

ICC Regulations (Business of Insurance) in Malta



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The “ICC Regulations”, Companies Act (Incorporated Cell Companies Carrying on Business of Insurance) Regulations, 2010 have been introduced through L.N. 558 of 2010.

Legislation providing for cell companies carrying on business of insurance has been available in Malta since 2004, through the “PCC Regulations”, Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, 2004.

What is an ICC?

The ICC Regulations build on the “cellular” concept, taking into account international developments and setting out a framework for a new type of vehicle in Malta - Incorporated Cell Companies (“ICCs”).

The cellular concept provides for the establishment of a cell within the incorporated cell company structure. Assets and liabilities are attributed either to the cell company itself or to a particular cell of the cell company.

The main features of the ICC Regulations, as well as key similarities and differences as compared to a PCC, are summarised below:

Application

The establishment of an ICC structure under these Regulations is limited to the carrying out of business of insurance, as defined under the Insurance Business Act, or affiliated insurance in terms of the Insurance Business (Companies carrying on Business of Affiliated Insurance) Regulations, 2003.

The provisions of the Companies Act apply to an incorporated cell company and to an incorporated cell, unless such provisions are inconsistent with the Insurance Business Act and the ICC Regulations, in which case the latter apply.

Establishing an ICC and incorporated cells

Subject to the relevant provisions of the Regulations, an ICC can be established in the following ways:

- a company can be formed as an ICC;
- a body corporate carrying on business of insurance, similar to an ICC but established outside Malta, may be continued as an ICC in Malta;

- a body corporate, carrying on business of insurance, similar to a non-cellular company but established outside Malta, may be continued as an ICC in Malta;
- a non-cellular company can convert into an ICC or into an incorporated cell;
- a PCC can convert into an ICC.

Conversely,

- an ICC may be continued as a body corporate similar to an ICC outside Malta;
- an ICC can be continued as a body corporate outside Malta;
- an ICC having no incorporated cells, or an incorporated cell, can convert into a non-cellular company;
- an ICC having no incorporated cells can convert into a PCC.

Note that the term “outside Malta”, referred to above, shall mean approved countries and jurisdictions as may be determined from time to time by guidelines issued by the Registrar of Companies pursuant to the Continuation Regulations.

The name of an incorporated cell company shall include the expression “Incorporated Cell Company” or its abbreviation “ICC”.

Incorporated cells can be established by virtue of a resolution of the Board of Directors (“cell resolution”). An incorporated cell shall be validly constituted when a copy of the cell resolution is delivered to the Registrar, a Memorandum & Articles of Association is signed for the incorporated cell and a certificate of registration is issued.

The name of an incorporated cell shall include the expression “incorporated cell”. The name may be similar to the ICC of which it forms part, but not as similar as to create confusion.

An incorporated cell shall not own shares in its ICC, but shall be permitted to own shares in any other incorporated cell of its ICC.

This newsletter sets out a summary of the ICC regulations and compares to the PCC Regulations already in existence in Malta

ICC and PCC compared	
Key similarities	In both sets of Regulations:
	Application is to companies carrying on business of insurance.
	“Cellular” concept exists whereby cells have their own constitution, share structure and shareholders.
	Cell owners, with varying interests, can participate in one vehicle.
	The cell company and its cells share the same Board of Directors, Company Secretary and registered address.
	Cell companies and cells are to indicate suitably in all their business letters, forms and correspondence that they are a cell company or a cell.
	A cell company is not intended to be the parent of its cells.
	A cell can be dissolved without affecting the use of any other cell or the cell company.
Lower cost alternative to establish business of insurance through cells, when compared to setting up a stand-alone insurance company.	

Separate legal personality of incorporated cells

The main difference between an ICC and a PCC structure lies in their legal status. An ICC, and each of its incorporated cells, are each separate legal personalities. Conversely, in a PCC, the cell company and its cells together represent one legal entity (i.e. cells do not have separate legal personality).

The lack of separate legal personality in a PCC creates complexities, for example, when it comes to cells transacting in their own name and with other cells of the PCC. Such complexities are eliminated by the separate legal personality of incorporated cells in an ICC structure.

An ICC does not have the power to transact on behalf of any of its incorporated cells, and vice versa.

Separation of assets and liabilities

Both the ICC and the PCC regulations provide for separation of assets and liabilities between the cell company and each cell. Furthermore, in both cases, it is the cell company’s directors’ responsibility to ensure that this is achieved.

The difference is that in an ICC, liability is limited through the separate legal identity of each cell. In a PCC structure, limitation of liability is achieved through the ring fencing principle, whereby each cell is protected from third party claims attributable to other cells by the Regulations, provided that the appropriate procedures are in place.

PCC Regulations provide for secondary recourse to non-cellular assets if the cellular assets attributable to the relevant cell have been exhausted (although in some instances, recourse can be restricted). Such recourse is not envisaged under the ICC structure.

ICC and PCC compared – the main differences	
ICC	PCC
The ICC and each cell are a separate legal entity.	The PCC is a single legal entity.
Liability is limited by structure (separate legal personality of cells).	Liability is limited by ring fencing principle.
Cells can contract because of separate legal personality. The ICC shall not have the power to contract on behalf of a cell by virtue of it being the ICC.	PCC directors transact on behalf of the cell. Directors obliged to notify and record when contracting for a cell.
Claims limited to assets of that cell. No recourse from ICC assets is envisaged.	Directors to properly separate cellular assets. Primary recourse is to cellular assets. If cellular assets are exhausted, secondary recourse from non-cellular assets may be available.
Does not enable capital leverage for insurance solvency purposes	Enables capital leverage for insurance solvency purposes

Annual Return, Accounts, Directors’ report

The ICC and each cell shall submit a separate Annual Return.

Separate financial statements are to be prepared for the ICC and each cell. Financial statements of an ICC shall not be consolidated with the incorporated cells, unless the incorporated cell is a subsidiary of the ICC.

The Directors' report of an ICC, shall also include the names and registration numbers of all its incorporated cells.

Tax considerations

Each cell in an ICC is a separate legal entity and, therefore, each cell and the ICC are considered to be separate companies for Maltese income tax purposes. In this respect, an ICC structure is similar to a PCC structure on the basis that, solely for Maltese income tax purposes, each cell and the core of a PCC are considered to be separate entities.

Each cell of an ICC will benefit from the fiscal advantages that Malta offers to any other company registered in Malta, including companies carrying on the business of insurance in Malta. Such advantages include that upon a distribution of profits by an ICC and each cell, the shareholders of such ICC and of each respective cell should be entitled to a refund of 6/7th of the tax suffered on such distributed profits.

Winding up

Subject to the applicable provisions of the Regulations, an incorporated cell can be:

- transformed into a non-cellular company;
- relocated to another ICC;
- expelled;
- continued as a body corporate in another jurisdiction;
- struck-off.

An ICC that has been dissolved and wound up shall not be struck off unless each of its incorporated cells have gone through one of the exit options above.

The attractiveness of an ICC in Malta to potential investors

The ICC structure, like the PCC structure, offers a risk management vehicle to potential investors, with varying interests, to participate in one structure, with the potential cost leverage and other advantages associated with it. Malta is the only full EU member state to have both these vehicles in place, adding its attractiveness as an insurance and captive domicile.

The key difference between the two vehicles lies in the legal status of the cells, which will most likely be the determining factor in rendering one structure more attractive than the other to the potential investor.

The notes are designed to keep readers abreast with financial and tax developments. They are not intended to be a definitive or comprehensive analysis of the subject and should not be acted upon without prior consultation with the Partners and/or Senior Consultants of the firm. For further details please do not hesitate to contact:

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