L.N. 412 of 2007

COMPANIES ACT
(CAP. 386)

Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations, 2007

IN exercise of the powers conferred by article 84A of the Companies Act, the Prime Minister and Minister of Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:

Citation.

1. The title of these regulations is the Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations, 2007, and they shall be read and construed as one with the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, 2004, hereinafter referred to as "the principal regulations". L.N. 218 of 2004.

Amends regulation 2 of the principal regulations.

2. Regulation 2 of the principal regulations shall be amended as follows:

(a) in the definition "business of insurance", for the words "the business of insurance manager, as well as the business of insurance broking under the Insurance Brokers and Other Intermediaries Act;", there shall be substituted the words "the business of an insurance manager and the business of insurance broking under the Insurance Intermediaries Act;"; Cap. 404. Cap. 487.

(b) for the definition "competent authority", there shall be substituted the following:

" "competent authority" means the body appointed under article 3 of the Insurance Business Act;"; Cap. 403.

(c) for the definition "insurance directive", there shall be substituted the following:

" "insurance rule" has the same meaning as is assigned to it by article 2 of the Insurance Business Act;".

Amends regulation 3 of the principal regulations.

3. In the proviso to sub-regulation (2) of regulation 3 of the principal regulations, for the words "Insurance Brokers and Other Intermediaries Act", wherever they appear, there shall be substituted the words "Insurance Intermediaries Act".

Amends regulation 5 of the principal regulations.

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

(a) in sub-regulation (1) thereof, for the words "and authorised in terms of article 13 of the said Act to carry on business of insurance manager, or a company enrolled in the Brokers List in terms of the Insurance Brokers and Other Intermediaries Act", there shall be substituted the words "or a company enrolled in the Managers List or Brokers List in terms of the Insurance Intermediaries Act"; and

(b) in sub-regulation (3) thereof, for the words "by an insurance directive", there shall be substituted the words "by an insurance rule".

Amends regulation 12 of the principal regulations.

5. Regulation 12 of the principal regulations shall be amended as follows:

(a) in sub-regulation (2) thereof, the words "(except in so far as the same is expressly excluded in writing)" shall be deleted; and

(b) in sub-regulation (6) thereof, for the words "or non-cellular assets of a cell company wherever situated", there shall be substituted the words "or non-cellular assets of a cell company wherever such assets are situated".

Amends regulation 14 of the principal regulations.

6. Regulation 14 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words "Where any liability arises which is attributable to a particular cell of a cell company-", there shall be substituted the words "Subject to the provisions of regulation 14A, where any liability arises which is attributable to a particular cell of a cell company -"; and

(b) in sub-regulation (4) thereof, for the words "or non-cellular assets of the company wherever situated", there shall be substituted the words "or non-cellular assets of the company wherever such assets are situated".

7. Immediately after regulation 14, there shall be added the following new regulation 14A:

Adds a new regulation 14A in the principal regulations.

"Liability of cells carrying on exclusively business of affiliated insurance or business of reinsurance.

14A. (1) Notwithstanding the provisions of regulation 14, where a cell exclusively carries on business of affiliated insurance or business of reinsurance and provided that it is specifically permitted by the memorandum and articles of association of the cell company, the company may, by specific written agreement to that effect, provide that only the cellular assets of that cell may be utilised to satisfy the cellular liability of such cell:

Provided that, where the business of the cell in question relates to compulsory insurance, the cell company shall be obliged to establish to the satisfaction of the competent authority sufficient guarantees for the protection of insureds, policyholders, creditors or other interested parties.

(2) For the purposes of this regulation:

(a) "business of affiliated insurance" means the business of a cell which carries on business of insurance or reinsurance restricted to risks originating from:

(i) an undertaking being the sole holder of the cell shares of the particular cell; or

(ii) undertakings in which the undertaking referred to in sub-paragraph (i) holds a participating interest; or

(iii) an undertaking being the sole user of the particular cell; or

(iv) undertakings which are the sole users of the particular cell and in which the undertaking referred to in sub-paragraph (iii) holds a participating interest;

(b) "business of reinsurance" means the business of a cell which carries on an activity consisting in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking; and

(c) "compulsory insurance" means any insurance which a person is required by law to have in effect.

(3) Specific written agreements entered into in terms of sub-regulation (1) shall be operative as between the contracting parties, and shall not be of prejudice or advantage to third parties.".

Amends regulation 16 of the principal regulations.

8. In sub-regulation (2) of regulation 16 of the principal regulations, for the words "by an insurance directive", there shall be substituted the words "by an insurance rule".

Amends regulation 17 of the principal regulations.

Cap. 330.

9. In sub-regulation (2) of regulation 17 of the principal regulations, for the words "The provisions of article 21 of the Malta Financial Services Authority Act and article 57 of the Insurance Business Act", there shall be substituted the words "The provisions of article 21 of the Malta Financial Services Authority Act, article 57 of the Insurance Business Act and article 50 of the Insurance Intermediaries Act".

Adds a new regulation 18 in the principal regulations.

10. Immediately after regulation 17 of the principal regulations, there shall be added the following new regulation 18:

"Compliance by cell companies and their cells with the regulations.

18. Cell companies and their cells shall comply with these regulations and any agreement incompatible with these regulations shall, to the extent of such incompatibility, be null and void.".

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