

# CAPTIVES



an ideal location

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It is no secret that the Insurance sector is passing through a tough phase. Although this sector has not been hit as hard as the Banking Sector, the losses it has endured on investments are said to be substantial. Share prices have plummeted and Executive Boards across the globe have been put in disarray as they are no longer able to hide their underwriting losses behind the profits from investments. In the future underwriting risk will have to be considered under careful scrutiny with the objective of quantifying profitability.

## EU ACCESSION

Malta's accession to the EU attracted an influx of captives. While designed not to overburden captives, the country's fully compliant EU legislation adds credibility to it as a captive domicile. In addition, a captive that is registered in Malta is an EU-domiciled insurer with the opportunity to benefit from passporting rights which permits it to write business anywhere in the EU without the need for costly fronting arrangements.

## WHY MALTA?

Malta is an attractive jurisdiction when it comes to captive management. Over the last decade, Malta has developed and enhanced its financial services regulatory infrastructure which extends to the Insurance sector, including the Captives, which have placed it among Europe's foremost players in this sector.

In addition Malta has a competitive tax regime supported by a broad network of double taxation agreements, a strategic location, high caliber human resources, an excellent IT and international connectivity and above everything else, the Islands remain a comparatively low cost jurisdiction. Malta's work ethic is British with English being universally spoken.

## SMALL IS BEAUTIFUL

The most striking factors that have made the island attractive to multinational operators are the advantages that the country has acquired from being small.

Being small carries with it an extraordinary advantage that few jurisdictions, if any, can replicate. Advantages include flexibility, accessibility, responsiveness and being customer centred.

Reflecting change in the market's demands for new risk management solutions, and enacting the related regulatory reform, is less burdensome in a small jurisdiction.

The Malta Financial Services Authority [MFSA] and the Insurance Business Unit operate in concert with the client. Whereas there is no compromise in the approach to regulatory activities, access to the Regulator, in comparison to other Jurisdictions in the EU, is seamless, reinforcing relationships, ideas and concepts from the very early stages, prior to the licensing stage.

The Regulator's proactive and responsive approach offer potential investors support when operating within the Maltese jurisdiction. Being conscious of the demand for professional staff in an expanding market, MFSA and other professional bodies, provide ongoing training programmes in insurance, tax and specialised accounting together with support in related areas such as investments, hedge funds the derivatives market.

# FAQ

**Q** *Can an existing captive be redomiciled to Malta without having to be wound-up.*

**A** Yes! In terms of the Continuation of Companies Carrying on Business of Insurance Regulations, foreign bodies corporate are permitted to continue their business of insurance in Malta without being wound-up. A company may migrate to Malta subject to compliance to certain conditions that are relatively straightforward. An important provision for redomiciliation to take place is that a foreign body, incorporated under the laws of an approved jurisdiction, may be redomiciled provided that the laws of that jurisdiction sanction it, and provided that redomiciliation is approved by the company's Board and constitutive documents. Consequently, the approval of the relevant regulators must be obtained in the form prescribed by the foreign competent authority, and by way of an insurance licence issued by the MFSA. The company redomiciling to Malta must file an instrument of continuation with the Maltese Registrar of Companies. Redomiciliation is a major advantage that enables a captive to migrate seamlessly avoiding costly winding-up procedures in the originating country and the process of reincorporation in Malta.

**Q** *What are the major regulatory requirements with which captives in Malta must comply?*

**A** An application for authorisation to set up a captive in Malta is processed by the MFSA within three months from receipt of a complete application. In practice, the licensing process involves regular communication with the MFSA, which scrutinise the draft documentation thereby facilitating the application process. An application must include a scheme of operations drawn up in accordance with relevant rules contemplated by the Insurance Business Act in the Laws of Malta. Solvency requirements are modelled on the EU Solvency I regime.

Various sources of capital are accepted within pre-established parameters (including ordinary and preference shares, profits, and subordinated loans). The own funds requirement currently stands at €2.2m and must be kept unencumbered at all times.

It is increased to €3.2m for captives carrying out certain classes of business and for long-term business. A lower requirement of €1m applies where business is restricted to affiliated reinsurance. A captive's minimum margin of solvency varies in line with the nature of the business underwritten and its net exposure towards policy holders. Discretionary buffer margins may be required by the regulator.

Asset valuation and admissibility rules apply if the respective assets are being used to cover technical provisions. Solvency is monitored by the MFSA through submission of quarterly returns to the Insurance Business Unit, supplemented with the preparation of annual extended statistical reporting and statutory financial statements to be submitted within six months of the year end.

Regulatory fees amount to €4,300 on application for a licence, €2,250 on incorporation of the captive and annual fees of around €5,000.

**Q** *How are profits of a Maltese captive taxed?*

**A** Companies registered in Malta, are subject to the normal Maltese corporate tax rate of 35% on their chargeable income. Captives are no exception. This is calculated in accordance with specific provisions contemplated in the Income Tax Act which refer specifically to Insurance business. Deductions are allowed in respect with the business related expenses.

Company profits are allocated to various tax accounts depending on a number of factors, and dividends are distributed from these accounts. On a distribution of dividends, the tax paid on the distributed profits is available as a credit to shareholders under the full imputation system.

Refunds due to shareholders on a distribution of applicable trading profits, amounts to 6/7ths of the tax liability suffered by the company on the distributed profits. This refund is itself exempt from income tax. Furthermore, no withholding tax is chargeable in Malta on distributions to non-resident shareholders

As of January 2009, there were some 32 insurance companies being managed by some 13 insurance managers. The top three international managers— AON, Marsh and Willis- all participate in the market, along with HSBC.

There are also a good representation by mid-tier operators—JLT, Heath Lambert and Heritage who also attract a fair share of business together with local operators which provide a high level of service.

A number of indicators show that Malta is positioning itself at the forefront as an ideal EU location for reinsurance companies outside the EU looking for a European foothold in the wake of EU's Reinsurance Directive.

The island's state-of-the art legislation and its tried and tested support services and the accessibility of the jurisdiction are expected to win further investment from the EU and globally focused companies.



“Every day you may make progress. Every step may be fruitful. Yet there will stretch out before you an ever-lengthening, ever-ascending, ever-improving path.

You know you will never get to the end of the journey. But this, so far from discouraging, only adds to the joy and glory of the climb”

Sir Winston Churchill



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