

28 March 2024

Circular on the Amendments to the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, 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

1.0 Introduction

On 13 September 2023, two Consultation Documents were issued. The first Consultation which was issued on the government portal was entitled [Amendments to the Companies Act \(Cell Companies Carrying on Business of Insurance\) Regulations](#). The second Consultation Document, which was issued on the MFSA website was entitled [New Chapter 17 to the Insurance Rules entitled “Cell Companies carrying on Business of Insurance” and amendments to Chapter 5 to the Insurance Rules](#).

The Consultation Documents issued, proposed:

- An amended Subsidiary Legislation 386.10 of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, hereinafter referred to as the “Amending Regulations”;
- A new Chapter 17 to the Insurance Rules entitled “Cell Companies carrying on Business of Insurance”; and
- An amendment to Chapter 5 to the Insurance Rules;

The Consultation period elapsed on 13 October 2023. The MFSA reviewed the feedback received and discussed further internally. Following the said discussions, a Feedback Statement is being published by the MFSA highlighting the comments raised by the insurance industry and the MFSA’s replies thereto.

2.0 Companies Act (Cell Companies Carrying on Business of Insurance) Regulations

Applicability of Amendments to Chapter 5 of the Insurance Rules

Following the publication of the Consultation Document, a number of market queried whether the amendments to Chapter 5 of the Insurance Rules will also apply to cells of a cell company making use of regulation 15 during the transitional period of ten years. The MFSA took note of the comments received and will be including a new proviso to regulation 15(4) of the Amending Regulations to clarify that the amendments to Chapter 5 of the Insurance Rules will not apply to cells making use of regulation 15 during the transitional period of ten years.

New Regulation 15A of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations

A number of market participants also argued that the non-recourse clause should continue to apply especially in cases where a cell is adequately capitalised. The MFSA has noted the feedback received, and upon further internal discussions has drafted a new regulation 15A to the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations. The new regulation 15A will clarify that the non-recourse clause may continue be made use of where the cell carries on business of affiliated insurance as defined in the same regulations and as long as the said cell holds eligible basic own funds to cover the Solvency Capital Requirement which shall not be less than the Minimum Capital Requirement as if the said cell was an authorised insurance undertaking or an authorised reinsurance undertaking, in line with the requirements of the Act, regulations and Insurance Rules made for the purposes of Article 15 and 17 of the Act, issued thereunder.

The new regulation 15A will also contain a definition of “business of affiliated insurance” which will state the following: “business of affiliated insurance” means the business of a cell which carries on business of insurance or reinsurance restricted to risks originating from:

- (a) an undertaking being the sole holder of the cell shares of the particular cell; or
- (b) undertakings in which the undertaking referred to in sub-paragraph (a) holds a participating interest.

Transfer of Cells

Following the Consultation document, the MFSA received a number of comments stating that the provisions regarding transfers do not contemplate transfers of insurance managers and insurance brokers set up as a protected cell company. In this respect, the MFSA has included new provisions to allow a cell of an insurance manager or a cell of an insurance broker to be transferred to another cell company enrolled as an insurance manager or an insurance broker respectively. The new provisions will also allow a cell of an insurance manager or a cell of an insurance broker to be transferred to an insurance manager or an insurance broker.

3.0 A New Chapter 17 to the Insurance Rules entitled “Cell Companies carrying on Business of Insurance”

Following comments received by the market, the MFSA is amending the applicability of the new Chapter 17 to the Insurance Rules to make the Chapter also applicable to a cell of an insurance manager and a cell of an insurance broker. New definitions of a Brokers List, Managers List, insurance distribution activities and reinsurance distribution activities have also been included.

Section 17.4 on the transfer of a cell of a cell company have also been amended to align them with the provisions of the regulations. A new section 17.7 has been included to clarify which paragraphs of Chapter 17 would apply in the cases of a transfer of a cell enrolled in the Managers List or the Brokers List.

Finally, with respect to the winding up of an insolvent cell, the MFSA has disapplied the section 17.11 where the cell of a protected cell company is an insurance manager or an insurance broker.

4.0 Amendment to Chapter 5 to the Insurance Rules

Following the publication of the Consultation Document, a number of market stated that the manner in which paragraph 5.5.95 has been drafted needs to be clarified. In this respect, the MFSA has amended the wording of Chapter 5. Furthermore, the MFSA has also included a new proviso which clarifies that the new Chapter 5 of the Insurance Rules will not apply to cells making use of regulation 15 during the transitional period of ten years.

5.0 Applicability

The new Chapter 17 to the Insurance Rules entitled “Cell Companies carrying on Business of Insurance” will come in force when the Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations come into force. Once the Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations come into force, the MFSA will be issuing a Circular to inform the market in relation to the same.

The amendments to Chapter 5 of the Insurance Rules will apply on the date of the publication of the Circular.

6.0 Contacts

Any queries or requests for clarifications in respect of the above should be sent by email on ipsu@mfsa.mt.