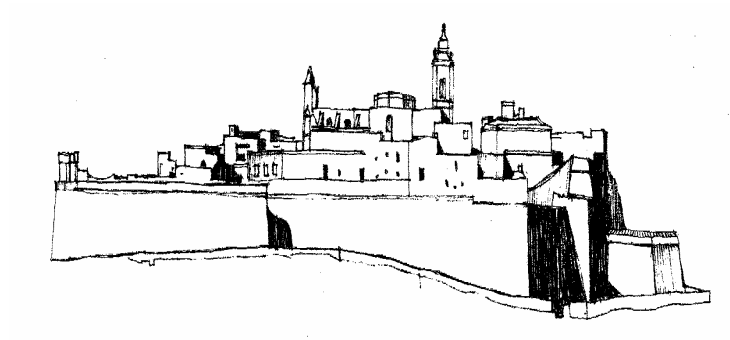


MALTA

**A Guide to
Affiliated Insurance
and
Insurance Management Companies**



Citadel - Gozo, Malta

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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1.0 INTRODUCTION

The MFSA's regulatory responsibilities include the licensing and supervision of insurance companies (including affiliated insurance), insurance intermediaries, collective investment schemes and providers of investment services, banking and financial institutions. The MFSA also oversees company registration.

The Guide to Affiliated Insurance and Insurance Management Companies has been designed to assist organisations considering captive insurance structures to obtain an overview of the rules that exist in Malta in this area.

Readers interested in obtaining more information about the establishment of captive insurance companies in Malta or about any related topic are invited to make contact with the MFSA. Further information may be obtained from:

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2.0 BUSINESS PROFILE

The international environment for captives has changed. Corporate insurance buyers are facing higher primary premiums and related taxes, higher reinsurance prices, lower policy limits and less cover. In the captive sector, major corporations are also finding problems to make fronting arrangements with insurance companies as a result of which they are forced to make strategic choices. There is a need for captives to be financially stronger and to be able to take more risk. There are options such as direct underwriting and cost reduction to be considered. It is time new business models are explored and new locations studied.

Over recent years Malta has established itself as a model jurisdiction in financial services regulation. As in other successful economic sectors the regulatory framework combines well with other advantages Malta can provide in terms of competitiveness, EU membership, strategic access to southern Mediterranean markets and a good working environment.

Malta provides the opportunity for companies to locate their captive insurance business and insurance management activity within an OECD-recognised tax environment that combines tax efficiency with controlled foreign company tax legislation requirements.

Malta's insurance legislation is based on research carried out among Maltese and international insurance operators and provides opportunities for captive insurance business and related activities, including cell companies, insurance management companies and regional operations for insurers, reinsurers and brokers. The legislation also provides continuation procedures that allow insurance companies resident in a foreign domicile with equivalent legislation to re-domicile to Malta.

Captive insurance business is regulated under a set of tailor made rules that take into consideration the current state of the market and possible future developments. These rules provide for the registration and operation of captive insurance companies which within the Maltese insurance legislation are termed "Affiliated Insurance Companies" ("AICs").

In addition to the above, the Malta Financial Services Authority has also designed a fast track approach for back office operations. Further information in this respect may be obtained from the MFSA "Guide to Back Office Administration in the Financial Services Sector"

3.0 REGULATION

3.1 WHO REGULATES AFFILIATED INSURANCE COMPANIES?

The Malta Financial Services Authority (MFSA) is responsible for the licensing, regulation and supervision of insurance companies and intermediaries, including Affiliated Insurance Companies (AICs). The MFSA also licenses, regulates and supervises banking and financial institutions, and investment services business.

3.2 WHAT IS THE MFSA?

The MFSA was established as an autonomous public authority in 2002 by the Malta Financial Services Authority Act (“MFSA Act”). It is also responsible for the management of the Registry of Companies.

3.3 WHAT IS THE MFSA’S STYLE OF REGULATION AND SUPERVISION?

The MFSA requires the highest standards of probity and honesty. Every licence is issued subject to standard conditions which may be adapted to suit certain circumstances so long as standards are not compromised.

3.4 WHAT IS THE PRINCIPAL LEGISLATION IN MALTA THAT AFFECTS AICs?

Insurance business in Malta is regulated under the Insurance Business Act, 1998 (“the Act”). The Act provides for the authorisation and supervision of insurance companies and the MFSA is the competent authority for the purposes of the Act. The MFSA has the power and the duty to ensure that companies authorised to carry on affiliated insurance business comply with:

- (i) the provisions of the Act;
- (ii) the provisions of any regulations made thereunder;
- (iii) the requirements determined by any Insurance Rule.

4.0 THE LEGAL FRAMEWORK FOR AFFILIATED INSURANCE COMPANIES

4.1 Legislation

4.1.1 WHAT IS THE LEGISLATION THAT APPLIES TO AICs?

The detailed regulatory provisions on AICs are contained in subsidiary legislation which includes regulations and rules issued in terms of the Insurance Business Act, 1998 (“the Regulations”).

The main pieces of subsidiary legislation in this area are:

- the Insurance Business (Companies Carrying on Business of Affiliated Insurance) Regulations, 2003;
- the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, 2003;
- the Insurance Business (Continuance of Companies Carrying on Business of Insurance) Regulations, 2003;
- Insurance Rule 21 of 2007 on the business of affiliated insurance.

4.1.2 WHAT IS THE DEFINITION OF AFFILIATED INSURANCE UNDER MALTESE LAW?

“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”.

AICs 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.

These shareholding or other connecting relationships between undertakings are determined by Insurance Rule 21 of 2007 (*see* Appendix 2).

4.2 Key features of AIC legislation

4.2.1 IS THERE A “MINIMUM OWN FUNDS” REQUIREMENT?

Companies carrying on affiliated insurance are required to possess own funds, whether in Euros or in other currencies acceptable to the Authority amounting to not less than the applicable minimum guarantee fund as determined in the Fourth

Schedule to the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004. Such funds are to be unencumbered at all times.

The components making up the own funds are to consist of:

- paid up share capital which must not be less than 50% of the value of the own funds requirement;
- a mixture of issued and unpaid share capital, preferential share capital and subordinated loans, retained profits and reserves

4.2.2 WHAT IS THE POSITION REGARDING "EQUALISATION RESERVES"?

AICs carrying on general business of a prescribed nature are required to maintain an equalisation reserve.

Companies are exempted from this obligation if:

- their head office is outside Malta; or
- the net premiums written in any financial year in respect of that business are less than 4% of the total net premiums written in the financial year and are less than Euro 2,500,000 (approx. Lm1 million Maltese liri).

Notwithstanding the above, since technical provisions and equalisation reserves are allowed as a deduction in the computation of taxable income, an affiliated company carrying on reinsurance business may still elect to hold an equalisation reserve if its business is less than the aforementioned thresholds.

4.2.3 WHAT SOLVENCY MARGINS AND TECHNICAL PROVISIONS HAVE TO BE MAINTAINED BY AICs?

Such companies are required to maintain at all times a margin of solvency in accordance with regulations which are modelled on the European Union Directives.

Companies carrying on affiliated insurance are required to establish and maintain adequate technical provisions.

4.2.4 ARE THERE ANY INVESTMENT REQUIREMENTS?

An insurance company, including an affiliated insurance company, is required to cover its technical assets and margins of solvency requirements by admissible assets. Moreover to ensure the safety, yield and marketability of the assets must be diverse and spread.

There are no investment restrictions with respect to that portion of assets that is not required to cover technical provisions and margins of solvency.

For the purposes of the technical reserves, assets are taken into consideration up to a certain limit. Admissible assets are determined in accordance with the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004, while the limitations that apply with respect to different types of assets are given in Schedule 9 of the same Regulations.

4.2.5 WHAT SORT OF FINANCIAL STATEMENTS IS AN AIC REQUIRED TO PUBLISH?

In terms of the Insurance Business (Companies Accounts) Regulations, 2000 affiliated companies are permitted to draw up accounts in an abridged form.

They are also exempted from the requirement to publish accounts in local newspapers. A copy of the audited financial statements must however be submitted to any person applying for such copy and the company may charge such reasonable fees for such copy.

4.2.6 DOES THE LAW CATER FOR "PROTECTED CELL COMPANIES"?

The Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, 2004 allow a licensed AIC to be registered as or convert to a protected cell company.

These Regulations provide for:

- segregation and protection of cellular assets from other assets of the company,
- creation and issue of cell shares,
- transfer of cellular assets to other persons, and extension of protected cell assets concept to the transferee,
- provisions requiring assets attributable to different cells to be kept separate and separately identifiable;
- provisions requiring cellular and non-cellular assets to be kept separate and separately identifiable;
- use of non-cellular assets as a secondary asset base where cellular assets are exhausted, and
- other related matters.

Transfer of cellular assets is possible subject to approval of the MFSA. However, a cell company does not require cell transfer approval in order to invest, change investment of cellular assets or make payments or transfers from cellular assets in the ordinary course of the company's business.

4.2.7 IS REDOMICILIATION OF AN AIC ALLOWED?

A body corporate licensed in another jurisdiction to carry out any insurance business or to provide insurance management or broking services, may be authorised to continue as a company formed or registered in Malta.

The Insurance Business (Continuance of Companies Carrying on Business of Insurance) Regulations, 2003 provide that the MFSA may authorise such companies to re-domicile to Malta and operate under Maltese insurance legislation if they originate from an approved jurisdiction. Prior to applying for such authorisation, such company must first approve such continuance by a corporate decision which is valid under the laws of its country of origin and that would be equivalent to an extraordinary resolution under Maltese law.

The requirements in such case include the drawing up of an instrument of continuance and delivery of this document to the Registrar of Companies together with a copy of the Memorandum of Association or deed of partnership or equivalent instrument by which the continuing company was constituted in the country of origin. Upon acceptance and registration of these instruments and MFSA authorisation under the relevant Maltese insurance laws, such company shall cease to be a body corporate under its previous jurisdiction and shall continue its corporate existence under the laws of Malta. The company will retain all its assets, rights and liabilities as a company otherwise formed and registered under the Companies Act and authorised under Maltese insurance legislation.

Similarly the said regulations empower the MFSA to authorise a Maltese registered and licensed company to be continued as a body corporate registered, incorporated or constituted under the laws of a country outside Malta. Such continuance must first be approved by extraordinary resolution of the company. Authorisation may only be granted if such company will operate as a continued company that continues to retain or succeeds to all its existing assets, rights and liabilities.

The company continuance provisions contained under the Companies Act and the Continuation of Companies Regulations, 2002 also *mutatis mutandis* apply with respect to the continuation of AICs.

4.2.8 TO WHAT EXTENT DOES INSURANCE LEGISLATION APPLY TO AICs?

The Regulations establish a specific licensing framework for AICs and hence such companies are regulated by specific provisions found in the Regulations. The provisions of the Act and related subsidiary legislation and rules apply only to the extent stated in the Regulations and they may also apply with certain modifications.

For example:

- Similarly to other insurance companies, AICs regulated under the Act are required to establish and maintain adequate technical provisions;
- Affiliated companies are exempted from the **custody** of assets rules provided for in the Insurance Business (Insurer's Assets and Liabilities) Regulations, 2004;
- AICs are also exempted from the requirement to contribute to the **Protection and Compensation Fund**; therefore such companies are exempted from the requirement to contribute for the payment of claims remaining unpaid by reason of the insolvency of an authorised insurance company;

- AICs are exempt from a number of obligations in the case it intends to *cease* to carry on business of insurance;
- The AICs are also exempt from the payment of duty under the *Duty on Documents and Transfers* Act, 1993 on any contract of insurance relating to a risk situated outside Malta.

4.3 Procedures and Fees

4.3.1 HOW LONG DOES AN APPLICATION TO SET UP AN AIC TAKE?

An application for authorisation by an affiliated company is processed within a statutory period of three months.

4.3.2 WHAT DOES AN APPLICATION ENTAIL?

Approval is granted after the MFSA is satisfied that:

- an application is filed in writing on the prescribed form;
- the company has the appropriate own funds for the type of business to be carried on or being carried on by the company;
- the company's objects are limited to business of affiliated insurance and operations arising directly therefrom to the exclusion of other commercial business;
- sufficient information is made available on persons having any proprietary, financial or other interest in, or in connection with, the company;
- all qualifying shareholders, controllers, and all persons who will effectively direct the business of insurance are fit and proper to ensure the company's sound and prudent management;
- a scheme of operations has been submitted in accordance with the relevant Rule.

4.3.3 WHAT ARE THE FEES APPLICABLE TO AIC'S?

The Insurance Business (Fees) Regulations 1999 as subsequently amended establish specific fees for AICs, which unlike those of companies carrying on direct and reinsurance business do not vary according to the amount of business the company underwrites in the previous financial year. The fees applicable to AICs can be found in Appendix I.

4.4 Insurance Management Companies

4.4.1 WHAT IS THE DEFINITION OF AN INSURANCE MANAGER?

The Act defines an Insurance Manager as a person enrolled 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. Management functions may include the authority to enter into contracts of insurance on behalf of such company under the terms of appointment. A local company authorised under the Insurance Intermediaries Act, 2006 as insurance intermediary and carrying on business as an insurance broker, restricted to contracts of insurance relating to risks situated outside Malta, may appoint an insurance manager authorised under the Act to manage such business.

4.4.2 WHAT ARE THE LICENCE REQUIREMENTS FOR INSURANCE MANAGEMENT COMPANIES?

Companies carrying on affiliated insurance may employ the services of an insurance management company.

An insurance management company must be a Maltese registered company and is regulated by the Insurance and Intermediaries Act.

Such company would require a license if it carries out activities which consist in the management of any part of another company's insurance business; the exercise of managerial functions therein and the maintenance of accounts or other records of such company. Such activity could also include the authority to enter into contracts of insurance on behalf of the company under the terms of the appointment.

4.4.3 WHAT IS THE OWN FUNDS REQUIREMENT FOR AN INSURANCE MANAGER?

An Insurance Management company licensed under the Act is required to possess 'own funds' amounting to:

- (i) if it holds no appointment: - to the amount of the paid-up share capital in terms of the Companies Act, 1995 **Euro 1,164.69** (Lm500) [in paid up share capital].
- (ii) if the appointment for so acting is from a company whose business is restricted to affiliated insurance or the appointment excludes or does not include authority to enter contracts of insurance on behalf of an company: - to the value of not less than **Euro 15,140.93** (Lm6,500);
- (iii) if the appointment for so acting is either from a company whose business is not restricted to affiliated insurance and includes authority to enter into contracts of insurance on behalf of such company or from a company enrolled in the Brokers List: - to the value of not less than **Euro 58,234.33** (Lm25,000) or 4% of the annual gross premiums receivable, whichever is the higher;

4.4.4 OTHER REQUIREMENTS

An insurance manager will be required to:

- keep moneys held by it in a fiduciary capacity separate from its own moneys; and
- effect a fidelity bond.

These requirements will not apply to an insurance management company for so long as it holds no appointment.

In addition the insurance manager will be required to have in its favour a policy of professional indemnity insurance.

4.4.5 IS REDOMICILIATION OF AN INSURANCE MANAGEMENT COMPANY ALLOWED?

Yes. The continuation rules outlined for AIC's under paragraph 4.2.7 also apply to insurance management and insurance broking companies.

4.5 Money Laundering

AICs and insurance management companies must act in accordance with the regulations made under the Prevention of Money Laundering Act, 1994 and follow the relative Guidelines issued by the MFSA.

APPENDIX 1 - FEES

Fees	Lm	Euros
Affiliated Insurance Companies		
Application for authorisation	500	1,164.69
Acceptance of application	500	1,164.69
Continuance of authorisation	1000 annually	2,329.37 annually
Insurance Management Companies		
Application for authorisation	100 and 50 per appointment	232.94 and 116.47 per appointment
Acceptance of application	100 and 50 per appointment	232.94 and 116.47 per appointment
Continuance of authorisation	200 and 150 per appointment	465.87 and 349.41 per appointment
Company Registration Fee (<i>one off</i>)	150 – 750 (<i>depending on the company's authorised share capital</i>)	349.41 – 1,747.03 (<i>depending on the company's authorised share capital</i>)

APPENDIX 2 – SHAREHOLDING AND CONNECTING RELATIONSHIPS

Clause 1 and 2 of the First Schedule to Insurance Rule 21 of 2007

Affiliated Insurance Companies

1. (1) In the case of an affiliated insurance company, business of affiliated insurance is restricted to risks originating -

- (a) with undertakings being members of a group of which it is itself an undertaking; or
- (b) with an undertaking or undertakings not forming part of a group, having common membership, up to the ultimate beneficial owner level, with the company amounting to at least fifty one per centum of both the membership of such undertaking or undertakings and the company; or
- (c) with a society, corporation, or body (howsoever constituted) established and recognised under the laws of Malta or under the laws of country outside Malta or individuals who hold fifty one per centum or more of the share capital issued by the company or of the voting rights attaching to such capital; or
- (d) with members of an association or an organisation of a particular trade, industry or profession and the risks originating with the members are those restricted to the trade, industry or profession for the purposes of which the association or organisation was established or registered;

(2) For the purposes of sub-paragraph (1) of paragraph 1 of this Rule -

- (a) “group” shall mean a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation;
- (b) “membership” shall mean a direct or indirect holding in the share capital issued by a company or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the company.

Parent and subsidiary undertakings

2. (1) For the purposes of this Schedule, an undertaking is a parent undertaking in relation to another undertaking (“a subsidiary undertaking”) if –

- (a) it holds a majority of the voting rights in the undertaking; or
- (b) it is a member of the undertaking and has a right to appoint or remove a majority of its board of directors or persons entrusted with its administration; or

- (c) it has a right to exercise a dominant influence over the undertaking:
 - i. by virtue of provisions contained in the undertaking's memorandum or articles; or
 - ii. by virtue of a control contract (as defined in paragraph (2) of article 13 of Insurance Rule 18 of 2003); or
 - (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking; or
 - (e) it is a member of the undertaking, no other person is the undertaking's parent by virtue of any of sub-paragraphs (a) to (c) of this paragraph, and at all times since the beginning of the undertaking's immediately preceding financial year, a majority of the undertaking's board of directors have been directors who were appointed solely as a result of the exercise of its voting rights; or
 - (f) it has a participating interest in the undertaking and either actually exercises a dominant influence over the undertaking, or it and the undertaking are managed on a unified basis; or
 - (g) it has a participating interest in the undertaking which either entitles it to twenty per centum or more of the voting rights in the undertaking or comprises twenty per centum or more of the shares in the undertaking.
- (2) For the purposes of sub-paragraph (1) of this paragraph, an undertaking shall be treated as a member of another undertaking if -
- (a) any of its subsidiary undertakings is a member of that other undertaking; or
 - (b) any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.
- (3) Subject to sub-paragraph (4) of this paragraph, a parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings.
- (4) An undertaking ("A") shall not be treated as a parent undertaking of an undertaking ("B") by reason only that another undertaking which is A's subsidiary undertaking by virtue of sub-paragraph (g) of paragraph (1) of this article is a parent undertaking of B.
- (5) For the purposes of this paragraph:
- (a) "participation" exists when an undertaking holds rights in the share capital of other undertakings which, by creating a durable link with those undertakings are intended to contribute to the company's activities. The holding of twenty per centum of the capital or of the voting rights of another undertaking shall be presumed to constitute a participating interest; and

- (b) “subsidiary undertaking” shall mean a subsidiary undertaking within the definition of “parent undertaking” and any undertaking over which, in the opinion of the Authority, a parent undertaking effectively exercises a dominant influence; all subsidiary undertakings of subsidiary undertakings shall also be considered as subsidiary undertakings of the parent undertaking; and
- (c) references to “undertakings” shall include references to a person, whether natural or legal, and in the case of a legal person shall mean a society, corporation or body (howsoever constituted), established or recognised under the laws of Malta or under the laws of a country outside Malta.