

SECURITISATION CELL COMPANIES

Michelle Mizzi Buontempo and Sephora Scerri of the Malta Financial Services Authority provide an insight into the breakthrough regulatory innovation in the Maltese financial services industry

Over the past years, the Malta Financial Services Authority (MFSA) constantly sought to keep pace with market developments and financial innovation through the introduction of sound and innovative legislation, resulting in new opportunities for more financial innovation. Malta has been at the forefront in opening up new areas of business while updating traditional ones. One such example is the development of a bespoke legislative framework for securitisation vehicles and securitisation cell companies (SCC).

The concept of cell companies was introduced by the MFSA in 2004 with the introduction of the Companies Act (Cell Companies Carrying on Business of Insurance) regulations (Legal Notice 243 of 2010) for the insurance sector. The concept of a protected cell company was extended by the introduction of the securitisation cell companies regulations (Legal Notice 411 of 2014) which introduced a new protected cell company structure, called the securitisation cell company, to operate as a securitisation vehicle.

An SCC is a single legal entity that has two components, the core and its cells. Notwithstanding the creation of one or more cells by the SCC, the cells do not have a separate legal personality, and each cell transacts through the SCC. In fact, notwithstanding the innovative feature of the cell structure, the SCC is still one company with one board of directors, and constituted through its memorandum

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and articles of association.

The SCC regulations provide an effective framework for the segregation of different sets of assets and risk instruments within a single special purpose vehicle, the SCC, thereby allowing for the launch of multiple securitisation transactions without incurring any risk of cross-contamination between the different sets of creditors and investors. This is the key

difference between a cell company and the traditional non-cellular company. 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. In fact, although the SCC and its cells together constitute a single legal entity, each cell constitute distinct and segregated patrimonies, which are ring-fenced from each other.

The SCC regulations also provide that an SCC can be established solely for the purpose of either carrying on the business of a securitisation vehicle in accordance with the Securitisation Act (Cap. 484 of the Laws of Malta) or assuming risks as a reinsurance special purpose vehicle (RSPV) in accordance with the reinsurance special purpose vehicles regulations (Legal Notice 452 of 2013) issued in terms of the Insurance Business Act.

Currently, there are 12 SCCs established in Malta. Of these 12, 11 intend carrying on business of securitisation vehicles with six cells being notified to the MFSA over the past few months. One SCC has been established to carry on business as an RSPV and has duly submitted an application for licensing, which is currently being considered by the MFSA.

Although these two types of SCC vehicles perform different activities, they both enjoy many commonalities as far as their setting up and operation are concerned. Nevertheless, they also possess a set of specific features, some of which have been identified below.



Securitisation cell companies carrying on business of securitisation vehicles

Under the laws of Malta, in accordance with Article 18 of the Securitisation Act and Regulation 22 of the SCC regulations, the SCC is required to give notice to the MFSA prior to commencement of business as a securitisation vehicle, and also prior to commencing business in respect of any individual cell. In addition, an SCC which falls within the definition of a 'public securitisation vehicle' in terms of Article 19(1) (a) of the Securitisation Act requires authorisation, and cells may only be created with the prior approval of the MFSA acting as competent authority under the Securitisation Act. Furthermore any approval or notification issued in respect of a cell is required to be registered with the Registrar of Companies.

The SCC may then enter into one or more securitisation transactions in respect of a cell. Article 2 of the Securitisation Act defines "securitisation" as a transaction or an arrangement whereby a securitisation vehicle, directly or indirectly (a) acquires securitisation assets from an originator by any means, (b) assumes any risks from an originator by any means, or (c) grants a secured loan or other secured facility or facilities to an originator, and finances any or all of the above, directly or indirectly, in whole or in part, through the issue of financial instruments, and includes any preparatory acts carried out in connection with the above.

The SCC may also 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. Therefore in accordance with Regulation 25 of the SCC regulations, an SCC may enter into one or more

securitisation transactions in respect of a cell provided that the securitisation assets allocated to a cell originate from the same originator. This allows the securitisation assets in each cell to be protected in the sense that the SCC's 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.

In compliance with Regulation 21 of the SCC regulations a securitisation vehicle formed and constituted as a limited liability company may be converted

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into an SCC carrying on the business of a securitisation vehicle following the submission of a written notification to the MFSA on the appropriate form, accompanied by the documentation as prescribed in the SCC regulations.

Securitisation cell companies carrying on business as RSPVs

The RSPV regulations define a "reinsurance special purpose vehicle" as an undertaking, other than an existing insurance undertaking or reinsurance undertaking,

which assumes risks from a ceding undertaking and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment right of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such a vehicle.

The SCC regulations provide that an SCC may only carry on business as an RSPV with the prior authorisation of the MFSA granted in terms of the RSPV regulations. This also applies to the setting up of cells and any approval issued is required to be registered with the Registrar of Companies.

The SCC may then enter into one or more risk transfer arrangements in respect of a cell 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.

The development of a regulatory framework for securitisation vehicles and SCCs is another milestone in the progress of Malta's financial services sector. Against a backdrop of increasing financial innovation and constant changes affecting financial markets, the MFSA strives to adopt a flexible and proactive approach to market events while trying to find a balance between providing the necessary support to industry participants and the protection of investors, which balance undoubtedly has its challenges. 🌱