

Consultation Document on a New Chapter 17 to the Insurance Rules entitled “Cell Companies carrying on Business of Insurance” and amendments to Chapter 5 to the Insurance Rules

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NOTE: The documents circulated by the MFS A for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

1.0 Introduction

- 1.1 The MFSA periodically conducts reviews to the legislation to amend it in line with findings observed while conducting regulatory work, as well as other findings observed by the market and brought to the attention of the MFSA, whilst carrying out their operations. In recent years, while conducting reviews, it was noted that the procedures in relation to the transfer of cellular assets of a cell company and the liquidation of a cell in [Subsidiary Legislation 386.10](#) Companies Act (Cell Companies Carrying on Business of Insurance) Regulations (hereinafter 'the PCC Regulations' or 'the Regulations') were not detailed.
- 1.2 In this respect the MFSA is issuing for Consultation a number of documents. It is to be noted that in light of new procedures, a Consultation in relation to amendments to the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations will be issued on the Government Portal. On the other hand, a Consultation Document on the proposed new Chapter 17 of the Insurance Rules entitled "*Cell Companies carrying on Business of Insurance*" and the proposed amendment to Chapter 5 of the Insurance Rules will be issued on the MFSA website.
- 1.3 In order to tackle the findings observed, the MFSA and the Malta Business Registry (hereinafter the 'MBR') have been liaising to discuss proposed amendments to be carried out to the said PCC Regulations in light of the fact that the Regulations are issued under the Companies Act which falls within the remit of the Malta Business Registry.
- 1.4 As a result of the above and for the purposes of this consultation, the following documents in draft format will be issued for joint Consultation between the MFSA and the MBR:
- A proposed new Chapter 17 to the Insurance Rules entitled "*Cell Companies carrying on Business of Insurance*"; and
 - A proposed amendment to Chapter 5 to the Insurance Rules.
- 1.5 With respect to the above, it is to be noted that new procedures have been set in place for Consultation purposes. Consultations that include Secondary Legislation, in this case the PCC Regulations, will be published on the Government Portal, accessible [here](#). Consultations that include Rules will be uploaded on the MFSA website as was previously done. In this respect, it is being advised that when reviewing consultation documents, both the consultation uploaded on the Government Portal and the consultation uploaded on the MFSA portal are accessed to ensure that a full review of the documents in draft format is carried out.
- 1.6 With respect to the submission of feedback, new procedures have also been introduced. Since Consultations including secondary legislation will be uploaded on the Government Portal, feedback of such is also required to be submitted on the Government Portal.

- 1.7 Feedback in relation to the proposed amendments to the Rules, as is the case in this Consultation Document, are to be addressed to the Insurance and Pensions Supervision function and submitted in writing via email to ips_legal@mfsa.mt. Since the PCC Regulations are issued under the Companies Act, which falls within the remit of the MBR, the MBR is to be copied in when feedback is submitted, via legal.enforcement@mbr.mt. All feedback sent on the different platforms is to refer to this Consultation Document in the subject field and should be submitted by not later than **13 October 2023**.
- 1.8 The purpose of this Consultation Document is to gather feedback on the proposed amendments from the market. As a result of this, these proposals are not binding and are subject to changes and revisions.

2.0 The new Chapter 17 to the Insurance Rules

2.1 In line with the amendments being proposed to Subsidiary Legislation 386.10 hereinafter referred to as the ‘*PCC Regulations*’, the MFSA is proposing the introduction of a new Chapter 17 to the Insurance Rules to compliment the amended PCC Regulations. The aim behind this proposed new introduction is to include clear procedures in order to transfer a cell of a cell company as well as cease, service or run off the business of insurance of a cell and wind up a cell of a cell company. The new Chapter aims to strike the right balance between creditor protection and effective procedures that eliminate time consuming and cumbersome processes. In this respect, the MFSA is proposing that this new Chapter will delve into the detailed and structured procedure which needs to be followed in the different scenarios that may arise when:

- a transfer of a cell of a cell company arises;
- there is a ceasing of a cell;
- there is a cell carrying out the servicing or run-off of business of insurance; and,
- there are different instances where the trigger for winding up ensues.

Transfer of a cell of a cell company

2.2 The proposed new Chapter will prompt a cell company which wishes to transfer the cellular assets, but not the non-cellular assets of a cell company, to obtain the necessary written approvals by the competent authority. In this respect, this Chapter will lay down the methodology of how a cell of a cell company will be transferred to:

- (a) another cell company authorised under the Insurance Business Act;
- (b) an authorised insurance undertaking or a European insurance undertaking; or
- (c) a third country insurance undertaking.

- 2.3 Where a cell company wishes to transfer the cellular assets of a cell company to **another cell company authorised under Article 7 of the Insurance Business Act**, the MFSA is proposing that primarily there is a transfer of the portfolio of business of the cell. With respect to the transfer of the rest of the assets of the cell, it is being proposed that the transferring cell company and the receiving cell company enter into a written agreement. This is being done in order to ensure that a clear procedure which eliminates time consuming and cumbersome processes is set up. The same process ensures the protection of creditors.
- 2.4 With respect to the rest of the transfers, wherein a cell of a cell company transfers to an authorised insurance undertaking, a European insurance undertaking, or a third country insurance undertaking, the MFSA is proposing to regulate that transfer by including provisions in relation to a portfolio transfer only since the transfer will be between a cell of a cell company to a legal entity.

From a cell of a cell company to another cell company authorised under the Insurance Business Act

- 2.5 A transfer from a cell of a cell company to another cell company authorised under the Insurance Business Act will require the transfer of all or part of its right and obligations under such general business policies or the whole of the long-term business carried out by the cell of a cell company. This shall not be valid unless it has been approved by a board resolution of the transferring cell company and the receiving company. Once a board resolution has been obtained, a portfolio transfer of a cell of a cell company to another cell company would need to be carried out. The said portfolio transferred shall be carried out in line with the applicable provisions of the Insurance Business Act on portfolio transfers as applicable depending on the type of portfolio transfer to be conducted, whether pertaining to general business, long term business, whether the transfer will include all or part of the business etc.
- 2.6 The proposed new Chapter shall also include a set of requirements that need to be satisfied for the competent authority to issue a cell transfer approval in relation to a cell of a cell company. These requirements include that a cell transfer approval will not be approved by the competent authority unless the transferring cell company submits a declaration from the directors of the transferring cell company stating whether:
- (i) there are regulatory concerns associated with the cell transfer; and
 - (ii) there is any pending litigation connected to, or in any way affecting the cell;
- 2.7 Furthermore, in order to transfer the rest of the assets which do not comprise the portfolio of business, it is being proposed that the transferring cell company will be required to enter into a draft terms of agreement with the receiving cell company which shall contain specific

requirements as indicated in the proposed new Rule. The draft terms of agreement will then be forwarded to the competent authority for its approval after being signed by at least one director of the transferring cell company, the cell owner of the transferring cell of the transferring cell company and one director of the receiving cell company.

- 2.8 The new Insurance Rule also includes a proposed provision stating that approval will not be granted unless a notice approved by the competent authority informing the public of the transfer is published on the Government Gazette or on a website maintained by the Registrar for a period of three (3) months is published. This three (3)-month period is being imposed for the benefit of any creditor who, during this period of time, will have the opportunity to submit any objection by sworn application showing good cause as to why the transfer should not take place. Should this take place, the court will then, after evaluating this objection, decide to uphold the objection or allow the cell transfer to occur on sufficient security being given. Furthermore, the competent authority retains the right to subject a cell transfer approval to such conditions as it may from time to time deem fit to impose.
- 2.9 Following the approval of the competent authority, it is being proposed that the transferring cell company shall then be required within fourteen (14) days from the date of issue of the cell transfer approval, to deliver to the Registrar a copy of the cell transfer approval for registration and return the original certificates of the approval of the cell to the competent authority.

From a cell of a cell company to an insurance undertaking or a European Insurance Undertaking

- 2.10 The procedure to carry out a transfer from a cell of a cell company to an insurance undertaking or a transfer from a cell of a cell company to a European Insurance Undertaking, is also included in the proposed new Rule. It is being proposed that the Chapter stipulates that no transfer shall be complete unless it obtains the specific written approval of the competent authority. In order to obtain this, the competent authority will need to be satisfied that a portfolio transfer has been conducted in line with the applicable provisions of the Insurance Business Act on portfolio transfers as applicable depending on the type of portfolio transfer to be conducted, whether pertaining to general business, long term business, whether the transfer will include all or part of the business etc.

From a cell of a cell company to a third country insurance undertaking

- 2.11 The proposed procedure to carry out a transfer in this instance, adopts the same methodology as outlined above. The transfer would be subject to the competent authority's written approval. For this to be obtained, a portfolio transfer in line with the applicable provisions of the Insurance Business Act on portfolio transfers would need to be conducted. Following the approval obtained by the competent authority, after the portfolio has been transferred, the cell of the transferring company would be able to be wound up in line with the provisions in the proposed new rule that set out the process to wind up a solvent cell.

2.12 In relation to the above, the MFSA would like to note that the above-mentioned procedure has been drafted after multiple internal discussions and discussions with the MBR, and after taking into consideration and consulting applicable provisions on the procedure to transfer as laid down in the Insurance Business Act, the Companies Act and the current PCC Regulations.

Ceasing of a Cell

2.13 The MFSA is also proposing to include the procedure to be followed in the event of a ceasing of a cell. This shall include *inter alia* requirements that the cell company would be required to give notice of its intention to cease to carry on business by no later than six (6) months prior. This shall also be subject to the cell company complying with any requirements as may be stipulated by the competent authority. These proposed requirements have been drafted taking into consideration the applicable provisions in respect to ceasing to carry on business as outlined in the Insurance Business Act.

2.14 In this respect, for the competent authority to give its approval, it is being proposed that the cell company will be required to give publicity to the matter amongst its policyholder and in the press in the form and manner as may be determined by the competent authority. This is being done to ensure that policyholders and creditors are privy to the business decision taken by the cell company to cease the cell. It is also being proposed that the cell company will also be required to discharge all the liabilities of the cell of the cell company to its policyholders and creditors in a manner acceptable to the competent authority and appoint a person which shall service or run-off the business of the cell of the cell company, as the case may be.

2.15 Furthermore, it is also being proposed that the competent authority will also have the power to require the cell of the cell company to ascertain that its technical provisions meet the requirements of Article 18E of the Insurance Business Act and that the cell resolves by means of a board resolution of the cell company that the cell of the cell company shall voluntarily cease to effect and carry out any new and renewal contracts of insurance from the date indicated in the notice. Furthermore, the cell of the cell company is required to submit to the competent authority a declaration signed by at least two directors from the Board of Directors of the cell company stating whether:

- (i) the assets of the cell satisfy or exceed the liabilities of the cell; or
- (ii) the liabilities of the cell exceed the assets of the cell, and in such instance, there are sufficient non-cellular assets to satisfy the excess cell liabilities of the cell;

2.16 Finally, it is being proposed that the ceasing cell will be required to submit to the competent authority the original certificate of authorisation to carry on business of insurance of the cell of a cell company. The proposed new Rule also states that within thirty days before the proposed date of which the cell of a cell company intends to cease to carry on the business, the competent authority will be required to issue a permit to the cell of a cell company:

- (a) authorising it to cease to carry on such business and to service or run-off that business, as from a specified date;
- (b) specifying the conditions under which such service or run-off shall be carried out; and
- (c) authorising a person to carry out such service or run-off.

Cell carrying out servicing or run-off of business of insurance

2.17 The MFSA is proposing that this section includes a requirement where in the event where a cell will carry out servicing or run-off of its business of insurance, it shall not as from the date specified in the permit be authorised to carry on the business it was previously authorised to carry on. Such cell will also not be authorised to effect and carry out any new contracts of insurance but shall in the case of long term business, service and/or in the case of general business, run-off any contracts of insurance effected and carried out by it before the specified date. This proposed new section is in line with Article 40 of the Insurance Business Act.

Winding up of a cell

2.18 The MFSA is proposing that the new Chapter 17 differentiates between the processes to be followed in the event of winding up. In this respect, the processes that the MFSA is proposing are in line with the applicable provisions of the Insurance Business Act and [the Insurance Business \(Reorganisation and winding up of Insurance Undertakings\) Regulations](#). This to ensure a clear and effective procedure is in place. In this respect, the proposed provisions in the new Chapter 17 will capture the different instances in the event of:

- (a) a solvent cell
- (b) an insolvent cell
- (c) a cell company

Winding up of a solvent cell

2.19 In the event of a solvent cell, it is being proposed that the cell company would need to provide to the competent authority a certificate to be issued by the independent external auditors certifying that:

- (a) the cell of the cell company has no outstanding liabilities arising from the carrying on of business of insurance and that no such liabilities will arise in the future; and
- (b) where applicable, the cell has serviced or run-off the business of insurance it was authorised to carry on.

2.20 Furthermore, in view of the fact that at this stage the cell would have ceased, the permit to cease to carry on business of insurance will need to be provided to the competent authority.

2.21 Following the submission of the above by the cell company to the competent authority, it is being proposed that the competent authority would assess the information submitted and notify the cell company if approval to proceed to dispose of the issued share capital of the cell is obtained. Following this, the proposed new Chapter will also stipulate that the cell company would need to inform the competent authority when the issued share capital of the cell has been disposed and shall also deliver the relevant forms to the Registry of Companies to wind up the cell company in question. Following this procedure, the competent authority would be able to strike off the name of the cell from the competent authority's registry.

Winding up of an insolvent cell

2.22 In the event of an insolvent cell, it is being proposed that for the cell company to wind up an insolvent cell, it would need to ensure that such cell:

- (a) reorganises as if it were a Maltese insurance undertaking; or
- (b) winds up as if it were a Maltese insurance undertaking;

in accordance with the provisions of the Insurance Business (Reorganisation and Winding up of Insurance Undertakings) Regulations.

2.23 In this respect, the MFSA is further proposing that where a cell of a cell company enters into reorganisation or winding up proceedings, the directors of the cell company shall continue exercising their duties in relation to the cell company and other cells. The Chapter will also contain an additional stipulation that the directors of such cell company do not exercise a management power, in relation to a cell in winding up, without the consent of the administrator or liquidator of the cell. In this respect, the proposed new rule also includes a paragraph defining what is meant by "management power" to avoid any misinterpretation of this by the market.

Winding up of a cell company

2.24 In the instance where a winding up of a cell company occurs, the MFSA is proposing to include in the new Chapter 17, that prior to this taking effect, the cell company would need to ensure that every cell:

- (a) is transferred to another cell company;
- (b) transfers to another authorised insurance undertaking, European insurance undertaking or third country insurance undertaking the portfolio of insurance business in line with the requirements of the Insurance Business Act and upon completion of the transfer of the cell, winds up the cell; or

(c) is wound up.

2.25 Furthermore, in the event that a cell company has not created one or more cells, it is being proposed that the cell company shall cease to carry on business of insurance in accordance with the provisions of the Insurance Business Act, Regulations and Insurance Rules issued thereunder.

3.0 Amendments to be carried out to Chapter 5 of the Insurance Rules

3.1 The MFSA is also proposing to introduce a new provision 5.5.95 to Chapter 5 of the Insurance Rules on the *Risk Mitigation Techniques* to be adopted by authorised insurance undertakings. This provision will include a new requirement which states that undertakings shall not take into account risk mitigation clauses and/or techniques in relation to the obligation to pay a claim where a reinsurance undertaking defaults, which disproportionately reduce the counterparty default risk on the exposure of a reinsurance undertaking, for the purposes of calculating the Solvency Capital Requirement.

3.2 The purpose behind this introduction is to ensure maximum policyholder protection insofar as undertakings being able to satisfy a claim when a re-insurer is in default by not being able to refer to risk mitigation clauses and/or techniques in relation to the obligation to pay a claim. By adding this clause, a valid claim will need to be honoured by the undertaking irrespective of whether the re-insurer is in default.

4.0 The Way Forward

4.1 In line with the new procedures adopted, any comments and feedback in relation to the proposed amendments to the PCC Regulations (Secondary Legislation) as included in the Consultation accessible through the Government Portal are to be submitted through the same Portal by not later than **13 October 2023**. Any comments and feedback in relation to this Consultation (on the proposed new Chapter 17 to the Insurance Rules and the proposed amendment to Chapter 5 to the Insurance Rules) are to be addressed to the MFSA's Insurance and Pensions Supervision function and submitted via email on ips_legal@mfsa.mt and copying in legal.enforcement@mbr.mt by not later than **13 October 2023**.