Captive insurance in Malta
“Malta has been nimble and quick and focused and dynamic in building its financial services sector to the quality and size it is today. The country is now a serious force among mainstream EU jurisdictions. We have matured into a fully grown financial services adult, but we must be an adult full of youthful enthusiasm, always excited by new challenges and new horizons, open to new ideas and new thinking.”

Prof Joe V Bannister
Chairman MFSA
Chairman’s Statement
MFSA Annual Report 2007
Introduction to Malta

A European Union (EU) member state, the Republic of Malta is a politically stable parliamentary democracy based on the British Westminster model.

In 1964, Malta was declared independent after 150 years of British rule.

Malta joined the Euro-zone in January 2008 and is also an active member of the United Nations and the British Commonwealth. Its legal system is based on civil (Roman) law, but with a strong mixture of English law, particularly in commercial and some financial law.

Malta boasts an open, diversified economy, having very well-developed professions, including those in insurance, law, banking, finance and accounting. Malta’s official languages are Maltese and English, however, a substantial number of people speak a third language.

Malta has very good infrastructure complementing the excellent communication links, having several regular flights to the main international airports in the UK, mainland Europe, North Africa and Dubai.

Lying at the heart of the Mediterranean, at the crossroads between Europe and Africa, Malta enjoys a moderate climate and provides an ideal living environment and a balanced lifestyle.

A snapshot of Malta’s key advantages for captive insurance companies include the following:

- Direct writing across the EU, without need to appoint a fronting company
- Protected cell company legislation
- International financial reporting standards (IFRS), making it easier and less costly to consolidate accounts
- Possibility to extend captive insurance license to do third-party business
- Continuation of companies legislation, that allows captives to redomicile to Malta from other jurisdictions
Affiliated insurance companies (AICs)

Malta provides the opportunity for companies to locate or redomicile their captive insurance business and insurance management activity within an EU and OECD-recognized tax environment.

Captive insurance business termed as "affiliated insurance" is regulated under a set of rules that take into consideration the current state of the market. AICs setting up in Malta may benefit from a number of favorable conditions in tax and passport rights. AICs are regulated, licensed and supervised by the Malta Financial Services Authority (MFSA), the regulator of the financial sector in Malta. Generally, the MFSA takes a very open, flexible yet professional approach towards the setup of new AICs in Malta.

Affiliated insurance business in terms of Maltese Law refers to “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”.

Captive insurance companies may also be established to insure members of trade, industry or professional associations in respect of risks related to the particular trade, industry or profession.

In line with other insurance companies, AICs are regulated under the Insurance Business Act 1998. Further detailed regulatory provisions on AICs are contained in subsidiary legislation which includes regulations and insurance rules issued in terms of the Insurance Business Act 1998, which include among others:

- The Insurance Business (Companies Carrying on Business of Affiliated Insurance) Regulations, 2003
- Insurance Rule 1 of 2007 on Own Funds of Companies Carrying on Business of Insurance; IR 2 of 2007 on Criteria of Fitness and Properness; IR 6 of 2007 on Schemes of Operations Relating to Business of Insurance; IR 15 of 2008 on Appointment and Changes of Director, Controller or Senior Manager; IR 21 of 2007 on the Business of Affiliated Insurance; IR 24 and 25 of 2005 on Exercise of Passport Rights; and IR 27 of 2005 on Insurer’s Internal Controls

“Malta is now home to the captive or insurance arms of five Fortune 100 companies. The Reactions Magazine Survey 2007 ranked Malta ahead of all the other European captive domiciles in cost-efficiency, tailored regulation and protected cell company (PCC) legislation.”

Strategic Overview

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2 Insurance Rule 21 of 2007
Insurance Rule 1 sets out the minimum value of own funds which is required to be maintained at all times by an insurance company, including an AIC. The value varies depending on the nature of the insurance business the company intends to carry on. The following contribute to the own funds composition, subject to restrictions:

- Paid up share capital
- Reserves, excluding technical provisions or equalization reserves
- Retained earnings
- Preferential share capital
- Subordinated loan capital

Capital requirements

An essential requirement for insurance companies is the maintenance of adequate technical provisions. Technical provisions must be supported by equivalent and matching assets.
The Maltese tax system is a full imputation system that eliminates economic double taxation. Relief, whether unilateral or via a treaty, is granted to foreign tax by ordinary tax credits and applies both to companies and branches. This may result in significant tax refunds in the hands of the shareholders, subject to certain conditions and limitations. Malta has around 50 double-tax treaties with other countries. Furthermore, contracts of insurance relating to risks outside Malta are exempt from premium tax in Malta.

Taxation considerations

The Maltese tax system is a full imputation system that eliminates economic double taxation. Relief, whether unilateral or via a treaty, is granted to foreign tax by ordinary tax credits and applies both to companies and branches. This may result in significant tax refunds in the hands of the shareholders, subject to certain conditions and limitations. Malta has around 50 double-tax treaties with other countries. Furthermore, contracts of insurance relating to risks outside Malta are exempt from premium tax in Malta.

Income tax considerations for foreign personnel

The general rule is that foreign personnel employed by a Maltese company are liable to pay tax in Malta on their employment income. However, the tax liability will depend on the residence and domicile of each employee and on whether the country of residence has any double tax treaties with Malta. An “insurance expatriate”, defined under Maltese law as an employee of, or someone who provides services to, an insurance company, is not liable to tax on income relating to the following expenditure incurred for their benefit or that of their family:

- Removal costs relating to relocation
- Accommodation expenses incurred in Malta
- Visiting travel costs to and from Malta incurred by expatriates and their immediate family
- Provision of a car for the use by the expatriate
- A subvention of €600 per calendar month
- Medical expenses and insurance

School fees in respect of the expatriate’s children

Management of the Malta Insurance Companies (AICs)

AICs can be managed in-house, however, management is often entrusted to insurance managers. In 2008, there are approximately 12 established companies providing the service of insurance management in Malta. They include the leading global brands in the international insurance and risk management industry.

Legislation granting passport rights for insurance undertakings in the EU came into force following Malta’s accession to the EU. Undertakings desiring to open a branch in Malta, or to provide services in Malta, are required to meet certain conditions. Such conditions include notices of intention to the MFSA and the supervisory authority of the relevant EU member state, authorization and other reporting and filing requirements.

Redomiciliation of the AICs

Maltese law permits insurers/reinsurers registered and authorized in certain jurisdictions to redomicile to Malta, or out of Malta, thereby, a company would be able to move its domiciliation, while maintaining at all times the same legal identity. Redomiciliation is only possible, however, from approved jurisdictions.

Passporting rights

Legislation granting passport rights for insurance undertakings in the EU came into force following Malta’s accession to the EU. Undertakings desiring to open a branch in Malta, or to provide services in Malta, are required to meet certain conditions. Such conditions include notices of intention to the MFSA and the supervisory authority of the relevant EU member state, authorization and other reporting and filing requirements.
Financial reporting, audit and actuarial services

Under the Insurance Business Act (IBA), every insurance company authorized under the Act is required to prepare audited annual financial statements and to file them with the MFSA.

In terms of the Companies Act, financial statements drawn up by companies are to comply with IFRS issued by the International Accounting Standards Board. The financial statements are to be audited by registered auditors. Audits in Malta are conducted in accordance with international standards on auditing (ISA) issued by the International Federation of Accountants. The IBA provides for the form and content of the financial statements to be further subject to regulations under the Act.

The IBA also requires that every insurance company authorized under the Act to carry on long-term business (such as life insurance) shall appoint an approved actuary, and at the end of each financial year shall request an investigation by the actuary of the financial position in respect of that business.

Identifying your needs

Your needs may include:

- Initial overall orientation with insurance, tax and corporate legislation in Malta, including that on corporate governance
- Preliminary meetings with the regulator
- Assistance with regulatory compliance in the application and setup phase
- Assistance in the project management of setting up
- Ongoing assistance with tax compliance, tax advice, accounting or payroll assistance, application of IFRS, preparation of financial statements, actuarial services
How Ernst & Young can help you

Ernst & Young (Malta) has established teams in Transaction Advisory Services (TAS), Tax Services (Tax), and Audit and Advisory Business Services (AABS), each comprising of a number of knowledgeable, dedicated, fully-qualified and experienced professionals that form part of a network of similar teams that have been set up within Ernst and Young globally. This ensures access to a large number of professionals, not only throughout Europe, but across the globe.

Our teams of professionals will be able, on request, to:
- Establish contact with the relevant regulators and authorities including the MFSA
- Provide you with assistance in the setup (or redomiciliation) and during the ongoing operations of a captive insurance company
- Guide you towards professionals in other fields such as bankers and legal advisors
- Introduce you to other industry players, including insurance managers in Malta
- Connect you to other Ernst & Young counterparts around the globe where you may have your business interest

Our TAS team will be able to provide assistance with:
- Understanding the legal and regulatory framework in Malta
- The preparation of relevant applications to the MFSA
- Setting up and holding meetings with relevant bodies, mainly the MFSA
- Drawing up of your scheme of operations, including business plan and financial projections
- The initial setup of the operation and project management;
- Establishing a connection with Ernst & Young’s professional service lines which cover audit, tax compliance and advisory services, business risk and advisory services

Our AABS team will be able to provide assistance with:
- Ongoing audit under ISA
- Application of IFRS
- Drafting of financial statements under IFRS and in compliance with local laws and regulations
- Actuarial services in connection with life insurance
- Agreed upon procedures in relation to reporting to the MFSA on margin of solvency
- Business Risk Services, including risk assessments, internal audit, internal control procedures

Our Tax team will be able to provide assistance with:
- Tax compliance, including periodic submission of tax returns and tax computations
- Tax advisory services
- VAT compliance and advisory services

For each project, we have the capability to build up teams of knowledgeable professionals from within our Ernst & Young network across the globe.

“At Ernst & Young we are committed to our people, our clients and our wider communities achieve their potential. It is how we make a difference.”

What we stand for

Ernst & Young
Ernst & Young
Assurance | Tax | Transactions | Advisory

About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 130,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve potential.

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Insurance
Ronald Attard
ronald.attard@mt.ey.com
Noel Ciantar
noel.ciantar@mt.ey.com

Assurance
Mario P Galea
mario.p.galea@mt.ey.com
Anthony Doublet
anthony.doublet@mt.ey.com

Tax
Christopher J. Naudi
chris.naudi@mt.ey.com
Robert Attard
robert.attard@mt.ey.com

Ernst & Young
Regional Business Centre
Achille Ferris Street
Msida, MSD 1751 Malta
Tel: +356 2134 2134
Fax: +356 2347 1600
E-mail: ey.malta@mt.ey.com

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EYG no. EGO027