



TURKS AND CAICOS ISLANDS

CHAPTER 16.09
PROTECTED CELL
COMPANIES ORDINANCE

Revised Edition
showing the law as at 31 December 2014

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

This edition contains a consolidation of the following laws—

PROTECTED CELL COMPANIES ORDINANCE

Ordinance 5 of 2006 .. in force 1 November 2006 (L.N. 30/2006)

No Subsidiary Legislation has been made under this Ordinance

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CHAPTER 16.09

PROTECTED CELL COMPANIES ORDINANCE

ARRANGEMENT OF SECTIONS

PART I

INTRODUCTORY

SECTION

1. Short title
2. Interpretation

PART II

FORMATION OF PROTECTED CELL COMPANIES

3. Protected cell companies
4. Fundamental nature of a protected cell company
5. Names
6. Memorandum of protected cell company
7. Creation of protected cell company

PART III

CELLS

8. Registration and register of protected cell companies
9. Creation of cells, and cellular and non-cellular assets
10. Cellular and non-cellular assets: directors' duties

PART IV

CELL SHARE CAPITAL AND DIVIDENDS

11. Cell shares and share capital
12. Dividends in respect of cell shares
13. Reduction of cell share capital with approval of Court
14. Notice of applications to Court
15. Order authorizing reduction of the cell share capital
16. Accounts, rewards and registers
17. Safeguards for creditors
18. Liability of holders of cell shares
19. Offences

PART V

ASSETS AND LIABILITIES

20. Attribution of non-cellular assets and liabilities
21. Liability of cellular and non-cellular assets
22. Disputes as to liability attributable to cells
23. Position of creditors
24. Recourse to cellular assets by creditors
25. Transfer of cellular assets from protected cell companies
26. Cell transfer orders

PART VI

RECEIVERSHIP ORDERS

27. Receivership orders in relation to cells
28. Application for receivership orders
29. Function of receiver and effect of receivership order
30. Discharge and variation of receivership orders
31. Remuneration of receiver

PART VII

LIQUIDATION

32. Provisions in relation to liquidation of protected cell companies

PART VIII

GENERAL PROVISIONS

33. Company to inform persons that they are dealing with protected cell companies
34. Suits and actions against the Commission
35. Charges of cell assets
36. Power to make regulations
37. Saving for directors' functions
38. Saving for internal arrangements

CHAPTER 16.09

PROTECTED CELL COMPANIES ORDINANCE

(Ordinance 5 of 2006)

AN ORDINANCE TO PROVIDE FOR THE INCORPORATION OF COMPANIES AS PROTECTED CELL COMPANIES; FOR THE CONVERSION OF COMPANIES INTO PROTECTED CELL COMPANIES; AND FOR CONNECTED PURPOSES.

Commencement

[1 November 2006]

PART I

INTRODUCTORY

Short title

1. This Ordinance may be cited as the Protected Cell Companies Ordinance.

Interpretation

2. (1) In this Ordinance—

“account owner” means in relation to a protected cell account, any person who is the registered holder of shares which are issued by the protected cell company, and linked to that protected cell account;

“cell” means a cell created by a protected cell company the purpose of segregating and protecting cellular assets in the manner provided by this Ordinance;

“cell share capital” means the proceeds of issue of cell shares;

“cell shares” means shares created and issued by a protected cell company in respect of one of its cells pursuant to the provisions of section 10, the proceeds of the issue or the cell share capital of which shall be comprised in the cellular assets attributable to that cell;

“cell transfer order” means an order transferring the cellular assets attributable to a cell of a protected cell company;

“cellular assets” means the assets attributable to a cell of a protected cell company which are assets represented by the proceeds of cell share capital and reserves attributable to the cell and all other assets attributable to the cell;

“cellular dividend” means dividend payable by a protected cell company in respect of cell shares by reference only to the cellular assets and liabilities, or profits, attributable to the cell in respect of which the cell shares were issued;

“Commission” means the Turks and Caicos Islands Financial Services Commission established under section 4 of the Financial Services Commission Ordinance;

“Court” means the Supreme Court of the Turks and Caicos Islands;

“creditors” includes present, future and contingent creditors;

“general account” means an account comprising all of the assets and liabilities of a protected cell company which are not linked to a protected cell account of that company;

“liability” includes any debt or obligation;

“linked” means referable by means of—

- (a) an instrument in writing including a governing instrument or contract;
- (b) an entry or other notation made in respect of a transaction in the records of a protected cell company; or
- (c) an unwritten but conclusive indication,

which identifies an asset, right contribution, liability or obligation as belonging to a cell;

“non-cellular assets” means the assets of a protected cell company which are not cellular assets;

“prescribed” means prescribed by regulations made by the Governor;

“protected cell company” means a protected cell company, incorporated as, or converted into, a protected cell company in accordance with the provisions of this Ordinance;

“receiver” means the person appointed by the Court by a receivership order;

“receivership order” means an order of the court for a receiver to manage the business and cellular assets of or attributable to a cell under section 25(1);

“Registrar” means the Registrar of Companies;

“reserves” includes retained earnings, capital reserves and share premiums;

“transaction” includes, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship whereby any liability arises or is imposed.

(2) Unless the context otherwise requires, expressions used in this Ordinance have the same meanings as in the Companies Ordinance.

PART II

FORMATION OF PROTECTED CELL COMPANIES

Protected cell companies

3. (1) A company may be incorporated as a protected cell company under the Companies Ordinance.

(2) A company which is not a protected cell company may by special resolution be converted into a protected cell company if the conversion is authorised by its articles.

(3) A company may be incorporated as, or converted into, a protected cell company only if it is a company limited by shares.

(4) Subject to the provisions of this Ordinance, the Companies Ordinance applies in respect of a company which is a protected cell company as it applies in respect of any other company.

Fundamental nature of a protected cell company

4. (1) A protected cell company is a single legal person.

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

Names

5. (1) The name of a protected cell company must include the expression "Protected Cell Company" or "protected cell company".

(2) Each cell of a protected cell company must have its own distinct name or designation.

(3) This section is without prejudice to section 6(1)(a) of the Companies Ordinance.

Memorandum of association of a protected cell company

6. (1) The memorandum of association of a protected cell company shall state that it is a protected cell company.

(2) A company may alter its memorandum by special resolution in order to comply with subsection (1).

Creation of protected cell company

7. (1) Upon an application to incorporate a company as a protected cell company there must be delivered to the Commission together with all other documents, consents and information as are required for the registration of the memorandum of a company under the Companies Ordinance, a statement in the prescribed form signed by or on behalf of the subscribers of the memorandum.

(2) Subject to subsection 3(2), upon an application to convert a company which is not a protected cell company into a protected cell company there must

be delivered to the Commission a statement of conversion in the prescribed form signed by a director of the company.

(3) A company cannot be incorporated as, nor can a company which is not a protected cell company be converted into, a protected cell company unless—

- (a) it carries on, or will when incorporated carry on, insurance business within the meaning of the Insurance Ordinance; or
- (b) it is or will be of such class or description, or carries on or will carry on, such business or class of business, as is prescribed.

PART III

CELLS

Registration and register of protected cell companies

8. (1) Upon application and upon payment of such fee as may be prescribed, the Commission, if satisfied that the company is capable of complying with this Ordinance may register the company as a protected cell company.

(2) The Commission may—

- (a) impose such conditions on the granting of its consent to the registration of a company as it may consider necessary to ensure the reputation of the Turks and Caicos Islands and in particular, to vet the account owners of protected cell accounts and to ensure compliance with this Ordinance;
- (b) require the company to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its protected cell accounts business in a particular way.

(3) The Commission may revoke or vary any condition or requirement imposed under subsection (2) by giving notice thereof to the company.

(4) After the registration of a company pursuant to subsection (1), the Registrar shall issue a certificate showing the date of registration.

(5) The Registrar shall place a copy of the certificate referred to in subsection (4) on the public file maintained by him in respect of the company.

(6) The Registrar shall maintain a register of protected cell companies.

(7) The register shall be available for inspection by members of the public.

(8) In addition to the annual fee payable under the Companies Ordinance and licence fee otherwise payable, a protected cell company registered under this Ordinance shall pay such annual fee as may be prescribed.

(9) Where the Commission refuses to register a company pursuant to subsection (1) it shall not be bound to assign any reason for its refusal and its decision shall not be subject to appeal or review in any court.

Creation of cells, and cellular and non-cellular assets

9. (1) A protected cell company may create one or more cells for the purpose of segregating and protecting cellular assets in the manner provided by this Ordinance.

(2) The powers conferred by subsection (1) must be exercised by the protected cell company in general meeting unless the protected cell company's articles of association provide that they may be exercised by the directors of the protected cell company;

(3) The assets of a protected cell company are either cellular assets or non-cellular assets.

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

(5) The non-cellular assets of a protected cell company are the assets of the protected cell company attributable to the cells of the protected cell company.

Cellular and non-cellular assets: directors' duties

10. (1) It is the duty of the directors of a protected cell company—

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

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

(2) Subsection (1) does not prevent the directors arranging for cellular assets and non-cellular assets to be held—

(a) by or through a trustee, custodian or nominee; or

(b) by a company the shares and capital interests of which may be cellular assets or non-cellular assets, or a combination of both.

(3) There is no default in complying with subsection (1) if cellular assets or non-cellular assets, or a combination of both, are collectively invested, or collectively managed, by an investment manager if the assets in question remain separately identifiable in accordance with that subsection.

(4) If default is made in complying with subsection (1), the directors of the protected cell company are liable to a default fine.

PART IV

CELL SHARE CAPITAL AND DIVIDENDS

Cell share capital

Cell shares and share capital

11. (1) A protected cell company may create and issue shares, “cell shares,” in respect of any of its cells.

(2) The proceeds of the issue of shares other than cell shares are non-cellular assets.

Cell share dividends

Dividends in respect of cell shares

12. (1) A protected cell company may pay a dividend (a “cellular dividend”) in respect of cell shares.

(2) 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.

(3) In determining whether or not profits are available for the purpose of paying a cellular dividend, no account is to be taken of—

- (a) the profits and losses, or the assets and liabilities, attributable to any other cell of the protected cell company; or
- (b) non-cellular profits and losses, or assets and liabilities.

Reduction of cell share capital

Reduction of cell share capital with approval of Court

13. A reduction of cell share capital may be made under the authority of, and in accordance with the terms and conditions of, an order of the Court under this Part but not otherwise.

Notice of applications to Court

14. (1) Before an application for an order authorising the reduction of cell share capital is made, public notice of the application shall be given, setting out the terms of the application and the date, time and place of the hearing.

(2) Notice of an application to the Court for an order authorising the reduction of cell share capital must be given to—

- (a) the protected cell company, except where the protected cell company is itself the applicant;

- (b) the receiver (if any) of the cell;
- (c) the liquidator (if any) of the protected cell company;
- (d) all holders of cell shares of the cell, other than the applicant;
- (e) such persons as are specified in regulations under section 36; and
- (f) such other persons as the Court may direct.

(3) Each person specified in subsection (2)(a) to (f) is entitled to make representations to the Court before the order is made.

(4) The Court may dispense with the requirement to give notice to any person specified in subsection (2)(a) to (d).

Order authorising reduction of cell share capital

15. (1) The Court may, on an application being made, by order authorise the protected cell company to reduce the cell share capital—

- (a) if the applicant is the protected cell company, of any of the protected cell company's cells; or
- (b) if the applicant is the holder of cell shares, of the cell in which the cell shares are held.

(2) Without prejudice to the generality of subsection (1), an order under subsection (1) may authorise the protected cell company—

- (a) to extinguish or reduce the liability on any cell shares in respect of cell share capital not paid up; or
- (b) with or without extinguishing or reducing any liability on any cell shares—
 - (i) to cancel any paid-up cell share capital which is lost or unrepresented by available cellular assets; or
 - (ii) to pay off any paid-up cell share capital which exceeds the needs of the protected cell company.

(3) An order of the Court authorising a reduction of cell share capital shall be deemed to be substituted for the corresponding part of the protected cell company's memorandum and have effect as if originally contained therein.

(4) A Court order authorising a reduction of cell share capital does not prejudice anything done in accordance with the memorandum before the date of the order.

(5) The protected cell company may, so far as is necessary, alter its memorandum to reflect a Court order authorising a reduction of cell share capital.

(6) The Court, on hearing an application for an order authorising the reduction of cell share capital, may make an interim order, or adjourn the hearing, conditionally or unconditionally.

Accounts, records and registers

16. (1) A protected cell company shall maintain records that will enable financial statements to be prepared in accordance with accepted accounting principles so that the records shall, to the best of the knowledge, information and belief of the directors and officers of the company, clearly show the share capital, proceeds or rights issues, securities, reserves, assets, liabilities, income and expenses, dividends and distributions that are linked to each protected cell account.

(2) The records referred to in subsection (1) shall be kept in accordance with section 64 of the Companies Ordinance provided that in the case of a protected cell company to which the Insurance Ordinance applies, the records shall be kept at the principal office.

(3) The records maintained with respect to a protected cell account may be inspected by any account owner of that protected cell account, but an account owner shall not have a right to inspect the records relating to any other protected cell account or (in such capacity) in the general account.

(4) A protected cell company shall prepare or cause to be prepared financial statements in respect of each protected cell account.

(5) Subject to subsection (4), a copy of the financial statements of a protected cell account shall be made available to the account owner of a protected cell account at such intervals and for such periods as are agreed between the protected cell company and the account owner of the protected cell account, but in any event shall be made available not less frequently than once in each financial year.

(6) If—

- (a) the records maintained with respect to a protected cell account; or
- (b) the financial statements of a protected cell account,

are not made available for inspection by any account owner of that protected cell account, the Commission may, on application by the affected account owner, compel immediate production of the records or financial statements.

(7) A protected cell company shall maintain a register of account owners setting out their perspective interest in any protected cell account together with the particulars required in respect of members of the protected cell company.

(8) The register of account owners shall not be open to public inspection and in the case of a protected cell company which is a mutual fund, the register of account owners shall not be open to inspection by any person without the consent of the protected cell company, provided that an account owner shall be entitled to receive a copy of the information in the register pertaining to his interest in the protected cell company.

(9) The register of account owners shall be *prima facie* evidence of any matters by this Ordinance directed or authorised to be inserted therein.

Safeguards for creditors

17. (1) The Court shall not make an order authorising the reduction of cell share capital unless it is satisfied—

- (a) that the creditors of the protected cell company entitled to have recourse to the cellular assets attributable to the cell in question consent to the reduction; or
- (b) that those creditors would not be unfairly prejudiced by the reduction.

(2) The Court may dispense with the consent of a creditor upon the protected cell company securing payment of its liability to the creditor in such form and manner as the Court may direct.

(3) Subsections (5) and (6) apply if—

- (a) a creditor whose consent is required under subsection (1) has not, without neglect or default on his part, been given written notice by the protected cell company that his consent to the reduction is required; and
- (b) after the reduction of cell share capital, the cellular assets attributable to the cell in question are or are likely to be insufficient to discharge the claims of creditors in respect of that cell.

(4) In determining the cellular assets attributable to the cell in question under subsection (3)(b), no account is to be taken of the protected cell company's general assets unless there are no creditors in respect of that cell entitled to have recourse to the protected cell company's general assets.

(5) Every person who, at the date of the Court order authorising the reduction of cell share capital, was a holder of cell shares of the cell in question shall be liable to contribute, towards payment of the liability in question, an amount not exceeding that which he would have been liable to contribute if the winding up of the protected cell company had commenced on the day before that date.

(6) Subsection (7) applies if the protected cell company is wound up, or if a receivership order is made under section 27, in respect of the cell of the protected cell company in relation to which the Court order authorising the reduction of cell share capital was made.

(7) The Court, on the application of the creditor in question and upon proof of the matters set out in subsection (3)(a) may—

- (a) if it thinks fit, settle a list of persons liable to contribute; and
- (b) make and enforce calls and orders against the contributories settled on the list as if they were ordinary contributories in a winding up.

(8) Nothing in subsections (3) to (7) affects the rights of the contributories among themselves.

Liability of holders of cell shares

18. (1) Subject to any other provisions in this Ordinance, if a protected cell company's cell share capital is reduced, no past or present holder of cell shares of the cell in question is liable in respect of any cell share to any call or contribution exceeding the amount of the difference (if any) between the following amounts—

- (a) the amount of the cell share as fixed by the order of the Court authorising the reduction of cell share capital; and
- (b) the amount paid on the cell share or if appropriate, the reduced amount deemed to have been paid on it.

Offences

19. (1) An officer of a protected cell company commits an offence if he—

- (a) makes a statement or declaration that he knows or has reasonable grounds to believe to be false, deceptive or misleading in a material particular;
 - (b) intentionally conceals the name of a creditor whose consent is required under this Part to the reduction of the protected cell company's cell share capital;
 - (c) intentionally misrepresents the nature or amount of the debt or claim of a creditor; or
 - (d) aids, abets, connives in or is privy to any such concealment or misrepresentation as is described in paragraph (a) or (b).
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding \$10,000 or a term of imprisonment for two years or both;
 - (b) on conviction on indictment, to a fine not exceeding \$20,000 or a term of imprisonment for two years or both.

PART V**ASSETS AND LIABILITIES****Attribution of non-cellular assets and liabilities**

20. (1) Liabilities of a protected cell company not otherwise attributable to any of its cells are to be discharged from the protected cell company's non-cellular assets.

(2) Income, receipts and other property or rights of or acquired by a protected cell company not otherwise attributable to any cell are to be applied to and comprised in the protected cell company's non-cellular assets.

Liability of cellular and non-cellular assets

21. (1) Subject to subsection (2) and (9), if any liability arises which is attributable to a particular cell of a protected cell company—

- (a) the cellular assets attributable to that cell will be primarily liable;
- (b) the protected cell company's non-cellular assets will be secondarily liable, provided that the cellular assets attributable to the relevant cell have been exhausted; and
- (c) the liability will not be a liability of any cellular assets not attributable to the relevant cell.

(2) If the protected cell company has agreed with the person in respect of whom the liability arises that a liability is the liability solely of—

- (a) the protected cell company's non-cellular assets, or
- (b) the cellular assets attributable to a particular cell of the protected cell company,

subsection (1) will have effect subject to that agreement.

(3) In the case of loss or damage which is attributable to a particular cell of a protected cell company and which is caused by fraud, the loss or damage shall be the liability solely of the protected cell company's non-cellular assets.

(4) Subsection (3) is without prejudice to any liability of any person other than the protected cell company.

(5) The fraud referred to in subsection (3) does not include the fraud of any person making a claim against the protected cell company or any of its assets or of that person's servants, employees, officers or agents.

(6) Any liability not attributable to a particular cell of a protected cell company will be the liability solely of the protected cell company's non-cellular assets.

(7) The liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a protected cell company will reduce proportionally until the value of the aggregate liabilities equals the value of those assets but this subsection will be disregarded in assessing the existence and extent of any secondary liability under subsection (1)(b).

(8) The liabilities of the protected cell company's non-cellular assets will reduce proportionally until the value of the aggregate liabilities equals the value of those assets but this subsection will not apply in any situation in which any of the liabilities of the protected cell company's non-cellular assets arises from fraud or by reason of a special agreement such as is referred to in subsection (2).

(9) This section has extra-territorial application.

Disputes as to liability attributable to cells

22. (1) In the event of any dispute as to—

- (a) whether any right is or is not in respect of a particular cell;

- (b) whether any creditor is or is not a creditor in respect of a particular cell;
- (c) whether any liability is or is not attributable to a particular cell; or
- (d) the amount to which any liability is limited,

the Court, on the application of the protected cell company, and without affecting any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

(2) The Court, on hearing an application for a declaration under subsection (1) may—

- (a) direct that any person shall be heard on the application;
- (b) make an interim declaration, or adjourn the hearing, conditionally or unconditionally;
- (c) make the declaration subject to such terms and conditions as it thinks fit; or
- (d) direct that the declaration is binding upon such persons as are specified.

Position of creditors

23. (1) The rights of creditors of a protected cell company shall correspond with the liabilities provided for in section 21.

(2) No such creditor shall have any rights other than the rights referred to in this section and in sections 21 and 24.

(3) There is implied in every transaction entered into by a protected cell company unless expressly excluded in writing, the following terms—

- (a) that no party will seek, whether in any proceedings or by any other means, to make or attempt to make liable any cellular assets attributable to any cell of the protected cell company in respect of a liability not attributable to that cell;
- (b) that if any party succeeds by any means in making liable any cellular assets attributable to any cell of the protected cell company in respect of a liability not attributable to that cell, that party is liable to the protected cell company to pay a sum equal to the value of that benefit;
- (c) that if any party succeeds in arresting, seizing or attaching by any means, or otherwise levying execution against, any cellular assets attributable to any cell of the protected cell company in respect of a liability not attributable to that cell, that party holds those assets or their proceeds on trust for the protected cell company and must keep those assets or proceeds separate and identifiable as such trust property; and

(d) that the law applicable to the transaction is the law of the Islands and that the parties submit to the exclusive jurisdiction of the Court.

(4) All sums recovered by a protected cell company as a result of a trust under subsection (3)(c) shall be credited against any concurrent liability imposed pursuant to the implied term set out in subsection (3)(b).

(5) Any asset or sum recovered by a protected cell company under the implied term set out in paragraphs (b) or (c) of subsection (3) or by any other means in the events referred to in those paragraphs must, after the deduction or payment of any costs of recovery, be applied by the protected cell company so as to compensate the cell affected.

(6) In the event of any cellular assets attributable to a cell of a protected cell company being taken in execution 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 protected cell company must—

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

(b) transfer or pay, from the cellular or non-cellular assets to which the liability was attributable to the cell affected, assets or sums sufficient to restore to the cell affected the value of the assets lost.

(7) Where under subsection (6)(b) a protected cell company is obliged to make a transfer or payment from cellular assets attributable to a cell of the protected cell company, and those assets are insufficient, the protected cell company shall so far as possible make up the deficiency from its non-cellular assets.

(8) This section shall have extra-territorial application.

Recourse to cellular assets by creditors

24. Without prejudice to the provisions of sections 21 and 24, cellular assets attributable to a cell of a protected cell company—

(a) are available only to the creditors of the protected cell company who are creditors in respect of that cell and who are thereby entitled, in conformity with the provisions of this Ordinance, to have recourse to the cellular assets attributable to that cell; and

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

Transfer of cellular assets from a protected cell company

25. (1) Subject to the provisions of subsections (2) and (3), the cellular assets attributable to any cell of a protected cell company may be transferred to another person, wherever resident or incorporated, and whether or not a protected cell company.

(2) Subsection (1) does not apply to non-cellular assets of a protected cell company.

(3) No transfer of the cellular assets attributable to a cell of a protected cell company may be made except under a “cell transfer order”.

(4) A transfer of cellular assets attributable to a cell of a protected cell company shall not of itself entitle creditors of that protected cell company to have recourse to the assets of the person to whom the cellular assets were transferred.

(5) The provisions of this section are without prejudice to any power of a protected cell company lawfully to make payments or transfers from the cellular assets attributable to any cell of the protected cell company to a person entitled to have recourse to those cellular assets.

(6) A protected cell company does not require a cell transfer order to invest, and change investment of, cellular assets or otherwise to make payments or transfers from cellular assets in the ordinary course of the protected cell company’s business.

Cell transfer orders

26. (1) The Court shall not make a cell transfer order in relation to a cell of a protected cell company unless it is satisfied—

- (a) that the creditors of the protected cell company are entitled to have recourse to the cellular assets attributable to the cell or consent to the transfer; or
- (b) that those creditors would not be unfairly prejudiced by the transfer.

(2) The Court, on hearing an application for a cell transfer order—

- (a) may make an interim order or adjourn the hearing, conditionally or unconditionally; or
- (b) may dispense with any of the requirements of subsection (1).

(3) The Court may attach such conditions as it thinks fit to a cell transfer order, 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.

(4) The Court may make a cell transfer order in relation to a cell of a protected cell company even if—

- (a) a liquidator has been appointed to act in respect of the protected cell company or the protected cell company has passed a resolution for voluntary winding up; or
- (b) a receivership order has been made in respect of the cell or any other cell of the protected cell company.

PART VI

RECEIVERSHIP ORDERS

Receivership orders in relation to cells

27. (1) The Court may issue a receivership order and appoint a receiver for the purposes of—

- (a) the orderly winding up of the business of or attributable to the cell; and
- (b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.

(2) If the Court is satisfied—

- (a) that the cellular assets attributable to a particular cell of the protected cell company (when account is taken of the protected cell company's general assets, unless there are no creditors in respect of that cell entitled to have recourse to the protected cell company's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; and
- (b) that the making of an order under this section would achieve the purposes set out in subsection (1),

the Court may make a receivership order under this section in respect of that cell.

(3) A receivership order—

- (a) shall not be made if—
 - (i) a liquidator has been appointed to act in respect of the protected cell company; or
 - (ii) the protected cell company has passed a resolution for voluntary winding up;
- (b) shall cease to be of effect upon the appointment of a liquidator to act in respect of the protected cell company.

(4) A receivership order may be made in respect of one or more cells.

(5) A receivership order does not affect prior acts.

(6) No resolution for the voluntary winding up of a protected cell company, any cell of which is subject to a receivership order, shall be effective without leave of the Court.

Applications for receivership orders

28. (1) An application for a receivership order in respect of a cell of a protected cell company may be made by—

- (a) the protected cell company;
- (b) the directors of the protected cell company;
- (c) any creditor of the protected cell company in respect of that cell;

- (d) any holder of cell shares in respect of that cell;
- (e) the Commission; or
- (f) such other person as may be specified in regulations under section 36.

(2) The Court, on hearing an application—

- (a) for a receivership order; or
- (b) for leave, under section 27(6), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for a receivership order in respect of a cell of a protected cell company shall be served upon—

- (a) the protected cell company;
- (b) such other person as may be specified in regulations under section 36;
- (c) the Commission; and
- (d) such other persons (if any) as the Court may direct,

who shall each be given an opportunity of making representations to the Court before the order is made.

Functions of receiver and effect of receivership order

29. (1) The receiver of a cell—

- (a) shall, within 1 month from the date of the receivership order, deliver to the Commission a certified copy of the order;
- (b) may do anything necessary for the purposes set out in section 27(1); and
- (c) has all the functions of the directors in respect of the business and cellular assets of or attributable to the cell.

(2) The receiver may at any time apply to the Court—

- (a) for directions as to the extent or exercise of any function or power;
- (b) for the receivership order to be discharged or varied; or
- (c) for an order as to any matter arising in the course of his receivership.

(3) In exercising any functions the receiver is the agent of the protected cell company, and does not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

(4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.

(5) When an application has been made for, and during the period of operation of, a receivership order—

- (a) no proceedings may be instituted or continued by or against the protected cell company in relation to the cell in respect of which the receivership order was made; and
- (b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or cellular assets of or attributable to the cell in respect of which the receivership order was made,

except by leave of the Court, which may be conditional or unconditional.

(6) During the period of operation of a receivership order—

- (a) the functions of the directors shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made; and
- (b) the receiver of the cell is deemed to be a director of the protected cell company in respect of the general assets of the protected cell company, unless there are no creditors in respect of that cell entitled to have recourse to the protected cell company's general assets.

(7) If default is made in complying with subsection (1)(a), the directors of the protected cell company are liable to a default fine.

Discharge and variation of receivership orders

30. (1) The Court cannot discharge a receivership order unless the Court is satisfied that the purpose for which the order was made—

- (a) has been achieved or substantially achieved; or
- (b) is incapable of achievement.

(2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a receivership order in respect of a cell of a protected cell company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the protected cell company in respect of that cell shall be deemed full satisfaction of the liabilities of the protected cell company to that creditor in respect of that cell; and the creditor's claims against the protected cell company in respect of that cell shall be thereby deemed extinguished.

(4) Subsection (3) shall not affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell company.

(5) Subject to the provisions of—

- (a) this Ordinance,
- (b) section 170 (preferential payments) of the Companies Ordinance; and
- (c) any agreement between the protected cell company and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the protected cell company's other creditors,

the protected cell company's cellular assets attributable to any cell of the protected cell company in relation to which a receivership order has been made must, in the winding up of the business of or attributable to that cell pursuant to the provisions of this Ordinance, be realised and applied proportionately in satisfaction of the protected cell company's liabilities attributable to that cell.

(6) Any surplus must thereafter be distributed, unless the memorandum or articles provide otherwise—

- (a) among the holders of the cell shares or the persons otherwise entitled to the surplus; or
- (b) where there are no cell shares and no such persons, among the holders of the non-cellular shares,

in each case according to their respective rights and interests in or against the protected cell company.

(7) The Court may, upon discharging a receivership order in respect of a cell of a protected cell company, direct that the cell shall be dissolved on such date as the Court may specify.

(8) On the dissolution of a cell of a protected cell company, the protected cell company may not undertake business or incur liabilities in respect of that cell.

Remuneration of receiver

31. The remuneration of a receiver and any expenses properly incurred by him shall be payable, in priority to all other claims, from—

- (a) the cellular assets attributable to the cell in respect of which the receiver was appointed; and
- (b) to the extent that these may be insufficient, the general assets of the protected cell company.

PART VII

LIQUIDATION

Provisions in relation to liquidation of protected cell company

32. (1) Notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a protected cell company, the liquidator—

- (a) shall deal with the protected cell company's assets in accordance with the requirements of section 9(1);
- (b) in discharge of the claims of creditors of the protected cell company, shall apply the protected cell company's assets to those entitled to have recourse thereto in conformity with the provisions of this Ordinance.

(2) Section 144(a) of the Companies Ordinance, distribution of property of a company applies, with the necessary modifications, in relation to protected cell companies but subject to this Ordinance.

PART VIII

GENERAL PROVISIONS

Company to inform persons they are dealing with protected cell company

33. (1) A protected cell company shall—

- (a) inform any person with whom it enters into any transaction in respect of a particular cell that the company is a protected cell company; and
- (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting.

(2) Subsection (4) applies where—

- (a) in contravention of subsection (1), a protected cell company fails to inform a person that he is entering into a transaction with a protected cell company, and
- (b) that person is otherwise unaware that, and has no reasonable grounds to believe that, he is entering into a transaction with a protected cell company.

(3) Subsection (4) also applies where—

- (a) in contravention of subsection (1), a protected cell company fails to identify or specify the cell in respect of which a person is entering into a transaction, and

(b) that person is otherwise unaware of, and has no reasonable basis of knowing, the cell in respect of which he is entering into a transaction.

(4) Where this subsection applies—

(a) the directors shall incur personal liability to that person in respect of the transaction; and

(b) the directors shall have a right of indemnity against the general assets of the protected cell company, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(5) Subsection (4) applies even though there is a provision to the contrary in the protected cell company's articles or in any contract with the protected cell company or otherwise.

(6) The Court may nonetheless relieve a director of all or part of his personal liability under subsection (4)(a) if the Court is satisfied that it is fair to relieve him because—

(a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, reckless or negligent, nor acted in bad faith; or

(b) he expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

(7) Where, under subsection (6), the Court relieves a director of all or part of his personal liability under subsection (4)(a), the Court may order that the liability in question shall instead be met from such of the cellular or general assets of the protected cell company as may be specified in the order.

(8) Any provision in the articles of a protected cell company, and any other contractual provision under which the protected cell company may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity against general assets by virtue of subsection (4)(b), is void.

Suits and actions against the Commission

34. (1) No suit or action shall lie against the Commission or any person acting on its behalf in respect of anything done or committed to be done in its official capacity in good faith without negligence.

(2) Nothing in subsection (1) shall be deemed to interfere with applications or references to the Court under Part V of the Companies Ordinance (which applies to winding up).

Charges of cell assets

35. (1) A protected cell company may create any charge, mortgage, or other form of security interest in respect of assets attributable to a particular cell in relation to—

(a) any liability attributable to that cell; or

(b) any liability which is not attributable to that cell.

(2) A protected cell company cannot exercise the powers referred to in subsection (1) without the written consent of all the members of the relevant cell.

(3) Without affecting the generality of section 4, section 207 registration etc. of charges, of the Companies Ordinance applies in respect of each cell of a protected cell company as if each cell were a separate company.

Power to make regulations

36. (1) The Governor may make such regulations as are necessary to give full effect to this Ordinance.

(2) Without limiting the generality of subsection (1), regulations under this Ordinance may make provision in respect of any of the following matters—

- (a) restricting the business which protected cell companies may carry out;
- (b) the conduct of the business of protected cell companies;
- (c) the manner in which protected cell companies may carry on, or hold themselves out as carrying on, business;
- (d) the form and content of the accounts of protected cell companies;
- (e) the winding up, administration or receivership of protected cell companies;
- (f) the transfer of domicile, in accordance with Part X of the Companies Ordinance, of companies which are, or are equivalent to, protected cell companies.

(3) Regulations under subsection (2) may modify provisions of the Companies Ordinance in their application to companies which are protected cell companies but only to such extent as is necessary to prevent conflict between that Ordinance and this Ordinance.

(4) Regulations under this Ordinance—

- (a) may contain such consequential, incidental, supplemental and transitional provisions as may appear to the Governor to be necessary or expedient;
- (b) may provide that the provisions of this Ordinance shall apply in relation to any class or description of company specified by or prescribed under regulations subject to such exceptions, adaptations and modifications as may be specified in the regulations.

Saving for directors' functions

37. This Ordinance, subject to the powers of delegation by directors, does not affect the functions of the directors of a protected cell company in respect of the affairs of the protected cell company including the due administration of the affairs of each cell except as expressly provided.

Saving for internal arrangements

38. (1) This Ordinance does not prevent, in the ordinary course of business of a protected cell company, arrangements—

- (a) as between cells, or
- (b) as between cells and the protected cell company,

in relation to the protected cell company's business or to the protected cell company's business attributable to the cells concerned.

(2) In respect of any arrangements of a kind mentioned in subsection (1), the protected cell company shall make the necessary adjustments to the accounting records of the protected cell company and those attributable to its cells.

(3) This section does not affect the generality of section 4.

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