

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Consultation Document

**Proposals for Securitisation Cell Companies
Regulations 2014**

[MFSA REF: 07-2014]

4th September 2014

Closing Date: 24th September 2014

Note: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

Note for Consultation

PROPOSED SECURITISATION CELL COMPANIES REGULATIONS 2014

1. PURPOSE

The MFSA is issuing for consultation the proposed Securitisation Cell Companies Regulations, to be issued under the Companies Act (Chapter 386 of the Laws of Malta) and the Insurance Business Act (Chapter 403 of the Laws of Malta). Any comments and feedback to the attached draft Securitisation Cell Companies Regulations are to be addressed to the Regulatory Development Unit by email on elofaro@mfsa.com.mt. Interested parties are kindly asked to submit any comments in writing by not later than the 24th of September 2014.

2. INTRODUCTION

Cell companies have been an established feature of Maltese legislation since 2004, following the enactment of the Companies Act (Cell Companies carrying on business of insurance) Regulations, 2004 (the “PCC Regulations”). Since then the cell company concept in Malta has not only taken root among market operators and practitioners but has also influenced the development of other legal frameworks in the insurance and funds sector. The new draft regulations launched with this consultation, namely the Securitisation Cell Companies Regulations, 2014 (hereinafter referred to as ‘the SCC Regulations’), continue to build on the concept by adapting and extending the protected cell company structure to cater for securitisation activity.

The proposed Regulations have been drawn up with the aim of setting out a framework for a new type of Cell Company acting as a special purpose vehicle in Malta - the Securitisation Cell Company (the SCC). By uniting the highly sophisticated frameworks provided in the Securitisation Act and the Reinsurance Special Purpose Vehicle Regulations with the cell company concept, the proposed Regulations now provide a legally entrenched framework for the segregation of different sets of assets and risk instruments within a single special purpose

vehicle, the SCC, thus allowing for the launch of multiple asset-backed or insurance-linked securities without incurring any risk of cross-contamination between the different sets of creditors and investors.

The Structure of the Securitisation Cell Companies Regulations

The SCC Regulations distinguish between two types of securitisation cell companies:

- securitisation cell companies carrying on the business of securitisation vehicles; and
- securitisation cell companies carrying on business as reinsurance special purpose vehicles.

These two types of securitisation cell companies are regulated differently according to whether they carry on regulated activity or otherwise. The SCC Regulations are divided into three parts. Part I is the general part and applies to both types of securitisation cell companies. Part II regulates securitisation cell companies carrying on the business of securitisation vehicles, and Part III regulates securitisation cell companies carrying the business of reinsurance special purpose vehicles.

3. SALIENT FEATURES OF THE SECURITISATION CELL COMPANIES REGULATIONS:

A. The Nature of a Securitisation Cell Company

A Securitisation cell company (SCC) is a single legal entity made up of a non-cellular part (the core) and an unlimited number of cells. Assets and liabilities of SCCs are segregated into cells and treated as separate patrimonies from each other and from the core of the SCC. Cells may also be used for the allocation of different insurance risks for the purpose of structuring and issuing insurance-linked securities.

An SCC therefore holds two distinct types of assets; cellular assets and non-cellular assets. The cellular assets mean the assets of the SCC attributable to each of the cells of the SCC.

The non-cellular assets of a SCC mean the assets of the company which are not attributable to any cell of the company. Despite the segregation of assets and liabilities that exists between cells and the core and among the cells themselves, a cell has no separate legal identity.

B. Activities of SCCs

A securitisation cell company may be established for the purpose, of either entering into securitisation transactions, other than the assumption of insurance risk, in accordance with the Securitisation Act, or of assuming risks as a reinsurance special purpose vehicle in accordance with the Reinsurance Special Purpose Vehicles Regulations. The SCC may therefore enter into multiple securitisation transactions or risk transfer arrangements in respect of any of its cells, and each cell would be protected by the provisions for ring-fencing in the Regulations.

A securitisation cell company may not enter into securitisation transactions or risk transfer arrangements in respect of its non-cellular assets.

C. The Position of Creditors

A creditor of a cell has rights to the assets of that particular cell only and has no recourse to the assets of other cells or the non-cellular assets. Where any liability arises which is attributable to a particular cell of the SCC, the cellular assets attributable to that cell are those exclusively used to satisfy the liability. Any liability not attributable to a particular cell of a SCC is 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 SCC.

D. Regulation of Securitisation Cell Companies

- Securitisation Cell Companies carrying on the business of Securitisation Vehicles

A securitisation cell company established to carry on the business of Securitisation Vehicle is required to give notice in accordance with article 18 of the Securitisation Act. Furthermore it cannot commence business in respect of any cell unless it has given notice on the appropriate form to the competent authority that it intends to enter into one or more securitisation transactions in respect of that cell.

A securitisation cell company which falls within the definition of a ‘public securitisation vehicle’ in terms of article 19 (1)(a) of the Securitisation Act requires authorisation and cells may only be created with the prior approval of the competent authority.

- Securitisation Cell Companies carrying on business as Reinsurance Special Purpose Vehicles

A securitisation cell company may only carry on business as a reinsurance special purpose vehicle with the prior authorisation of the competent authority granted in terms of the Reinsurance Special Purpose Vehicles Regulations, and a cell may only be created with the prior approval of the competent authority.

E. Application of other relevant Legislation

The following legislation also applies to Securitisation Cell Companies to the extent and in the manner envisaged in the proposed Regulations.

- The Securitisation Act

The provisions of the Securitisation Act apply to securitisation cell companies carrying on the business of securitisation vehicles and their cells. The Securitisation Act is both non-intrusive and flexible, and at the same time secures the required level of investor protection. Should the securitisation cell company become insolvent, the Securitisation Act provides for rules aimed

at protecting the rights of the investors, the originator and other securitisation creditors. Most importantly the bankruptcy remoteness principle isolates the securitisation assets from any insolvency risks of the securitisation cell company, the originator or any service providers. Securitisation creditors, including bondholders in a securitisation cell company enjoy a privilege over the assets of the securitisation vehicle, and therefore rank prior to other claims at law.

- The Reinsurance Special Purpose Vehicles Regulations

The provisions of Reinsurance Special Purpose Vehicles Regulations apply to securitisation cell companies carrying on the business of reinsurance special purpose vehicles. Some provisions, such as those on solvency requirements, are applicable both at the level of the securitisation cell company as a whole and at the level of the individual cells. The RSPV Regulations in turn apply the certain provisions of the Securitisation Act and the Insurance Business Act.

4. BENEFITS OF THE SECURITISATION CELL COMPANY STRUCTURE

The proposed framework for securitisation cell companies retains all the benefits introduced by the Securitisation Act while providing increased flexibility, enhanced investor protection and economies of scale.

Securitisation vehicles formed as securitisation cell companies are ideal for clients with different business strategies. Issues of securities that are funded by assets ring-fenced in a particular cell and supported by specified collateral arrangements may thus be tailored to satisfy the different investor demands. This enables issuers to target investor segments with different risk/reward appetites. The securitisation cell company structure prevents creditors of one cell from having recourse to the assets of another cell thereby providing enhanced protection to investors in relation to specific sets of assets. Furthermore, in case of insolvency, the insolvency of one cell has no effect on the solvency of the other cells.

The administrative benefits of a cell company are significant. Once a cell company structure is in place, repeat transactions can be established in a much reduced timescale. This is particularly attractive in securitisations, where negotiating transaction documents can be a complex and lengthy process, and where a successful initial structure will often lead to a demand for further similar structures using common service providers. The structuring of securitisation transactions through a securitisation cell company allows for reduced costs and timeframes. There is only one entity being incorporated that undertakes distinct business strategies through its individual cells resulting in an advantageous cost to benefit ratio.

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