

Cell Companies carrying on Business of Insurance

Chapter 17

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17.1 Introduction

17.1.1 This Chapter on cell companies carrying on business of insurance is made by the competent authority pursuant to, and for the purposes of, Regulations 16 and 17 of the [Companies Act \(Cell Companies Carrying on Business of Insurance\) Regulations](#) and determines the manner in which the cellular assets attributable to any cell can be transferred. The Chapter will also determine the manner in which a cell of a cell company will be ceasing, running off or servicing insurance business and the manner in which the cell of a cell company is to be wound up.

17.2 Applicability

17.2.1 The Chapter applies to any company:

- (a) which may be formed or constituted as a cell company to carry on business of insurance; or
- (b) carries on business of insurance and has been converted, and authorised by its memorandum and articles of association, into a cell company.

17.3 Definitions

17.3.1 In this Chapter, unless otherwise required:

"authorised insurance undertaking" means an undertaking, which has received authorisation pursuant to article 7 of the Insurance Business Act to carry on direct general business and, or long term business, and includes an undertaking authorised to carry on direct and reinsurance business;

"business of insurance" has the same meaning as is assigned to it in article 2(1) of the Insurance Business Act, and shall include business carried on by a captive insurance undertaking and a captive reinsurance undertaking as defined in the Insurance Business Act, the business of insurance manager, as well as the business of insurance broking under the Insurance Distribution Act;

“cell” means a cell created by a cell company for the purpose of segregating and protecting the cellular assets of the company in the manner provided by these regulations and includes a reference to segregated accounts, compartments or units within a company having multiple accounts, compartments or units, by whatever name designated, and the word “cellular” shall be interpreted and applied accordingly;

“cell company” is a company formed or constituted as such or converted into a cell company and creating within itself one or more cells for the purposes of segregating and protecting the cellular assets of the company in accordance with the provisions of these regulations, and in relation to the business of insurance manager, as well as the business of insurance broking, reference to “company” shall include reference to a partnership en commandite or similar or equivalent body corporate, which has its capital divided into shares authorised under the Insurance Business Act;

“cell transfer approval” means an approval of the competent authority under regulation 16 approving the transfer of the cellular assets attributable to any cell of a cell company to another person;

“cellular assets” of a cell company means the assets of the company attributable to any cell of the company pursuant to regulation 9(4);

“competent authority” means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

“European insurance undertaking” means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing the activity of direct insurance within the meaning of Article 2 of the Solvency II Directive, which has received authorisation in accordance with Article 14 of the Solvency II Directive;

“Insurance Rule” has the same meaning as is assigned to it by article 2 of the Insurance Business Act;

“non-cellular assets” of a cell company comprise the assets of the company which are not cellular assets;

"Solvency II Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), as amended from time to time, and includes any delegated acts and any technical standards that have been or may be issued thereunder;

"third country insurance undertaking" means an undertaking, other than a European insurance undertaking, which would require authorisation as an authorised insurance undertaking pursuant to article 7 of the Insurance Business Act as if its head office were situated in Malta;

"transferring cell company" means the cell company that is to transfer part or all of its non-cellular assets or the cellular assets of its cell;

"transferring cell" means the cell of the cell company that is to transfer part or all of the cellular assets;

"receiving cell company" means the cell company receiving part or all of the non-cellular assets or the cellular assets of the transferring cell company.

17.4 Transfer of a cell of a cell company

17.4.1 The cellular assets attributable to any cell of a cell company, but not the non-cellular assets of a cell company, may with the specific written approval of the competent authority (a "cell transfer approval") be transferred to:

- (a) another cell company authorised under Article 7 of the Insurance Business Act;
- (b) an authorised insurance undertaking or a European insurance undertaking;
- or
- (c) a third country insurance undertaking.

From a cell of a cell company to another cell company

17.4.2 Where it is being proposed to carry out a transfer, pursuant to paragraph 17.4.1(a) under which the cellular assets of a cell of a cell company is to transfer to another cell company authorised under the Insurance Business Act:

- (a) cellular assets; and
- (b) all its rights and obligations under such general business policies, or the whole of the long-term business carried on by the cell of a cell company,

such transfer shall not be valid unless it has been approved by a board resolution of the transferring cell company and receiving cell company. The board resolution shall:

- (i) resolve to **transfer** all the rights and obligations under general business policies and/or long term business of the cell of the cell company which constitutes the carrying on of business of insurance in or from Malta or in or from a country outside Malta; and
- (ii) resolve to **surrender** the cell by applying to the competent authority to obtain a cell transfer approval pursuant to sub-regulation 17.4.1 subject to the competent authority's approval.

Portfolio Transfer of a cell of a cell company to another cell company

- 17.4.3 Where it is proposed to carry out a transfer, under which a cell of a cell company is to transfer to another cell company all its rights and obligations under such general business policies, the provisions of Articles 33, 34 and 37A of the Insurance Business Act shall apply to a cell, as if reference in such provisions to "transferor" were a reference to a "cell".
- 17.4.4 Where it is proposed to carry out a scheme, under which the whole of the long term business carried on by a cell of a cell company is to be transferred to another cell company the provisions of Articles 35, 36 and 37A of the Insurance Business Act shall apply to a cell, as if reference in such provisions to "transferor" were a reference to a "cell".
- 17.4.5 Where a cell of a cell company carrying on business restricted to reinsurance proposes to transfer all or part of its business, the provisions of Articles 37 and 37A of the Insurance Business Act shall apply to a cell, as if reference in such provisions to "transferor" were a reference to a "cell".
- 17.4.6 Where the transfer being proposed consists of the transfer of only a part of the rights and obligations of general business policies, or long term business or reinsurance, the provisions of Articles 33, 34, 35, 36, 37 and 37A as applicable of the Insurance Business Act shall apply to a cell, as if reference in such

provisions to “transferor” were a reference to a “cell” and paragraphs 17.4.7 to 17.4.16 shall not apply.

Transfer of the cellular assets of a cell of a cell company to another cell company

17.4.7 Where it is being proposed to carry out a transfer, under which all the cellular assets of a cell of a cell company is to transfer to another cell company, the competent authority shall not issue a cell transfer approval in relation to a cell of a cell company unless the transferring cell company:

- (a) submits a declaration from the directors of the transferring cell company 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;
- (b) enters into a draft terms of agreement with the receiving cell company which shall specify the following:
 - (i) the status, name and registered office of the transferring cell company and the receiving cell company and the name of the cell being transferred;
 - (ii) the terms relating to the allotment of shares in the receiving cell company;
 - (iii) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;
 - (iv) the date from which the transactions of the transferring cell of the transferring cell company shall be treated for accounting purposes as being those of the receiving cell company;
 - (v) a requirement stating that the liabilities, contracts, debts and other obligations of the transferring cell within the transferring cell company, to which the cell company was subject to, immediately before the transfer, are to become the liabilities, contracts, debts and other obligations of the receiving cell company;
 - (vi) actions, and other legal proceedings which, immediately before the transfer were pending by or against the transferring cell company in respect

of the transferring cell may continue or be continued by or against the receiving cell company in respect of the transferring cell;

(vii) the consent of all the shareholders of the transferring cell of the transferring cell company; and

(viii) a declaration that the property and rights of the transferring cell of the transferring cell company shall immediately upon the transfer will become the property and rights of the receiving cell company.

17.4.8 The draft terms of the agreement, duly completed, shall be 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 and forwarded to the competent authority.

17.4.9 The competent authority may subject a cell transfer approval to such conditions as it may from time to time deem fit to impose,

17.4.10 The competent authority shall not determine a cell transfer approval unless it is satisfied that a notice, approved by it informing the public that a cell of a transferring cell company shall be transferred to a receiving company. The notice shall be *published in the Government Gazette or on a website maintained to by the Registrar for a period of three months*. During the aforesaid period of three months any creditor of the cell of the cell company whose debt existed prior to the publication of the draft terms of agreement may by sworn application object to the cell transfer approval and, if he shows good cause why it should not take effect, the court shall either uphold the objection or allow the cell transfer approval to occur on sufficient security being given.

17.4.11 Where the competent authority is satisfied that all the requirements have been complied with, the competent authority shall issue the cell transfer approval.

17.4.12 The transferring cell company shall within fourteen days from the date of issue of the cell transfer approval:

(a) deliver to the Registrar a copy of the cell transfer approval for registration; and

(b) return the original certificates of the approval of the cell to the competent authority.

17.4.13 The competent authority may issue a cell transfer approval in relation to a cell of a cell company notwithstanding that a liquidator has been appointed to act in

respect of the company or the company has passed a resolution for voluntary winding up:

Provided that, the company proves to the satisfaction of the competent authority that the transfer would not unfairly prejudice creditors or other third parties.

17.4.14 Notwithstanding the above, a cell company may make payments or transfers from the cellular assets attributable to any cell of the company to a person entitled to have recourse to those cellular assets.

17.4.15 A cell company shall not require a cell transfer approval to invest and change investment of, cellular assets, or otherwise to make payments or transfers from cellular assets in the ordinary course of the company's business.

17.4.16 Article 83 of the Companies Act shall not apply.

17.5 Transfer of Cellular assets from cell company to an insurance undertaking or a European Insurance Undertaking

17.5.1 Where it is being proposed to carry out a transfer, pursuant to paragraph 17.4.1(b) under which the cellular assets attributable to any cell of a cell company, but not the non-cellular assets of a cell company, to be transferred to an authorised insurance undertaking or a European insurance undertaking, such transfer shall not be valid unless written approval is granted by the competent authority.

17.5.2 A transfer, pursuant to regulation 16(1) of the [Companies Act \(Cell Companies Carrying on Business of Insurance\) Regulations](#), of cellular assets attributable to a cell of a cell company shall not of itself entitle creditors of that company to have recourse to the other assets of the person to whom the cellular assets were transferred.

17.5.3 No transfer of the cellular assets attributable to a cell of a cell company may be made except with the specific written approval of the competent authority (a "cell transfer approval").

17.5.4 The competent authority shall not issue a cell transfer approval in relation to a cell of a cell company unless it is satisfied that:

(a) where the cell of a cell company transfers to an authorised insurance undertaking or a European insurance undertaking all its rights and obligations under such general business policies, or general business policies of such

descriptions, as may be specified in the scheme, the provisions of Articles 33, 34 and 37A of the Insurance Business Act shall apply to a cell, as if reference in such provisions to “transferor” were a reference to a “cell”;

(b) where the cell of a cell company transfers an authorised insurance undertaking or a European insurance undertaking, the whole or part of the long term business carried on by a cell of a cell company is to be transferred to another cell company the provisions of Articles 35, 36 and 37A of the Insurance Business Act shall apply to a cell, as if reference in such provisions to “transferor” were a reference to a “cell”;

(c) where the cell of a cell company transfers to an authorised insurance undertaking or a European insurance undertaking business restricted to reinsurance proposes to transfer all or part of its business, the provisions of Articles 37 and 37A of the Insurance Business Act shall apply to a cell, as if reference in such provisions to “transferor” were a reference to a “cell”.

17.5.5 Where the portfolio has been transferred, and cell transfer approval obtained, the cell of the transferring company shall be wound up in line with the provisions of paragraph 17.9.

17.6 Transfer of cellular assets from cell company to a third country insurance undertaking

17.6.1 Where it is being proposed to carry out a transfer, pursuant to paragraph 17.4.1(c) under which the cellular assets attributable to any cell of a cell company, but not the non-cellular assets of a cell company, to be transferred to a third country insurance undertaking, such transfer shall not be valid unless written approval is granted by the competent authority.

It shall be lawful, subject to the provisions of paragraph 17.4.6, for the cellular assets attributable to any cell of a cell company, but not the non-cellular assets of a cell company, to be transferred to a third country insurance undertaking.

17.6.2 A transfer, pursuant to regulation 16(1) of the [Companies Act \(Cell Companies Carrying on Business of Insurance\) Regulations](#), of cellular assets attributable to a cell of a cell company shall not of itself entitle creditors of that company to have recourse to the other assets of the person to whom the cellular assets were transferred.

17.6.3 No transfer of the cellular assets attributable to a cell of a cell company may be made except with the specific written approval of the competent authority (a “cell transfer approval”).

17.6.4 The competent authority shall not issue a cell transfer approval in relation to a cell of a cell company unless it is satisfied that:

(a) where the cell of a cell company transfers to a third country insurance undertaking all its rights and obligations under such general business policies, or general business policies of such descriptions, as may be specified in the scheme,

(i) the provisions of Articles 33 and 34 of the Insurance Business Act shall apply to a cell, as if reference in such provisions to “transferor” were a reference to a “cell”; and

(ii) the provisions of the Annex to the BOS Decision on the Collaboration of the Insurance Supervisory Authorities of the Member States of the European Economic Area;

(b) where the cell of a cell company transfers to a third country insurance undertaking, the whole or part of the long term business carried on by a cell of a cell company is to be transferred to another cell company the provisions of Articles 35 and 36 of the Insurance Business Act shall apply to a cell, as if reference in such provisions to “transferor” were a reference to a “cell”;

(c) where the cell of a cell company transfers to a third country insurance undertaking business restricted to reinsurance proposes to transfer all or part of its business, the provisions of Articles 37 of the Insurance Business Act shall apply to a cell, as if reference in such provisions to “transferor” were a reference to a “cell”.

17.6.5 Where the portfolio has been transferred, and cell transfer approval obtained, the cell of the transferring company shall be wound up in line with the provisions of paragraph 17.9.

17.7 Ceasing of a Cell

17.7.1 Subject to the following provisions, where a cell of a cell company intends to cease to carry on the business of insurance it is authorised to carry on, such cell company shall no later than six (6) months before the date on which the cell intends to cease to carry on business, give notice thereof in writing to the competent authority, and the cell company shall comply with any requirements stipulated by the competent authority.

17.7.2 Where the cell company gives notice to the competent authority under paragraph 17.7.1, the competent authority:

- (a) shall require the cell company to:
 - (i) 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;
 - (ii) discharge all the liabilities of the cell of the cell company to its policyholders and creditors in a manner acceptable to the competent authority;
 - (iii) appoint a person which shall service or, as the case may be, run-off the business of the cell of the cell company; and
- (c) may require the cell of the cell company to ascertain that its technical provisions meet the requirements of Article 18E of the Insurance Business Act;
- (d) resolves by means of a board resolution of the cell company that the cell of the cell company shall voluntarily ceases to effect and carry out any new and renewal contracts of insurance from the date indicated in the notice:
- (e) 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;

(f) submit to the competent authority the original certificate of authorisation to carry on business of insurance of the cell of a cell company.

17.7.3 The competent authority shall, not later than thirty days before the proposed date on which a cell of a cell company as aforesaid intends to cease to carry on the business it is authorised to carry on, 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.

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

17.8.1 Every cell of a cell company issued under paragraph 17.7 with a permit authorising it to cease to carry on the business it is authorised to carry on shall not, as from the date specified in the permit ("the specified date"), effect and carry out any new contracts of insurance in the business mentioned in the permit but shall –

(a) in the case of long term business, service or cause the person named in the permit to service on its behalf;

(b) in the case of general business run-off or cause the person named in the permit to run-off on its behalf,

contracts of insurance effected and carried out by it before the specified date.

17.9 Winding up of a solvent cell

17.9.1 Where the competent authority receives a signed declaration in line with paragraph 17.7.2(e)(i) and the cell of the cell company has ceased to carry on business it was authorised to carry on and where applicable has carried out the servicing or run-off of the business of insurance it was authorised to carry on, the cell company shall provide the competent authority:

(a) a certificate to be issued by the external auditors certifying that:

(i) 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

(ii) where applicable, the cell has serviced or run-off the business of insurance it was authorised to carry on;

(b) where applicable, the permit to cease to carry on business of insurance.

17.9.2 The competent authority shall assess the information submitted in paragraph 17.9.1 and notify the cell company that it may proceed to dispose of the issued share capital of the cell.

17.9.3 The cell company shall inform the competent authority when the issued share capital of the cell has been disposed. The competent authority shall strike off the name of the cell from the competent authority's registry.

17.10 Winding up of an insolvent cell

17.10.1 Where the competent authority receives a signed declaration in line with paragraph 17.7.2(e)(ii) or where the liabilities of a cell of a cell company exceed the assets of the cell and recourse to the non cellular assets of the company is not possible in terms of regulation 15 of the [Companies Act \(Cell Companies Carrying on Business of Insurance\) Regulations](#) or the non cellular assets of the cell company are not sufficient to satisfy the liabilities of the cell, the cell company shall ensure that such cell:

(a) reorganises as if it were a Maltese insurance undertaking; or

(b) wind 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](#).

17.10.2 Where the 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 any other cells:

Provided that the directors of a cell company shall not exercise a management power in relation to a cell in winding up without the consent of the administrator or liquidator of the cell.

17.10.3 For the purposes of paragraph 17.10.2 “management power” means a power which could be exercised so as to interfere with the exercise of the powers of the administrator or liquidator, whether such power is conferred on the cell company or the directors by an enactment or an instrument and whether such consent is general or specific.

17.11 Winding up of a cell company

17.11.1 Where a cell company with one or more cells intends to cease to carry on the business of insurance it is authorised to carry on, such cell company shall 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.

17.11.2 Where all the cells of the cell company satisfy any one of the requirements in paragraph 17.11.1, and the cell company does not have any other cellular assets, 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.

17.11.3 Where a cell company has not created one or more cells, it shall cease to carry on business of insurance in accordance with the provisions of the Insurance Business Act, Regulations and Insurance Rules issued thereunder.

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