

Consultation Document on the Amendments to the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations

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NOTE: The documents circulated by the MFSA 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 whilst 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, whilst 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 whilst a proposed new Chapter 17 of the Insurance Rules entitled "*Cell Companies carrying on Business of Insurance*" and a proposed amendment to Chapter 5 of the Insurance Rules will be issued on the MFSA website.
- 1.3 In addition to the legislative reviews conducted on the PCC Regulations, the MFSA also noted that PCCs were also presenting numerous applications with cells which included the non-recourse agreement in line with regulation 15 of the PCC Regulations. As a result, on the 22 December 2022, the MFSA published a [Circular](#) on the Proposed Changes to the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations (Subsidiary Legislation 386.10) wherein the MFSA informed the market that following a detailed assessment of the model whereby a PCC makes use of the possibility of non-recourse, the MFSA intends to review the PCC Regulations and remove the provisions of regulation 15.
- 1.4 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.
- 1.5 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 (hereinafter the "Authorities"):
- An amended Subsidiary Legislation 386.10 of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations with red markings to indicate the amended wording;

- The Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations.

- 1.6 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 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 consultations uploaded on the Government and the MFSA portals are accessed to ensure that a full review of the documents in draft format is carried out.
- 1.7 With respect to the submission of feedback, new procedures have also been introduced. In this respect, 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. Feedback in relation to the proposed amendments to the Rules are to be addressed to the Insurance and Pensions Supervision function and submitted in writing via email to ips_legal@mfsa.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 Amendments to be carried out to Subsidiary Legislation 386.10 of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations

Regulation 15 – The Removal of the non-recourse clause

- 2.1 The main aim behind the proposed amendments to regulation 15 of the PCC Regulations is to **remove the non-recourse clause**.
- 2.2 By removing the reference to the non-recourse clause, each and every cell of a cell company would be required to maintain recourse to the core. By maintaining the non-recourse clause, only the cellular assets of that cell may be utilised to satisfy the cellular liability of such cell. The aim behind this proposed removal, is for creditors to gain an added advantage of allowing creditors to pursue additional assets of the core when the assets of the cell are not sufficient to cover the liabilities of the cell.

- 2.3 The proposal to remove the non-recourse agreement which is currently being proposed is not something which was taken lightly. Both Authorities are aware that this could potentially raise concern within the industry and as a result, the proposal is to introduce a new transitional clause in sub-regulation (4) to regulation 15.
- 2.4 The new sub-regulation (4) will contain a transitional clause applicable for ten (10) years from the date of the coming into force of these Regulations. The new sub-regulation allows cells which exclusively carry on business of affiliated insurance or business of reinsurance and which have entered into a specific written agreement which provides that only the cellular assets of that cell may be utilised to satisfy the cellular liability of such cell, in line with the PCC Regulations and before the entry into force of this regulation, to continue to pursue the business, as approved by the competent authority for a period of **ten (10) years**. This introduction is being proposed to ensure a smooth transition of these amendments.

Regulation 16 – Transfer of cellular assets from cell company

- 2.5 In addition to the above, a number of amendments to regulation 16 of the PCC Regulations on the *transfer of cellular assets of a cell company* are also being proposed. The main purpose behind the proposed amendments to regulation 16 is to create a structured procedure to be adopted by cell companies conducting transfers of their cells.
- 2.6 In this respect, it is being proposed to amend sub-regulation 16(1) and introduce provisions to differentiate between different transfers of cellular assets and liabilities attributable to any cell of a cell company. In this respect, sub-regulation (1) differentiates between the transfer of a cell of a cell company to:
- another cell company authorised under the Insurance Business Act;
 - an authorised insurance undertaking or a European insurance undertaking; or
 - a third country insurance undertaking
- 2.7 The purpose behind this differentiation is to include a procedure to be adopted should a transfer be undertaken in any one of the scenarios mentioned above.
- 2.8 In order to be able to introduce a more detailed procedure on effecting a transfer of the cellular assets and liabilities attributable to any cell of a cell company, it is also being proposed to amend Regulation 16(4) to give the competent authority the power to issue Insurance Rules.
- 2.9 In this respect, the MFSA is proposing to issue a new Chapter in the Insurance Rules with the detail on the manner in which a transfer of cellular assets is required to be done. The Consultation

Document containing the proposed new Chapter 17 to the Insurance Rules is available on the MFSA website and can be accessed through this [link](#).

- 2.10 It is also being proposed to remove sub-regulation 16(5) of the PCC Regulations to remove reference in the Regulations on how a transfer of the cellular assets of a cell of a cell company is to be carried out in light of the fact that the new procedure will be included in the proposed new Chapter 17 to the Insurance Rules.
- 2.11 The MFSA is also proposing to introduce three new sub-regulations 16(10), 16(11) and 16(12) to the PCC Regulations and a new Schedule I to the said Regulations.
- 2.12 Where a transfer of the cellular assets and liabilities attributable to any cell of a cell company are transferred to another cell company authorised under the Insurance Business Act, in line with sub-regulation 16(1)(a), a new sub-regulation 16(10) is proposed to be included. The new sub-regulation will clarify that in case of such transfers, Article 83 of the Companies Act on the reduction of shared capital, shall not apply. Instead of applying Article 83 of the Companies Act, the cell company intending to conduct the transfer of a cell is required to deliver to the Registrar for registration, a notice in accordance with the proposed new Schedule I. Once the Registrar receives the notice, it shall publish such notice on a website maintained by it. This notification to the Registrar in the proposed new Schedule I will contain the required details in relation to the transfer to be published for the benefit of the general public.
- 2.13 Further to the above, the proposed new sub-regulation 16(11) will include an obligation to be undertaken by the cell company conducting the transfer to deliver to the Registrar for registration, a copy of the cell transfer approval as issued by the competent authority. Finally, the proposed new sub-regulation 16(12) will provide powers to the Registrar to strike off the name of the cell from under the name of the cell company, upon the completion of the transfer of the cellular assets and liabilities of the cell of the cell company, where necessary. Once the cell has been removed, the Registrar shall inform the MFSA as the competent authority in order to amend its records accordingly.

Regulation 17 – Ceasing, run-off or servicing and winding up of cells

- 2.14 With respect to Regulation 17 of the PCCs Regulations, the MFSA is proposing to amend the title of the Regulations to capture not only the liquidation of a cell but the full process of ceasing, run-off or servicing and the final winding up of the said cell.
- 2.15 In this respect, the proposal is to amend slightly sub-regulation 17(1) to clarify the process and the manner in which a cell of a cell company will:
- cease to carry on business of insurance;
 - run-off or service the business of insurance of a cell;
 - wind up the cell.

- 2.16 In addition to the above, a slight amendment to regulation 17(2) which already contained a power to issue Insurance Rules, is being proposed. The new sub-regulation 17(2) will include the power to issue Insurance Rules in the instance of ceasing, run-off or servicing and winding up of a cell.
- 2.17 Finally, a new regulation 17(3) is also being proposed. The new sub-regulation will require the cell company to inform the competent authority of its intention that one of its cells will cease to carry on business. The said cell company shall also be required to deliver to the Registrar for registration a notice in accordance with the proposed new Schedule II to the Regulations. This notification will also contain a declaration stating that a cell of a cell company shall be wound up. The same notification will also confirm to the Registrar whether the cell of the cell company which is going to be wound up is solvency or insolvent.

3.0 Transitional Period

- 3.1 A transitional period of **ten (10)** years will be provided to cells which exclusively carry on business of affiliated insurance or business of reinsurance and which have entered into a specific written agreement which provides that only the cellular assets of that cell may be utilised to satisfy the cellular liability of such cell, in line with the PCC Regulations and before the entry into force of the Regulation. Such cells shall continue to pursue the business, as approved by the competent authority for a period of ten (10) years.

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 this Consultation are to be submitted on the Government Portal. Feedback should be submitted by not later than **13 October 2023**.