Verżjoni Elettronika

L.N. 248 of 2020

COMPANIES ACT
(CAP. 386)

Companies Act (Shipping and Aviation Cell Companies) Regulations, 2020

IN EXERCISE of the powers conferred by article 84E of the Companies Act, the Minister responsible for the registration of commercial partnerships has made the following regulations:

Citation and scope.

1. (1) The title of these regulations is the Companies Act (Shipping and Aviation Cell Companies) Regulations, 2020.

(2) These regulations shall apply to any company conducting shipping or aviation business as defined in article 84E of the Companies Act. Cap. 386.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires:

"the Act" means the Companies Act; Cap. 386.

"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 conduct of shipping or aviation business as defined in article 84E of the Act;

"cell shares" means shares created and issued by a cell company in respect of one of its cells pursuant to the provisions of regulation 9, the proceeds of the issue of which (the "cell share capital") shall be comprised in the cellular assets attributable to that cell;

"cell share capital" means the proceeds of issue of cell

shares;

"cellular assets" of a cell company means the assets of the company attributable to any cell of the company as prescribed in these regulations;

"cellular dividend" means a dividend payable by a cell company in respect of cell shares pursuant to the provisions of regulation 9(3);

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

"Registrar" means the person appointed as Registrar of Companies under the Act;

"relevant activities" means the conduct of shipping or aviation business as defined in article 84E of the Act.

(2) Words and expressions used in these regulations, which are also used in the Act, shall in these regulations have the same meaning as in the Act.

Scope and application.

3. (1) The Act shall, subject to the provisions of these regulations, and unless the context otherwise requires, apply exclusively to a cell company carrying out relevant activities.

(2) In so far as the provisions of the Act are inconsistent with the provisions of these regulations or of any other legislation applicable in terms of these regulations, the provisions of these regulations and of any such legislation shall prevail and the provisions of the Act shall, to the extent of the inconsistency, not apply to a cell company.

Cell companies.

4. (1) Subject to the provisions of these regulations:

(a) a company may be formed or constituted as a cell company to carry on relevant activities;

(b) a company carrying on relevant activities may be converted, if so authorised by its memorandum and articles of association, into a cell company;

(c) a cell company shall, as the case may be, obtain any licence and, or authorisation in terms of any applicable law in order to carry on any relevant activities or to be formed or constituted as a cell company and to carry out specific acts or procedures whilst being a cell company, as may be prescribed.

(2) Notwithstanding that a cell company may have created one or more cells:

(a) a cell company is a single legal person; and

(b) the creation of a cell by a cell company does not create, in respect of that cell, a legal person separate from the company.

Name and memorandum of cell company.

5. (1) The name of a cell company shall, without prejudice to the provisions of the Act, include the expression "Mobile Assets Protected Cell Company" or "MAPCC".

(2) The memorandum and articles of association of a cell company shall state that it is a cell company.

(3) A company shall not be deemed to be a cell company until it has complied with the provisions of this regulation.

(4) Each cell of a cell company shall have its own distinct name or designation.

(5) A cell company shall also indicate in a suitable manner in all its business letters and forms that it is a cell company.

Formation, constitution or conversion of a company as a cell company.

6. A person intending to form or constitute a company as a cell company, or convert an existing company into a cell company, shall deliver to the Registrar for registration the company's memorandum and articles of association, or a copy of the resolution amending the company's memorandum and articles of association together with the company's updated memorandum and articles of association, as the case may be, which shall be accompanied by the fee prescribed in item (a) of the Schedule to the Companies Act (Fees) Regulations and which shall be due for each cell created. S.L. 386.03.

Creation of cells.

7. (1) A cell company may create one or more cells for the purposes of segregating and protecting cellular assets in the manner provided in these regulations. The decision or resolution approving the creation of a cell together with the instruments giving effect to the decision or resolution, or an authentic copy thereof, shall be delivered for registration to the Registrar who, being satisfied that the requirements of this regulation have been complied with, shall register the cell or cells.

A cell company shall pay the fee prescribed in item (a) of the Schedule to the Companies Act (Fees) Regulations for each cell created. S.L. 386.03.

(2) If a company is converted into a cell company in terms of these regulations, the company shall, within forty days from the day of its conversion into a cell company, by resolution of its directors attribute assets of the company to a particular cell of the company. The company shall, within fourteen days from such resolution, deliver a notice to the Registrar specifying the subject of this resolution and outlining the specific description of every asset being attributed to a particular cell. Upon publication of such notice, such assets shall be considered to be cellular assets of a particular cell.

(3) Pursuant to the provisions of sub-regulation (2) and the attribution of a particular asset to a cell of a cell company, the interest of an owner, following the aforementioned attribution, in a registered aircraft or ship in terms of the Merchant Shipping Act, the Aircraft Registration Act or any other law or regulation as the case may be, shall be noted accordingly, as long as any registered mortgagee or registered security interest holder has provided its consent in this regard. Such attribution shall not prejudice any rights of any creditor of the company existing prior to the conversion to a cell company or that of a registered mortgagee or registered security interest holder in relation to any registered mortgage or any security interest in terms of any applicable law or regulation.

Cap. 234.
Cap. 503.

Cellular and non-cellular assets.

8. (1) The assets of a cell company shall be either cellular assets or non-cellular assets.

(2) It shall be the duty of the directors of a cell company to keep:

(a) cellular assets separate and separately identifiable from non-cellular assets;

(b) cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells; and

(c) separate records, accounts, statements and other documents as may be necessary to evidence the assets and liabilities of each cell, as distinct and separate from the assets and liabilities of other cells in the same company.

(3) The cellular assets of a cell company comprise the assets of the cell company attributable to the cells of that cell company.

(4) The assets attributable to a cell of a cell company comprise:

(a) assets represented by the proceeds of cell share

Verżjoni Elettronika

capital and reserves attributable to the cell; and

(b) all other assets attributable to the cell.

(5) For the purposes of sub-regulation (4), the expression "reserves" includes retained earnings, capital reserves and share premiums.

(6) The non-cellular assets of a cell company comprise the assets of the cell company which are not cellular assets.

(7) Notwithstanding the provisions of sub-regulation (2), the directors of a cell company may cause or permit cellular assets and non-cellular assets to be held by a company, the shares and capital interests of which may be cellular assets or non-cellular assets, or a combination of both.

(8) The duty imposed by sub-regulation (2) is not breached by reason only that the directors of a cell company cause or permit cellular assets or non-cellular assets, or a combination of both, to be collectively invested or collectively managed by an investment manager, provided that the assets in question remain separately identifiable in accordance with sub-regulation (2).

Cell shares and share capital.

9. (1) A cell company may, in respect of any of its cells, create and issue shares ("cell shares") the proceeds of the issue of which ("cell share capital") shall be comprised in the cellular assets attributable to the cell in respect of which the cell shares were issued.

(2) The proceeds of the issue of shares, other than cell shares created and issued by a cell company, shall be comprised in the non-cellular assets of the company.

(3) A cell company may pay a dividend (a "cellular dividend") in respect of cell shares.

(4) Cellular dividends may be paid in respect of cell shares by reference only to the cellular assets and liabilities, or the profits attributable to the cell in respect of which the cell shares were issued; and accordingly, in determining whether or not profits are available for the purposes of paying a cellular dividend, no account shall be taken of:

(a) the profits and losses, or the assets and liabilities, attributable to any other cell of the cell company; or

(b) non-cellular profits and losses, or non-cellular assets and liabilities.

(5) Unless the context otherwise requires, references to shares in the Act includes references to cell shares.

Company to inform persons that they are dealing with a cell company.

10. A cell company shall:

(a) inform, in writing, any person with whom it transacts relevant activities that it is a cell company; and

(b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular cell.

Position of creditors.

11. (1) A creditor of a cell company shall not have any rights other than the rights referred to in this regulation and in regulations 12 and 13.

(2) In every transaction entered into by a cell company, there shall be implied the following terms, namely that:

(a) no party shall seek, whether in any proceedings or by any other means whatsoever, to make or attempt to use any cellular assets attributable to any cell of the company to satisfy a liability not attributable to that cell; and

(b) if any party succeeds by any means whatsoever in using any cellular assets attributable to any cell of the cell company to satisfy a liability not attributable to that cell, that party shall be liable to the cell company to pay a sum equal to the value of the benefit thereby obtained by him.

(3) Any asset or sum recovered by a cell company under the implied term set out in sub-regulation (2)(b) or by any other means whatsoever in the events referred to in that sub-regulation shall, after the deduction or payment of any costs of recovery, be applied by the cell company so as to compensate the cell affected.

(4) In the event of an executive warrant being issued or enforced on any cellular assets attributable to a cell of a cell company in respect of a liability not attributable to that cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the cell affected, the cell company shall:

(a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost by the cell affected; and

(b) transfer or pay to the cell affected, from the cellular

Verżjoni Elettronika

or non-cellular assets to which the liability was attributable, assets or sums sufficient to restore to the cell affected the value of the assets lost.

(5) Where under sub-regulation (4)(b) a cell company is obliged to make a transfer or payment from cellular assets attributable to a cell of the company, and those assets are insufficient, the company shall so far as possible make up for the deficiency from its non-cellular assets.

(6) This regulation shall apply to cellular and non-cellular assets of a cell company wherever such assets are situated.

Recourse to cellular assets by creditors.

12. Without prejudice to regulations 11 and 13, cellular assets attributable to a cell of a cell company shall:

(a) only be available to the creditors of the cell company who are creditors in respect of that cell and who are thereby entitled, pursuant to these regulations, to only have recourse to the cellular assets attributable to that cell;

(b) be absolutely protected from the creditors of the cell company who are not creditors in respect of that cell and who accordingly are not entitled to have recourse to the cellular assets attributable to that cell.

Liability of cells.

13. (1) Where any liability arises which is attributable to a particular cell of a cell company:

(a) only the cellular assets attributable to that cell shall be used to satisfy the liability; and

(b) any cellular assets not attributable to the relevant cell shall not be used to satisfy the liability.

(2) Any liability not attributable to a particular cell of a cell company shall be the liability solely of the company's non-cellular assets, provided that apportionments may be made out of the assets attributable to the individual cells towards the costs of the day-to-day administration of the cell company.

Transfer of cellular assets from a cell company.

14. (1) It shall be lawful 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 another person, wherever resident or incorporated, and whether or not a cell company.

(2) A transfer, pursuant to sub-regulation (1), 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.

(3) 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.

(4) A cell company may invest, or otherwise create a charge or security interest of whatever nature over, cellular assets, or otherwise make payments or transfers from cellular assets, or use cellular assets for the purposes of providing any security in the ordinary course of the company's business.

Liquidation of cell companies and cells.

15. (1) Without prejudice to the provisions of Part V, Title II and Part VI of the Act:

(a) proceedings in relation to a cell company shall respect the status of each cell as a patrimony separate from the assets and liabilities of each other cell of the cell company and the cell company itself in terms of these regulations;

(b) where a provisional administrator or liquidator is appointed in terms of the Act, he shall:

(i) deal with the cell company's assets in accordance with the provisions of these regulations, including, but not limited to, regulation 8(1); and

(ii) in the discharge of the claims of creditors of the cell company, apply the cell company's assets to those entitled to have recourse thereto in accordance with these regulations;

(c) proceedings under the Act shall apply *mutatis mutandis* to a cell as though it were a distinct legal entity operating in terms of the Act, and with such modifications as are necessary to accommodate the fact that the cell is not a company or a distinct legal entity; and any proceedings in relation to one cell shall not have any effect on the assets of any other cell of the cell company or of the cell company itself.

(2) The term "proceedings" in this regulation refers to any proceedings in terms of Part V, Title II and Part VI of the Act.

(3) A cell, the sole asset of which is an aircraft or aircraft engines and other related assets shall be deemed to be an "aircraft company" for the purposes of the Aircraft Registration Act. The

Cap. 503.

Verżjoni Elettronika

provisions of the Aircraft Registration Act, and to the extent that they are not defined in these regulations, the terms used in the Aircraft Registration Act in relation to an aircraft company, shall *mutatis mutandis* apply to such cell as though it were a distinct aircraft company for the purposes of the Aircraft Registration Act and any proceedings in relation to one cell or its assets shall not have any effect on any other cell of the cell company or the cell company itself.

Compliance by cell companies and their cells with the regulations.

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

Register of beneficial owners. S.L. 386.19.

17. Cell companies and their cells shall comply with the provisions of Companies Act (Register of Beneficial Owners) Regulations which shall be applicable *mutatis mutandis* to cell companies and their cells.

Fees. S.L. 386.03.

18. The provisions of item (a) of the Schedule to the Companies Act (Fees) Regulations shall be applicable *mutatis mutandis* to cell companies and their cells.

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