continuance of authorisation	€5,000

AICs are exempted from the payment of business statement submission fees.

Margins of solvency

A licensed insurance company must maintain, at all times, the stipulated minimum margin of solvency, covered by admissible assets which must be diverse and spread. The valuation of assets and the determination of liabilities are prescribed by the relative regulations. There are both qualitative and quantitative restrictions on the value of assets.

The required solvency margin for general business is currently determined on the basis of either the annual amount of premiums (premium basis), or on the average burden of claims (claims basis) for the previous three financial years, whichever is the higher. Owing to the diversity of the various long term insurance products offered, the required solvency margin for long term business is based on a different formula for the calculation of the minimum solvency margins for each class of long term business.

In any case, the margin of solvency must not fall below the guarantee fund (see below).

Own funds

A licensed AIC is required to maintain own funds as prescribed for the purposes of the category of business undertaken, which own funds must remain unencumbered at all times. Own funds consist essentially of share capital, reserves, retained profits and subordinated loans.

The minimum own funds requirement for combined business of affiliated insurance and reinsurance varies between €2.3 million and €3.5 million.

Category of insurance business	Minimum own funds requirements
Long term	€3.5
General	€2.3 - 3.5
Reinsurance	€1.1

Minimum guarantee fund

AICs must maintain, at all times, a guarantee fund equivalent to the greater of the minimum guarantee fund and one-third of the required margin of solvency. Affiliated insurers or reinsurers must maintain a minimum guarantee fund of €1.1 million.

Technical provisions

AICs are required to maintain adequate technical provisions including mathematical provisions. Technical provisions must be supported by equivalent and matching assets. The spread of assets requirements for solvency purposes apply to both assets covering technical provisions and shareholders' assets.

Protected cell companies

Under the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations (PCC Regulations), an AIC may be registered as, or converted to, a Protected Cell Company (PCC) to carry on the business of insurance. A cell company is a company which creates within itself one or more cells for the purposes of segregating and protecting the cellular assets of the company.

A cell company, irrespective of the number of cells created thereby, is a single legal person. However, cellular assets must be kept separate and separately identifiable from non-cellular assets and cellular assets attributable to a cell of a cell company are only available to the creditors of the company who are creditors in respect of that cell.

A cell company may set up cells with the exclusive purpose of carrying on business of affiliated insuranceor reinsurance. Under the PCC Regulations, "business of affiliated insurance" means the business of a cell which carries on business of insurance or reinsurance restricted to risks originating from:

a. An undertaking being the sole holder of the cell shares of the particular cell; or
b. Undertakings in which the undertaking referred to in (a)holds a participating interest; or
c. An undertaking being the sole user of the particular cell; or
d. Undertakings which are the sole users of the particular cell and in which the undertaking referred to in (c) holds a participating interest.

Incorporated cell companies

The Companies Act (Incorporated Cell Companies Carrying on Business of Insurance) Regulations, allow a company to be formed or constituted as an Incorporated Cell Company (ICC) having the power to establish incorporated cells for the purpose of carrying on business of affiliated (or captive) insurance pursuant to the Insurance Business (Companies Carrying on Business of Affiliated Insurance) Regulations.

The Insurance Business (Continuance of Companies Carrying on Business of Insurance) Regulations 2003 provide that a body corporate (whether the body corporate is a cell company or not) constituted in a territory outside Malta may be continued as an ICC in Malta, is allowed to re-domicile to Malta and continue its existence as an ICC either for the purpose of carrying on business of insurance.

For non-cellular companies already existing and registered under Maltese law, it is possible to convert into an ICC or into an incorporated cell by entering into an incorporation agreement with an ICC, which has to be approved by the board of directors and by an extraordinary resolution of the non-cellular company and the ICC. The ICC Regulations also enable PCCs carrying on business of insurance to convert into an ICC and similarly an ICC having no incorporated cells can convert into a PCC.

The ICC structure offers to investors the possibility to benefit from an effective risk management vehicle whilst benefiting from the separate legal personality of the incorporated cells as well as from cost benefits. Unlike a PCC cell, an ICC cell, being a separate company, has a very clear separation of assets and liabilities between itself and any other cell of the same or another ICC.

Malta tax treatment

As in the case of any Maltese company, an Insurance company incorporated under the laws of Malta would be chargeable to Malta tax on its profits at the standard rate of 35%.

Upon a distribution of dividends by the Insurance company to its shareholder/s, the said shareholder/s would be entitled to claim a refund from the Malta tax authorities of a part of the Malta tax paid by the said Insurance company on the profits out of which the dividend was distributed.

The method of computation of chargeable income of an Insurance company carrying on general business or long-term business is prescribed in local tax legislation.

Insurance and related services provided by licensed insurance companies are exempt from VAT in Malta. Any input tax incurred which is attributable to exempt without credit supplies by licensed Insurance company is not recoverable.

Malta does not impose an insurance premium tax. However, duty is chargeable under the Duty on Documents and Transfers Act at the relevant rates on insurance policies executed in Malta. No duty is chargeable in respect of an insurance policy relating to risks situated outside Malta.

Special concessions for AICs

AICs are permitted to draw up accounts in abridged form and are exempt from: publishing accounts in local newspapers and contributing to the protection and compensation fund.

Captive insurance managers

AICs may employ the services of an insurance management company. An insurance manager is a person authorised to carry out activities that consist of accepting an appointment from a company to manage any part of its business, or to exercise managerial functions therein, or to be responsible for maintaining accounts or other records of such company.

Continuance

Companies registered, incorporated or constituted under the laws of an approved jurisdiction authorised to carry on the Business of Insurance or to act as insurance manager may, subject to regulatory approval, be continued as a company formed and registered under the Companies Act by complying with the conditions laid out in the Insurance Business (Continuance of Companies Carrying on the Business of Insurance) Regulations.

European ‘passporting’ rights

An authorised EU/EEA insurance undertaking pursuing the activity of direct insurance may exercise its European right to establish a branch in Malta or to provide services in Malta without the requirement of obtaining authorisation under the Insurance Business Act, provided that the passporting provisions are complied with.

Similarly, a Maltese insurance company licensed in terms of the Insurance Business Act may exercise its right to establish a branch or provide services in another EU Member State or EEA State by submitting all relevant notifications and documentation to the MFSA in accordance with the passporting provisions.

Marc Alden
Deloitte
Deloitte Place
Mriehel Bypass
Mriehel BKR 3000
Malta

malden@deloitte.com.mt
+356 2343 2712

Other Deloitte contacts:

Malcolm Booker
mbooker@deloitte.com.mt
+356 2343 2000

Conrad Cassar Torregiani
ctorregiani@deloitte.com.mt
+356 2343 2716

Sarah Curmi
scurmi@deloitte.com.mt
+356 2343 2402

LTU160530 LDU1610257 FS021