

..... Prime Minister	
..... Minister for the Economy Minister for Finance and Employment
..... Chief Executive Officer Malta Financial Services Authority Chief Executive Officer Malta Business Registry

L.N. of 2023

**COMPANIES ACT
(CAP. 386)**

Companies Act (Cell Companies Carrying On Business Of Insurance) (Amendment) Regulations, 2023

IN EXERCISE of the powers conferred by article 84A of the Companies Act, the Minister for the Economy, European Funds and Lands, in consultation with the Minister for Finance and Employment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Citation.

S.L. 386.10

1. The title of these regulations is the Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations 2023, and these regulations shall be read and construed as one with the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, hereinafter referred to as “the principal regulations”.

Amends regulation 2 of the principal regulations.

2. In regulation 2 of the principal regulations in the definition “cell transfer approval”, for the words ‘under regulation 15’, there shall be substituted the words ‘under regulation 16’.

Amends regulation 15 of the principal regulations.

3. Immediately after sub-regulation (3) of regulation 15 of the principal regulations there shall be added the following new sub-regulation:

"L.N..... of 2023.

Transitory provision.

'(4) A cell which exclusively carries on business of affiliated insurance or business of reinsurance and which has 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 this regulation before the entry into force of the Cell Companies Carrying on Business of Insurance (Amendment) Regulations 2023, may continue to pursue the business on the basis of the said specific written agreement entered into in accordance with sub-regulation (1), as approved by the competent authority prior to the entry into force of the Cell Companies Carrying on Business of Insurance (Amendment) Regulations 2023, in line with the said regulation, until ten (10) years from the date of the coming into force of the said regulations, without prejudice to anything done or omitted to be done under the provisions of these regulations, the Insurance Business Act, Regulations and Insurance Rules issued thereunder.

Provided further that where a cell continues to pursue the business on the basis of the specific written agreement entered into in accordance with sub-regulation (1), such cell shall continue to comply with and adhere to the provisions of these regulations during the said ten (10) years.

(5) Without prejudice to sub-regulation (4), this regulation shall cease to have effect on the date of coming into force of the Cell Companies Carrying on Business of Insurance (Amendment) Regulations 2023, and shall only remain applicable to those specific written agreements entered into in accordance with sub-regulation (1) before the entry into force of the Cell Companies Carrying on Business of Insurance (Amendment) Regulations 2023 in terms of sub-regulation (4)."

Amends regulation 16 of the principal regulations.

4. Regulation 16 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof ,for the words "to be transferred to another person, wherever resident or incorporated, and whether or not a cell company.", there shall be substituted the words "to 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 as defined in the Insurance Business Act; or

(c) a third country insurance undertaking as defined in the Insurance Business Act.";

(b) sub-regulation (4) thereof shall be substituted by the following:

“(4) For the purpose of this regulation, the competent authority may, by Insurance Rules, determine the procedure to be adopted for the transfer of cellular assets from a cell company.”; and

(c) sub-regulation (5) thereof shall be deleted;

(d) immediately after sub-regulation (9), there shall be added the following new sub-regulation:

“(10) For the purposes of sub-regulation 1(a), article 83 of the Companies Act shall not apply. In such case, immediately after having sought the competent authority’s approval in terms of sub-regulation (3), but before the cell transfer approval is granted, the cell company intending to transfer the cellular assets of a cell shall deliver to the Registrar for registration, a notice in accordance with Schedule I of these regulations, and the Registrar shall publish such notice on a website maintained by the Registrar in accordance with Insurance Rules issued hereunder.

(11) Where the competent authority has granted a cell transfer approval, for the purposes of sub-regulation (1) and (3), the cell company transferring the cellular assets shall deliver to the Registrar for registration a copy of the cell transfer approval issued by the competent authority.

(12) Where all the cellular assets of a cell of a cell company have been transferred to another company, the Registrar shall:

(a) proceed with striking off the name of the cell from under the name of the cell company;

(b) register the name of the cell under the other company; and

(c) inform the competent authority accordingly.”.

Amends regulation 17 of the principal regulations.

5. Regulation 17 of the principal regulations shall be amended as follows:

(a) in the marginal note thereto for the words “Liquidation of cells”, there shall be substituted the words “Ceasing, run-off or servicing and winding up of cells.”;

(b) sub-regulation (1) thereof, for the words: “the liquidation of a cell”, there shall be substituted the words “the ceasing of a cell, the run-off or servicing of a cell; and the winding up of a cell”;

(c) in sub-regulation (2) thereof, for the words “adopted for the liquidation of a cell.”, there shall be substituted the words “adopted for the ceasing, run-off, or servicing and winding up of a cell.”; and

(d) immediately after sub-regulation (2), there shall be added the following new sub-regulation:

“(3) Where the cell company informs the competent authority that one of its cells, intends to cease to carry on business, the cell company shall deliver to the Registrar for registration, a notice in accordance with Schedule II informing the Registrar that one of its cell shall be wound up, together with a confirmation of solvency or insolvency of such cell.”.

Amends regulation 19 of the principal regulations.

6. In paragraph (d) of sub-regulation (1) of regulation 19 thereof, for the words “to refuse to issue a cell transfer approval under regulation 15,”, there shall be substituted the words “to refuse to issue a cell transfer approval under regulation 16,”.

Amends the second regulation 19 of the principal regulations.

7. Regulation 19, having the marginal note “Compliance by cell companies and their cells with the regulations.”, shall be renumbered as regulation 20.

Amends regulation 20 to the principal regulations.

8. Regulation 20 of the principal regulations shall be renumbered 21.

Addition of new Schedule I and Schedule II.

9. Immediately following regulation 21, as renumbered, of the principal regulations, there shall be added the following two new Schedules:

" SCHEDULE I
(Regulation 16)

Notification to the Registrar

Reg. No. of Cell Company.....

Notice of approval for the transfer of the cellular assets of a cell company to another cell company

Name of Cell Company

.....

Name of Cell

.....

Delivered by

.....

To the Registrar of Companies:

I/We hereby give you notice that the draft terms of agreement have been delivered to the competent authority in terms of regulation 16(10) of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations (S.L. 386.10). It is being proposed, and approval is being sought from the competent authority, that the Cell Company transfers one of its cells [include name of cell/s] to another cell company [include name of Cell Company] authorised under Article 7 of the Insurance Business Act.

Signature of Director/s (a)

This form must be completed in typed form.

(a) In the case of a company having more than two directors, this declaration is to be submitted and signed by the majority of directors.

SCHEDULE II
(Regulation 17)

Declaration of Solvency or Insolvency of a cell

Reg No. of Cell Company

Name of Cell Company

.....

Name of Cell Company

.....

Delivered by

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To the Registrar of Companies:

I/We <Name & Surname> being the director/s (b) of (c) <Name of cell company> hereby declare in accordance with regulation 17(3) of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations (S.L. 386.10) that cell <NAME OF THE CELL> is being wound up and that I/we have made a full inquiry into the affairs of the said cell and have formed the opinion that the said cell is solvent or insolvent.

A statement of the cell's assets and liabilities made up to <Day> day of <Month> of the year <Year> is being attached as part of this declaration.

Signature

<Name>

Director/s

Dated this <Day> day of <Month> of the year <Year>.

This form must be completed in typed form.

(a) This declaration is to be delivered together with the notice of dissolution.

- (b) In the case of a cell company having more than two directors, this declaration is to be submitted and signed by the majority of directors.
- (c) State cell company name.”.