

SUBSIDIARY LEGISLATION 386.10

**COMPANIES ACT (CELL COMPANIES CARRYING
ON BUSINESS OF INSURANCE) REGULATIONS**

30th April, 2010

LEGAL NOTICE 243 of 2010.

1. The title of these regulations is the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations. Citation.

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

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

"approved auditor" and "auditor" shall have the same meaning assigned to them by article 21(10) of the Insurance Business Act; Cap. 403.

"business of insurance" has the same meaning as is assigned to it in article 2(1) of the Insurance Business Act, and shall include business of affiliated insurance pursuant to regulation 2 of the Insurance Business (Companies Carrying on Business of Affiliated Insurance) Regulations, the business of insurance manager, as well as the business of insurance broking under the Insurance Intermediaries Act; Cap. 403.

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"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 business of insurance manager, as well as the business of insurance broking, reference to "company" shall include reference to a partnership en commandite or a similar or equivalent body corporate, which has its capital divided into shares;

"cell shares" means shares created and issued by a cell company in respect of one of its cells pursuant to the provisions of regulation 10, 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;

"cell transfer approval" means an approval of the competent authority under regulation 15 approving the transfer of the cellular assets attributable to any cell of a cell company to another person;

"cellular assets" of a cell company means the assets of the

	company attributable to any cell of the company pursuant to regulation 9(4);
	"cellular dividend" means a dividend payable by a cell company in respect of cell shares pursuant to the provisions of regulation 10(3);
Cap. 403.	"competent authority" means the body appointed under article 3 of the Insurance Business Act;
Cap. 403.	"insurance rule" has the same meaning as is assigned to it by article 2 of the Insurance Business Act;
	"non-cellular assets" of a cell company comprise the assets of the company which are not cellular assets.
	(2) Words and expressions which are also used in the Act shall, in these regulations, have the same meanings as in the Act.
Cell companies.	<p>3. (1) Subject to the provisions of these regulations:</p> <p>(a) a company may be formed or constituted as a cell company to carry on business of insurance; or</p> <p>(b) a company carrying on business of insurance may be converted, if so authorised by its memorandum and articles of association, into a cell company.</p> <p>(2) Notwithstanding that a cell company may have created one or more cells:</p> <p>(a) a cell company is a single legal person; and</p> <p>(b) the creation by a cell company of a cell does not create, in respect of that cell, a legal person separate from the company:</p>
Cap. 403.	Provided that, in so far as the provisions of the Act are inconsistent with the provisions of the Insurance Business Act and the Insurance Intermediaries Act, as the case may be, the provisions of the Insurance Business Act and the Insurance Intermediaries Act shall prevail and the provisions of the Act shall, to the extent of the inconsistency, not apply to a cell company.
Cap. 487.	
Name and memorandum of cell company.	<p>4. (1) The name of a cell company shall, without prejudice to the provisions of the Act, include the expression "Protected Cell Company" or "PCC".</p> <p>(2) The memorandum and articles of association of a cell company shall state that it is a cell company.</p> <p>(3) A company shall not be deemed to be a cell company until it has complied with the provisions of this regulation.</p> <p>(4) Each cell of a cell company shall have its own distinct name or designation.</p> <p>(5) In addition to, and without prejudice to article 6 of the Act, a cell company shall also indicate in a suitable manner in all its business letters and forms that it is a cell company.</p>

5. (1) A company may not be formed or constituted as a cell company, and an existing company may not be converted into a cell company, except in accordance with the terms and conditions of the written approval of the competent authority which shall only be granted in the case of a company which will, when formed or constituted, be authorised or, when converted, is a company authorised in terms of article 7 of the Insurance Business Act to carry on business of insurance or a company enrolled in the Managers' List or Brokers' List in terms of the Insurance Intermediaries Act.
- Approval of the competent authority required for cell company.
- Cap. 403.
- Cap. 487.
- (2) A company authorised to carry on business of re-insurance or affiliated insurance may be formed or constituted as a cell company or may be converted into a cell company in terms of these regulations.
- (3) For the purposes of these regulations, the competent authority may, by an insurance rule, from time to time, specify or restrict the classes of insurance a cell company may carry on, and the class or classes of persons, for, or in relation to whom, a cell may be created by a cell company.
- (4) The competent authority may, from time to time, in such a manner as it deems appropriate:
- (a) vary or revoke any term or condition subject to which an approval under sub-regulation (1) was granted; and
 - (b) impose any new term or condition in relation to any such approval.
6. An application for the approval of the competent authority for the formation or constitution of a company as a cell company, for the conversion of an existing company into a cell company or for the creation of a new cell shall be made to the competent authority in such form and manner, and shall be accompanied by such documents and information verified in such manner, as the competent authority may, from time to time, determine.
- Application for approval of the competent authority.
7. A person wishing 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 of the company's memorandum and articles, or a copy of the resolution amending the company's memorandum or articles, as the case may be.
- Formation, constitution or conversion of a company as a cell company.
8. Subject to the prior written approval of the competent authority, a cell company may create one or more cells for the purposes of segregating and protecting cellular assets in the manner provided by these regulations.
- Creation of cells.
9. (1) The assets of a cell company shall be either cellular assets or non-cellular assets.
- Cellular and 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 company attributable to the cells of the company.

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

- (a) assets represented by the proceeds of cell share 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 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.

10. (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 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 include references to cell shares.

11. (1) A cell company shall:

- (a) inform, in writing, any person with whom it transacts business of insurance 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.

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

12. (1) A creditor of a cell company shall not have any rights other than the rights referred to in this regulation and in regulations 13 and 14.

Position of creditors.

(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 company to satisfy a liability not attributable to that cell, that party shall be liable to the 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 paragraph shall, after the deduction or payment of any costs of recovery, be applied by the 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 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 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 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.

13. Without prejudice to regulations 12 and 14, cellular assets attributable to a cell of a cell company shall -

- (a) only be available to the creditors of the company who are creditors in respect of that cell and who are thereby entitled, in conformity with these regulations, to have recourse to the cellular assets attributable to that cell;
- (b) be absolutely protected from the creditors of the 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 cellular assets.

14. (1) Subject to the provisions of regulation 15, where any liability arises which is attributable to a particular cell of a cell company -

- (a) the cellular assets attributable to that cell shall be primarily used to satisfy the liability;
- (b) the company's non-cellular assets shall be secondarily used to satisfy the liability, provided that the cellular assets attributable to the relevant cell have been exhausted; and
- (c) 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.

(3) Notwithstanding the above provisions of this regulation -

- (a) the liabilities under sub-regulation (1)(a) of the cellular assets attributable to a particular cell of a cell company shall abate rateably until the value of the aggregate liabilities equals the value of those assets except that the provisions of this paragraph shall be disregarded in assessing the existence and extent of any secondary liability under sub-regulation (1)(b);
- (b) the liabilities of the company's non-cellular assets shall abate rateably until the value of the aggregate liabilities equals the value of those assets.

(4) This regulation shall apply to the cellular or non-cellular assets of the company wherever such assets are situated.

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

15. (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:

"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 (i) holds a participating interest; or
- (c) an undertaking being the sole user of the particular cell; or
- (d) 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;

"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

"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.

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

Transfer of cellular assets from 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) No transfer of the cellular assets attributable to a cell of a cell company may be made except with the specific written approval of the competent authority (a "cell transfer approval").

(4) The competent authority shall not issue a cell transfer approval in relation to a cell of a cell company unless the company proves to the satisfaction of the competent authority that the creditors of the cell company entitled to have recourse to the cellular assets attributable to the cell, consent to the transfer.

(5) The company shall deliver to the Registrar a copy of the cell transfer approval for registration within fourteen days from the date of issue of the cell transfer approval.

(6) The competent authority may subject a cell transfer approval to such conditions as it may from time to time deem fit to

impose, including conditions as to the discharging of claims of creditors entitled to have recourse to the cellular assets attributable to the cell in relation to which the order is sought.

(7) The competent authority may issue a cell transfer approval in relation to a cell of a cell company notwithstanding that a liquidator has been appointed to act in respect of the company or the company has passed a resolution for voluntary winding up:

Provided that, the company proves to the satisfaction of the competent authority that the transfer would not unfairly prejudice creditors or other third parties.

(8) Notwithstanding the provisions of this regulation, 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.

(9) A cell company shall not require a cell transfer approval to invest, and change investment of, cellular assets, or otherwise to make payments or transfers from cellular assets in the ordinary course of the company's business.

Liquidation of cells.

17. (1) In the event of the liquidation of a cell, the prior consent of the competent authority, given in writing, shall be required.

(2) For the purpose of this regulation, the competent authority may, by an insurance rule, determine the procedure to be adopted for the liquidation of a cell.

Exemption from contributions to the Protection and Compensation Fund.
Cap. 403.
S.L. 403.13.

18. (1) In relation to cells carrying on business of affiliated insurance, a cell company shall not be required to make a contribution to the Protection and Compensation Fund established under article 49 of the Insurance Business Act in terms of 7(2) of the Protection and Compensation Fund Regulations and no payment of claims shall be made out of the Fund in relation to such business.

(2) For the purposes of this regulation, "business of affiliated insurance" has the same meaning as is assigned to it by regulation 15.

Appeals.

19. (1) Any person who is aggrieved by a decision of the competent authority -

- (a) to refuse to issue an approval for a company to be constituted or formed as a cell company under regulation 5; or
- (b) for an existing company to be converted into a cell company under regulation 5; or
- (c) to refuse to issue an approval to a cell company to create one or more cells under regulation 8; or
- (d) to refuse to issue a cell transfer approval under regulation 15,

may appeal against the decision to the Financial Services Tribunal.

(2) The provisions of article 21 of the Malta Financial Services Authority Act and article 57 of the Insurance Business Act and article 50 of the Insurance Intermediaries Act shall apply *mutatis mutandis*, as if the appeal has been made in terms of the Insurance Business Act.

Cap. 330.
Cap. 403.
Cap. 487.

19. 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.

Compliance by cell companies and their cells with the regulations.

20. Every authorisation, approval or order taken or commenced under the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, 2004,* shall continue to be valid and in force, as if such authorisation, approval or order were taken or commenced under these regulations.

Savings.
L.N. 218 of 2004.

*Revoked by these regulations.