Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 21,307, 30 ta' Awwissu, 2024
Taqsima B

L.N. 201 of 2024

COMPANIES ACT
(CAP. 386)

Companies Act (Cell Companies Carrying On Business Of Insurance) (Amendment) Regulations, 2024

IN EXERCISE of the powers conferred by 84A of the Companies Act, the Minister responsible for the registration of commercial partnerships, in consultation with the Minister responsible for finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

1. The title of these regulations is the Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations, 2024 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". Citation. S.L. 386.10.

2. In the definition "cell transfer approval" in regulation 2 of the principal regulations, the words "under regulation 15" shall be substituted by the words "under regulation 16". Amends regulation 2 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- Amends regulation 15 of the principal regulations.

regulations:

"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 Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations, 2024 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 Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations, 2024 in line with this 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, and regulations and Insurance Rules issued thereunder:

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Provided that where a cell continues to pursue the business of affiliated insurance or business of reinsurance 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 specified ten (10) years:

Provided further that, for the purposes of this regulation, during the specified ten (10) years, the provisions of paragraph 5.5.95 of Chapter 5 of the Insurance Rules shall not apply.

(5) Without prejudice to sub-regulation (4), this regulation shall cease to have effect on the date of coming into force of the Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations, 2024 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 Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations, 2024.".

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Adds new regulation to the principal regulations.

4. Immediately after regulation 15 of the principal regulations, as amended, there shall be added the following new

regulation:

"Liability of cells carrying on exclusively business of affiliated insurance with certain conditions.

15A. (1) Notwithstanding the provisions of regulations 14 and 15, where a cell:

(a) exclusively carries on business of affiliated insurance;

(b) holds eligible basic own funds to cover the Solvency Capital Requirement which shall not be less than the Minimum Capital Requirement as though the said cell were an authorised insurance undertaking or an authorised reinsurance undertaking, in accordance with the requirements of article 15 and 17 of the Insurance Business Act, and any regulations and Insurance Rules made for the purposes of the said articles; and

Cap. 403.

(c) is specifically permitted by the memorandum and articles of association of the cell company,

the cell 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:

"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 paragraph (a) holds a participating interest; and

"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.

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

(a) sub-regulation (1) thereof shall be substituted by the following new sub-regulation:

"(1) It shall be lawful, subject to the provisions of sub-regulation (3):

(a) 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:

(i) another cell company authorised under article 7 of the Insurance Business Act; Cap. 403.

(ii) an authorised insurance undertaking or a European insurance undertaking or a European reinsurance undertaking as defined in the Insurance Business Act; Cap. 403.

(iii) a third country insurance undertaking as defined in the Insurance Business Act; or Cap. 403.

(iv) another cell of the same cell company:

Provided that the cellular assets attributable to a cell of a cell company may be transferred to another cell of the same cell company, only where:

(aa) the transferring cell does not apply the provisions of regulation 15; and

(bb) the shareholders of the transferring cell and the receiving cell are the same persons;

(b) for the cellular assets attributable to any cell of a cell company, enrolled in the Managers List, as defined in the Insurance Distribution Act, but not the non-cellular assets of a cell company, to be transferred to: Cap. 487.

(i) a cell company enrolled as an insurance manager under the Insurance Distribution Act; or Cap. 487.

(ii) an insurance manager enrolled under the Insurance Distribution Act; Cap. 487.

(c) for the cellular assets attributable to any cell of a cell company, enrolled in the Brokers List, as defined in the Insurance Distribution Act, but not the non-cellular assets of a cell company, to be transferred to: Cap. 487.

(i) a cell company enrolled as an insurance broker under the Insurance Distribution Act; or Cap. 487.

(ii) an insurance broker enrolled under the Insurance Distribution Act."; Cap. 487.

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

"(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.";

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

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

"(10) For the purposes of sub-regulations 1(a)(i), 1(b)(i) and 1(c)(i), article 83 of the 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, and the Registrar shall publish such notice on a website maintained by him 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.

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

(a) in the marginal note thereof the words "Liquidation of cells", shall be substituted by the words "Ceasing, run-off or servicing and winding up of cells.";

(b) in sub-regulation (1) thereof, the words: "the liquidation of a cell" shall be substituted by 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, the words "adopted for the liquidation of a cell." shall be substituted by the words "adopted for the ceasing, run-off or servicing and winding up of a cell."; and

(d) immediately after sub-regulation (2) thereof, as amended, 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 said cell company shall deliver to the Registrar for registration, a notice in accordance with Schedule II informing the Registrar that one of its cells shall be wound up, together with a confirmation of solvency or insolvency of such cell.".

Amends regulation 19 of the principal regulations.

7. Paragraph (d) of sub-regulation (1) of regulation 19 thereof, shall be substituted by the following new paragraph:

"(d) to refuse to issue a cell transfer approval under regulation 16,".

8. Regulation 19 of the principal regulations, having the marginal note "Compliance by cell companies and their cells with the regulations.", shall be renumbered as regulation 19A.

Amends the second regulation 19 of the principal regulations.

9. Immediately after regulation 20 of the principal regulations, there shall be added the following new Schedules:

Addition of new Schedule I and Schedule II.

"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 Insurance Rules made specifically for the purposes 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 the cellular assets attributable to any 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 (Cap. 403)/ enrolled as an insurance manager under the Insurance Distribution Act (Cap. 487)/ enrolled as an insurance broker under the Insurance Distribution Act (Cap. 487)*.

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.

*Delete as necessary

SCHEDULE II

(Regulation 17)

Declaration of Solvency or Insolvency of a cell

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

Name of Cell Company.....

Name of Cell.....

Delivered by.....

To the Registrar of Companies:

I/We <Name & Surname> being the director/s (a) of (b) <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/ 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.

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

(a) 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.

(b) State cell company name.

* Delete as necessary".

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