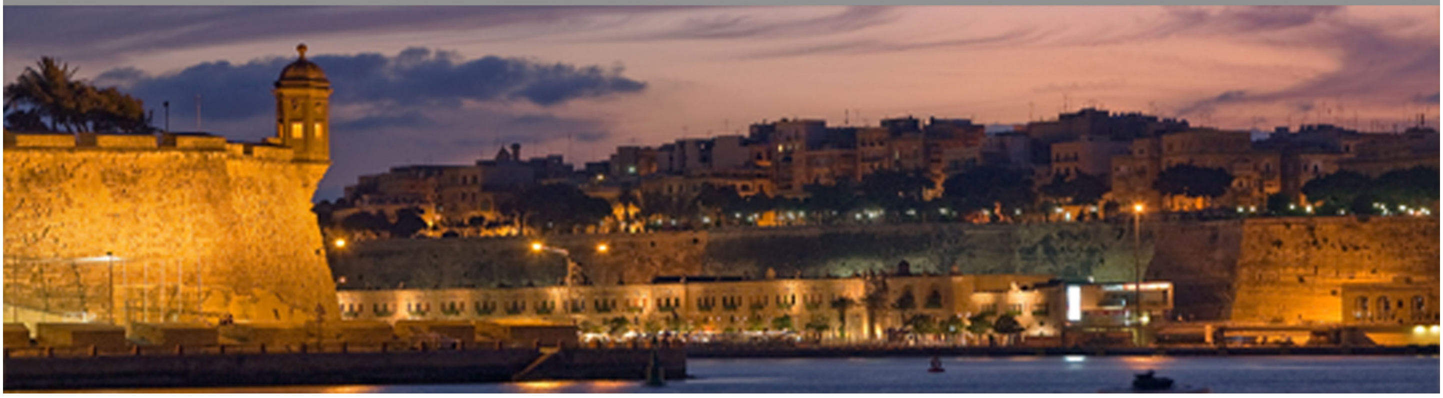
Securitisation Cell Companies

MFSA
Malta Financial Services Authority



Cell Company Framework for Asset-backed Securitisation and Insurance-Linked Securities

The concept of cell companies was introduced by the Malta Financial Services Authority in 2004 with the introduction of Protected Cell Companies [PCC] for the insurance sector [S.L.386.10].

The Securitisation Cell Companies Regulations introduced by Legal Notice 411 of 2014 extend this PCC concept by introducing a new protected cell company structure, called the Securitisation Cell Company, or SCC, to operate as a securitisation vehicle.

The Regulations therefore provide an effective and legally entrenched framework for segregation of different sets of assets and risk instruments within a single special purpose vehicle, the Securitisation Cell Company, thereby allowing for the launch of multiple securitisation transactions or insurance-linked securities without incurring any risk of cross-contamination between the different sets of creditors and investors.

Application of the Cell Company Concept

Similarly to a PCC, an SCC is a single legal entity that is structured in two parts, the core and an unlimited number of cells. It is one company with one board of directors, and one set of memorandum and articles of incorporation. The key differentiating element between a cell company and the traditional non-cellular company is that the former provides a flexible corporate vehicle within which assets and liabilities can be ring-fenced, or segregated, so as to be only available to the creditors and shareholders (where present) of each particular cell.

Therefore an SCC is able to limit its liability in respect of a particular transaction to a specified pool of assets rather than exposing all of the assets of the SCC, as would be the case with a non-cellular company. A cell of an SCC does not have a separate legal personality, and each cell transacts through the SCC. When an SCC enters into a contract, the directors must specify in the contract which particular pool of assets is to be bound by the obligations under the agreed contract.

An SCC can take one of two forms, either:

(i) An SCC that carries on business as a securitisation vehicle in compliance with the Securitisation Act; or

(ii) An SCC that carries on business as an RSPV in compliance with the Reinsurance Special Purpose Vehicles Regulations, 2013.

The two categories of SCC vehicles referred to above perform different activities; however, they both enjoy many commonalities as far as their setting up and operation are concerned. These are:

- **Creation of a cell:** an SCC may create cells by means of a resolution of its board of directors. A new cell will be created for the purpose of entering into either securitisation transactions or activities of an RSPV.
  Each cell of a securitisation cell company must have its own distinct name or designation which shall include the word 'cell'.
- **Issuance of financial instrument linked to a cell:** an SCC may issue financial instruments in one or more tranches, in respect of any of its cells, and the proceeds of the issue are comprised in the cellular assets attributable to the cell in respect of which the financial instruments were issued. Financial instruments issued in respect of a cell may be denominated in different currencies.
- **Cell shares:** 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.
- **No activities at the core:** an SCC may not carry securitisation transactions or activities of an RSPV through its non-cellular assets. Asset-based and risk-based securitisation transactions may therefore only be carried out in respect of specific cells and securitisation assets have to be allocated to a particular cell.
- **Duties of Directors:** the directors of an SCC have the duty to keep:

(a) cellular assets separate and separately identifiable from non-cellular assets;
(b) cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells; and
(c) separate records, accounts, statements and other documents as may be necessary to evidence the assets and liabilities of each cell as distinct and separate from the assets and liabilities of other cells in the same company, and as distinct and separate from the non-cellular assets and liabilities of the SCC.

• **Choice of cell currency:** the directors of an SCC may choose the base currency of a cell which may be different from the currency of the non-cellular share capital.

• **Annual accounts:** an SCC 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.

• **Position of creditors:** a creditor of a cell has rights to the assets of that particular cell only and has no recourse to the assets of other cells or the non-cellular assets. Apportionments may be made out of the assets attributable to the individual cells towards the costs of the day-to-day administration of the SCC.

• **Winding up of individual cells:** the SCC Regulations provide for the winding up of individual cells separately from the SCC itself as a whole. The winding up proceedings prescribed under the Companies Act (Cap. 386) apply *mutatis mutandis* to a cell as though it were a distinct legal entity.

• **Listing on EWSM:** an SCC may list its securities on the European Wholesale Securities Market (EWSM), an EU regulated market dedicated to the needs of arrangers and issuers of wholesale debt products. The EWSM Listing Rules regulate the admissibility to listing on the EWSM.

The specific features of SCCs carrying on business as securitisation vehicles include the following:

• **Notice/licencing/approvals:** the SCC is required to give notice in accordance with article 18 of the Securitisation Act prior to commencement of business as a securitisation vehicle, and also prior to commencing business in respect of any individual cell. An SCC which falls within the definition of a 'public securitisation vehicle' in terms of article 19 (1)(a) of the Act requires authorisation, and cells may only be created with the prior approval of the Competent Authority. Any approval or notification issued in respect of a cell is required to be registered with the Registrar of Companies.

• **Activities:** the SCC may enter into one or more securitisation transactions in respect of a cell.

• **Use by multiple originators:** the SCC may enter into multiple securitisation transactions with multiple originators in respect of its cells, provided that the securitisation assets deriving from different originators are attributed to different cells. Securitisation assets in each cell are protected by the provisions for ring-fencing of assets and liabilities contained in the SCC Regulations.

• **Conversions:** a securitisation vehicle previously set up as a limited liability company may convert into an SCC carrying on the business of a securitisation vehicle following the submission of a written notification to the Competent Authority on the appropriate form, accompanied by the documentation as prescribed in the SCC Regulations.

The specific features of SCC carrying on business as RSPVs include the following:

• **Licencing/approvals:** the SCC may only carry on business as an RSPV with the prior authorisation of the Competent Authority. This also applies to the setting up of cells. Any approval issued is required to be registered with the Registrar of Companies.

• **Activities:** the SCC may enter into one or more risk transfer arrangements in respect of a cell.

• **Use by multiple ceding undertakings:** the SCC may enter into multiple risk transfer arrangements with multiple ceding undertakings in respect of its cells, 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. The risk transfer arrangements attributable to each cell are protected by the provisions for ring-fencing of the assets and liabilities contained in the SCC Regulations.

• Every cell of the SCC needs to be **fully funded** in its own right in view of the application of the relevant provisions of the RSPV Regulations directly to the individual cells of an SCC.

Note: This information leaflet has been designed to assist persons considering setting up securitisation cell companies. It does not purport to provide legal advice thereon. Readers interested in obtaining more information about securitisation cell companies or on any related topic are invited to make contact with the MFSA or visit the MFSA website: www.mfsa.com.mt.

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