



Malta Financial Services Authority

Innovation through Regulation

Regulation

Malta Financial Services Authority (MFSA):-

- **Single regulator for financial services**
- **Regulates** *banking, financial institutions, insurance companies, investment services companies, securities, recognised investment exchanges and admissibility to listing, trust management companies, pension schemes*
- **Listing Authority**
- **[Resolution Authority for Credit Institutions]**



MFSA

Innovation through Regulation

What is the MFSA doing?



**Regularly we
assess how and in
what manner we
are achieving our
objectives**

Investment Services

- **Recognised ICC**
- **Limited Partnership**
- **Loan Funds**

Insurance Sector

- ☐ Insurance PCC
- ☐ Re - Insurance SPV
- ☐ Securitization Cell Companies



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Incorporated ICC

ICC Framework

- Establishment incorporated cells within an incorporated cell company (ICC) structure/platform – Not a parent / subsidiary relationship
- Based on the concept of separate legal personality of both the Incorporated Cell Company and the Incorporated Cells
- Two forms of investment ICCs:
 - SICAV-ICC
 - RICC

Basic Distinctions

SICAV-ICC

- **Licensed Cell Company**
 - functions as a CIS
- **Licensed Cells**
- - function as funds/sub-funds
- **Cells may be mixed:**
 - open/closed ended
 - listed/unlisted
- **Cells may not be segregated**
- **Multi-fund SICAV \Rightarrow SICAV-ICC with ICs**

RICC

- **Recognised Cell Company**
 - common admin services
- **Licensed Cells**
 - function as funds (CISs)
- **Cells may be:**
 - open/closed ended
 - listed/unlisted
 - self-managed/3rdpty-man
- **Cells may be segregated**
- **Multi-fund SICAV \Rightarrow multiple ICs of a new RICC**

Similarities

SICAV-ICC & RICC (the “ICC”)

- Separate legal personality
- IC's M&A must be signed by the ICC
- ICC may or may not subscribe to shares in IC
- ICC and ICs to have common registered address
- Directors of ICC and ICs may be the same
- At least one Director in common
- ICs would normally have same service providers unless otherwise authorised by MFSA
- Transformation/Migrate into/from other structures allowed
- Redomiciliation of similar structures allowed
- ICC may expel IC on serious grounds
- Similar dissolution and winding up procedures

Services provided by RICC

One or more of the following services:

- (i) administrative services related to the establishment of incorporated cells
- (ii) procurement of external service providers and approval of any changes thereto
- (iii) negotiation of (model) service provision agreements with service providers
- (iv) submission to MFSA of model agreements to be used by ICs, and changes thereto
- (vi) signature of tripartite agreements between service providers, the RICC and respective ICs based on the model agreements

Services provided by RICC

One or more of the following services:

- (vii) standardisation of any other documentation to be used by incorporated cells
- (viii) approval and joint signature of any applications for licences (including variations, extensions thereof) to be submitted by or on behalf of incorporated cells which are in the course of being formed
- (ix) written declarations identifying changes to model agreements already submitted to MFSA, including a NIL declaration confirming that no changes have been made
- x) provision of ancillary services as may be approved by the competent authority (e.g. standardisation of compliance reporting and other processes)

Possible Business Uses

SICAV-ICC

- Umbrella fund
- Master Feeder
- Single strategy funds

RICC

- Start up funds
- Small funds
- Management outsourcing strategies (co-ordination of/by small managers)
- Single strategy funds

Wherever it makes sense to set up a flexible risk allocation/management platform that can achieve potential economies of scale or other common advantages and that can also accommodate investors with varying interests



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Limited Partnership

Background

- ❑ The Limited Partnership – an established feature of Maltese commercial law, continuously renovated to meet modern day needs.
- ❑ CISs as LPs introduced by Act IV of 2003

Features

The more important features of the LP include:

- ☐ **Capital divided or not divided into shares**
- ☐ **General Partner/s solely responsible for management of the partnership**
- ☐ **Registration of the Partnership Deed by submitting a simple registration form**
- ☐ **A simplified compliance framework**

Legal Personality

- ❑ Separate legal personality distinct from that of its partners
- ❑ Subject of rights and obligations
- ❑ Capable of owning and holding property under any title at law and of suing and being sued in its own name
- ❑ Legal personality continues until such time as the name of the LP is wound up and struck off the register.

Incorporation

- ❑ Documentation required:
 - ❑ A **Partnership Deed** entered into and signed by the initial partners (at least one general and one limited partner)
 - ❑ A **Partnership Registration Document** signed by the first general partner/s duly delivered to the Registrar

Tax Treatment

❑ Maltese Tax Law

- ❑ A CIS in the form of LP with capital not divided into shares is a transparent vehicle with income and capital gains arising from the fund being taxed directly at source and retain their status

❑ US Investors

- ❑ A LP in terms of Art. 66A should also be treated as a fiscally transparent vehicle by the internal revenue services in the US. This is based on the understanding that a general partner in a LP has unlimited liability and thus, satisfying the essential condition for tax transparency under US Rules

❑ UK Investors

- ❑ HMRC correspondence shows that a LP established in terms of Art. 66A with capital not divided into shares will be considered as tax transparent under UK law.

Dissolution

☐ Winding Up

- ☐ Upon dissolution, the LP shall cease to carry on business except to the extent necessary for its beneficial winding up.

☐ Dissolution by the Court

- ☐ The Court may order the dissolution on the application of any partner, creditor or Registrar if certain conditions are met



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Loan Funds

Main Risks

Risk	Possible risk mitigation
Interlinkages with banks	Lending diversification requirements; credit assessments on acquisition
Risk of runs	Liquidity requirements, Closed-ended structures (in place of capital requirements)
Procyclicality	Limits on leverage
Stability	Exposure limits
Flawed credit risk transfer	Credit assessment standards, skin in the game, remuneration requirements, LTV ratios
Opaqueness	Investment Policy; Reporting and disclosure requirements to CAs and investors; VNAV

Loan Fund Rules (Structures)

- **Definition** - Loan funds are defined as funds investing through loans – including loan origination, portfolio acquisition, participation;
- **Licence** - loan funds may be established as PIFs or AIFs targeting professional investors under the relevant Investment Services Rules;
- **additional Standard Licence Conditions** apply, whether the manager falls below full AIFMD thresholds or not;
- **Vehicle Structure** - may only be set up as closed-ended funds, redemption gates allowed under conditions;

Loan Fund Rules (Structures)

- **Investment Restrictions** – *may* invest only in loans to unlisted companies, SMEs and other approved entities; *may not* lend to financial institutions, households or individuals;
- the use of leverage and the reuse of collateral by the Scheme is not permitted;
- fund must abide by certain investment restrictions so as not to concentrate risk on a small number of large loans/borrowers;
- **Eligible Investors** - institutional and professional investors;
- minimum entry level Eur100,000;

Loan Fund Rules (Management)

- Rules apply irrespective of whether the Manager has a full AIFMD licence or operates under *de minimis* thresholds
- Competence Requirements - fund manager must have proven experience in the area of granting loans including credit assessment, credit provisioning and control of exposures;
- Credit Risk Management - manager should establish appropriate credit risk policies and criteria for sound credit granting;
- Liquidity Management - manager must ensure that the liquidity profile of the investments matches the underlying liabilities and redemption policies;
- in the case of excess liquidity as verified by independent auditor, the fund manager may allow units to be redeemed;
- in view of the potential illiquidity of loan portfolios, distribution policies and policies regarding the use of side letters must be clearly disclosed in the offering documents;

Loan Fund Rules (Management)

- **Liquidity Management** - manager must ensure that the liquidity profile of the investments matches the underlying liabilities and redemption policies;
- in the case of excess liquidity as verified by independent auditor, the fund manager may allow units to be redeemed;
- in view of the potential illiquidity of loan portfolios, distribution policies and policies regarding the use of side letters must be clearly disclosed in the offering documents;
- a variable NAV shall be applied;
- Disclosure – provisions containing detailed disclosure to investors;
- Depositary - fund to appoint a custodian, but under certain conditions funds having a 5-year redemption gate may appoint a depositary-lite for monitoring and valuation purposes only.

Insurance Sector

- ☐ Insurance PCC
- ☐ Re - Insurance SPV
- ☐ Securitization Cell Companies



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Insurance PCC

Protected Cell Companies

- Modelled to a large extent on the provisions of the successful Guernsey Protected Cell Companies Ordinance, 1997;
- Protected Cell Company provisions also apply to all insurance companies, insurance managers and insurance brokers;
- A Protected Cell Company cannot be a composite.

Key features:

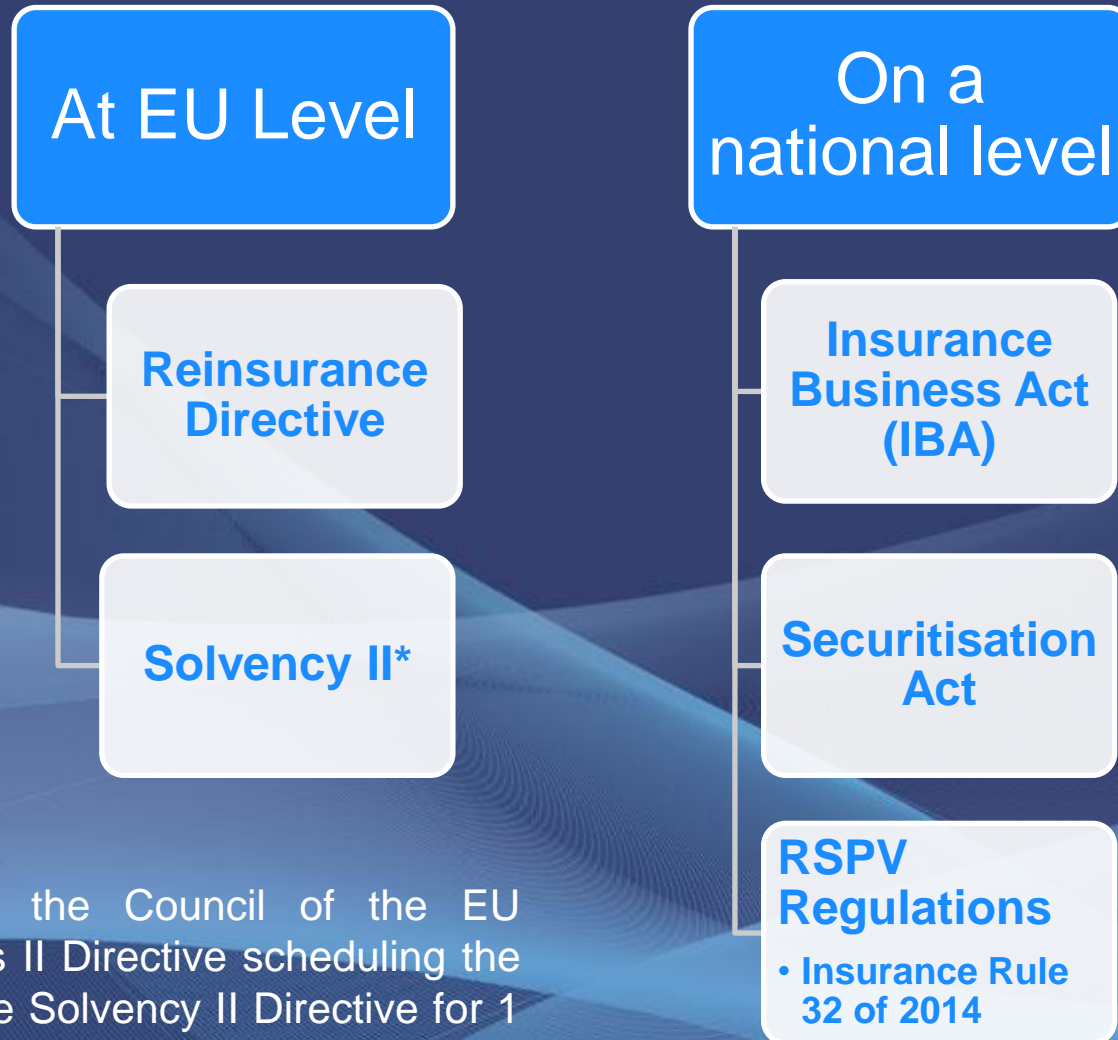
- Segregation of Cellular Assets and Liabilities from Core and other Cells;
- Lower capital requirements for Cells as they share capital with the Core, however, a cell is expected to be solvent in its own right when there is an underwriting core which is not common
- Minimum Own Funds requirements apply to the PCC as a whole not the Cell;
- 'Secondary recourse' to Core capital in case of insolvency of a Cell;



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Insurance SPV

Regulatory Aspects



In December 2013, the Council of the EU adopted the Omnibus II Directive scheduling the application date of the Solvency II Directive for 1 January 2016

RSPV Regulatory Framework

- Regulatory regime for the authorisation and regulation of RSPVs under the Insurance Business Act (Cap.403). Applies Securitisation Act (Cap 484)
- Transposes the Reinsurance Directive (Directive 2005/68/EC) - Which provides a regulatory framework for (re)insurance undertakings to transfer risks to RSPVs.
- Aligned the to EIOPA Advice for Level 2 Implementing Measures on Solvency II (Directive 2009/138/EC)

RSPV Regulatory Framework

- **Authorisation Process** - Procedures for the authorisation of an RSPV for specific use/s. Includes Mandatory Conditions required for all Contractual Arrangements to ensure that claims of the providers of capital to the RSPV are at all times subordinated to the reinsurance obligations of the RSPV to the insurance or reinsurance company;
- **Governance Requirements** - Qualifying shareholders and key functionaries must be fit and proper persons and the RSPV's system of governance needs to be appropriate to the nature, scale and complexity of the risk that the RSPV assumes;
- **Solvency Requirements** - RSPVs must be "fully funded" - at all times, the value of its assets must be equal to or exceed the aggregate maximum risk exposure, so that the RSPV is able to pay the amounts it is liable for as they fall due; and
- **Supervisory Reporting** - The RSPV is required to report to the MFSA on the value of its assets, its aggregate maximum exposure, any conflicts of interest, as well as any significant transactions entered into within a reporting period.



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Securitisation Cell Companies

SCC Regulatory Framework

- The PCC concept has been extended to asset-backed securitisation and insurance-linked securities through the Securitisation Cell Companies Regulations, [L.N 411 of 2014]. The SCC Regulations interface with the Securitisation Act (Cap. 484) and the Reinsurance Special Purpose Vehicle Regulations (L.N. 452 of 2013) to provide a legally entrenched framework for the segregation of different sets of assets and risk instruments within a single special purpose vehicle.
- Under these regulations a Securitisation Cell Company can launch multiple securitisation transactions or insurance-linked securities without incurring the risk of cross-contamination between the different sets of creditors and investors.
- The SCC structure envisages: one core company (the Securitisation Cell Company) with an unlimited number of Segregated Cells.

SCC Regulatory Framework

An SCC has one memo and articles of association and one board of directors; assets and liabilities are segregated with the cells, so as to be only available to the creditors and shareholders of each particular cell; a creditor of a cell has no recourse to the assets of other cells, nor to the non-cellular assets of the SCC.

An SCC may create new cells by Resolution of board of directors for the purpose of entering into either securitisation transactions or activities of an RSPV.

An SCC may, in respect of any of its cells, create and issue cell shares the proceeds of the issue of which ("cell share capital") are comprised in the cellular assets attributable to the cell in respect of which the cell shares were issued.

An SCC may choose the base currency of a cell which may be different from the currency of the non-cellular share capital. And shall draw up its annual accounts in either the currency of its non-cellular share capital or the base currency of one of its cells.

SCC Regulatory Framework

- An SCC can either carry on business as a securitisation vehicle in accordance with the Securitisation Act or carry on business as a RSPV in accordance with the Reinsurance Special Purpose Vehicles Regulations,

SCC carrying on business of an RSPV:

- Both core and cells require prior authorisation of in terms of the Reinsurance Special Purpose Vehicles Regulations SCC may enter into one or more risk transfer arrangements in respect of each cell;
- SCC may enter into multiple risk transfer arrangements with multiple ceding undertakings, provided that all risk transfer arrangements attributable to an individual cell shall originate from a single ceding undertaking or from ceding undertakings belonging to the same group;
- Each cell has to be fully funded in its own right.

Soundness of the Proposition

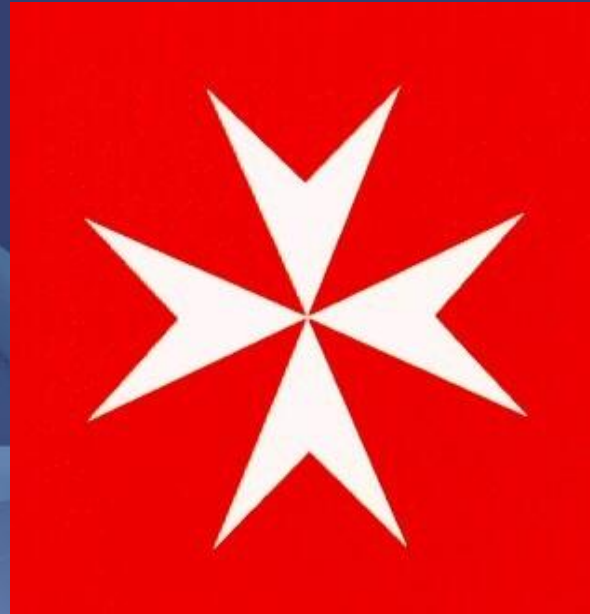
- The World Economic Forum Competitiveness Report [2013-2014] places Malta:
 1. 34th for Financial Market Development [Luxembourg 14th; Ireland 108th]
 2. 17th for the Regulation of Stock Exchanges [Luxembourg 3rd ; Ireland 56th]
 3. 14th for the Soundness of the Banks [Luxembourg 21th; Ireland 85th]out of a total of 148 countries.

CRITICAL SUCCESS FACTORS

*Innovation through Regulation
Competitive High Quality Skills*

*Steadfast Regulation
Agility in the Market*

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MALTA - the culture of getting things done

