

SEYCHELLES

PROTECTED CELL COMPANIES ACT, 2003

(as amended, 2004)

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Part I - Preliminary

Short title and commencement

1. This Act may be cited as the Protected Cell Companies Act, 2003 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation

2.(1) In this Act -

“administration order” means an order of the Court under section 25 in relation to a protected cell company or a cell thereof;

“administrator” means the person appointed as such by an administration order;

“Authority” means the Seychelles International Business Authority established by the Seychelles International Business Authority Act, 1994;

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

“cell shares” means shares created and issued by a protected cell company in respect of its cell pursuant to the provisions of section 8, the proceeds of the issue of which shall be comprised in the cellular assets attributable to that cell;

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

“cell transfer order” means an order of the Court under section 19(3) sanctioning the transfer of the : cellular assets attributable to any cell of a protected cell company to another person;

“cellular assets” means the assets of a protected cell company attributable to the company’s cells pursuant to section 5 (4);

“cellular dividend” means a dividend payable by a protected cell company in respect of cell shares pursuant to the provisions of section 8 (3):

“company” means a company incorporated under the Companies Act 1972 or under such other Act as may be prescribed;

“court” means the Supreme Court;

“creditors” includes present, future and contingent creditors

“liability” includes any debt or obligation;

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

“prescribed “ means prescribed by regulations made under this Act;

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

“receiver” means a person appointed as such by a receivership order;

“receivership order” means an order of the court under section 20 in relation to a cell of a protected cell company;

“transaction” means any agreement, arrangement, dealing, disposition, circumstance, event or relationship whereby any liability arises or is imposed.

(2) Expressions used in this Act shall (unless the context requires otherwise) have the same meanings as in the Companies Act, 1972.

Part II - Formation and Attributes

Protected cell companies

3.(1) It shall be lawful, subject to the provisions of this Act -

- (a) to incorporate a company which shall be a protected cell company;
- (b) to convert an existing company, if so authorised by its articles, into a protected cell company

for the purpose of conducting any business activity specified in the Schedule.

(2) For the avoidance of doubt, it is hereby declared that notwithstanding that a protected cell company may have created one or more cells pursuant to the provisions of this Act -

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

(3) The provisions of the Companies Act, 1972 shall, subject to the provisions of this Act and unless the context requires otherwise, apply in relation to a protected cell company.

Creation of cells

4. 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 Act.

Cellular and non-cellular assets

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

(2) It shall be 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.

(3) The cellular assets of a protected cell company comprise the assets of the company attributable to the

cells of the company.

- (4) The assets attributable to a cell of a protected cell company comprise -
- (a) assets represented by the proceeds of the I share capital and reserves attributable to the cell;
 - (b) all other assets attributable to the cell.
- (5) For the purposes of subsection (4), the expression “reserves” includes retained earnings, capital reserves and share premiums.
- (6) The non-cellular assets of a protected cell company comprise the assets of the company which are not cellular assets.
- (7) Notwithstanding the provisions of subsection (2), the directors of a protected cell company may cause or permit cellular assets and non-cellular assets to be held -
- (a) by or through a 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.
- (8) The duty imposed by subsection (2) is not breached by reason only that the directors of a protected 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 subsection (2).

Position of creditors

- 6.(1)** The rights of creditors of a protected cell company shall correspond with the liabilities provided in section 14.
- (2) No such creditor shall have any rights other than the rights referred to in this section and in sections 7 and 14.
- (3) There shall be implied (except in so far as the same is expressly excluded in writing) in every transaction entered into by a protected cell company the following terms -
- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to make liable any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell;
 - (b) that if any party shall succeed by any means whatsoever or wheresoever in making liable any cellular assets attributable to any cell of the company in respect of 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; and
 - (c) that if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.
- (4) All sums recovered by a protected cell company as a result of any such trust as is described in subsection (3) (c) shall be credited against any concurrent liability pursuant to the implied term set out in subsection (3) (b).

(5) Any asset or sum recovered by a protected cell company pursuant to the implied term set out in subsection (3) (b) or (3) (c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the 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 company shall

- (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 company, and those assets are insufficient, the company shall so far as possible make up the deficiency from its non-cellular assets.

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

Protection of cellular assets of a cell of a protected cell company

7. Without prejudice to the provisions of sections 6 and 14, cellular assets attributable to a cell of a protected cell company-

- (a) shall only be available to the creditors of the company who are creditors in respect of that cell and who shall thereby be entitled in conformity with the provisions of this Act, to have recourse to the cellular assets attributable to that cell;
- (b) shall be absolutely protected from the creditors of the company who are not creditors in respect of that cell and who accordingly shall not be entitled to have recourse to the cellular assets attributable to that cell.

Cell shares and cell share capital

8.(1) A protected 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 protected cell company shall be comprised in the company’s non-cellular assets.

(3) A protected 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 for the purposes of section 161 of the Companies Act 1972 whether or not profits are available for the purpose of paying a cellular dividend, no account need 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 assets and liabilities.

(5) Unless the context requires otherwise, references in the Companies Act 1972 to “shares” include references to cell shares.

Reduction of cell share capital

9.(1) A protected cell company or a holder of cell shares in a cell of a protected cell company may apply to the court to permit the company to reduce the cell share capital -

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

(2) A notice of the intention to make an application under the subsection (1) shall be published by the applicant in such form and manner, and in such local and foreign newspapers as may be specified by the Authority.

(3) The reduction may seek -

- (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 company’s wants,

and the company may, so far as is necessary, alter its memorandum accordingly.

(4) The court shall permit the reduction of cell share capital where it is satisfied that -

- (a) a special resolution referred to as “a resolution for cell share capital reduction” is filed;
- (b) the company has provided sufficient guarantees to secure payment of its liabilities to the creditor or creditors of the cell in respect of which the reduction of cell share capital is made;
- (c) no creditor is unfairly prejudiced by the reduction; and
- (d) the company demonstrates that it satisfies the solvency test.

(5) For the purposes of subsection (4)(d), a company shall be regarded as satisfying the solvency test where -

- (a) the company is able to pay its debts as they become due in the normal course of business and
- (b) the value of the company’s assets is greater than the value of its liabilities including contingent liabilities.

(6) For the purposes of subsection (5) (b), account may be taken of -

- (a) the most recent financial statements of the company;
- (b) all other circumstances that all directors know or ought to know that affect, or may

affect, the value of the company's assets and the value of the company's liabilities, including its contingent liabilities;

- (c) any valuation of assets or estimates of liabilities that are reasonable in the circumstances;
- (d) the likelihood of the contingency occurring;
- (e) any claim the company is entitled to make and can reasonably expect to be met; and
- (f) any contingent liability the company can reasonably expect to reduce or extinguish.

Name and memorandum of protected cell company

10.(1) The name of a protected cell company shall without prejudice to the provisions of section 4 of the Companies Act 1972, include the expression "Protected Cell", "PCC" or any cognate expression approved in writing by the Authority.

- (2) The memorandum of a protected cell company shall state that it is a protected cell company.
- (3) A protected cell company may in order to comply with subsection (2), alter its memorandum by special resolution.
- (4) Unless and until a protected cell company has complied with the provisions of this section, it shall be deemed not to be a protected cell company.
- (5) Each cell of a protected cell company shall, subject to the approval of the Authority, have its own distinct name or designation.

Consent of Authority required for protected cell company

11. A company shall not be incorporated as a protected cell company, and an existing company shall not be converted into a protected cell company, except under the authority of and in accordance with the terms and conditions of the written consent of the Authority.

Application for incorporation as a protected Cell company

12.(1) An application to incorporate a company as a protected company shall be made in the prescribed form and accompanied by the memorandum and articles and such other documents and fees as may be prescribed, to the Registrar of Companies, through the Authority, requesting that the company be so incorporated subject to the consent of the Authority referred to in section (11).

- (2) The Authority shall, on receipt of an application under subsection (1),
 - (a) hold such inquiry as it deems necessary to decide whether it should grant or refuse its consent;
 - (b) communicate its decision to the applicant;
 - (c) if the Authority decides to grant the consent, forward a copy of its written consent, the application and the accompanying documents to the Registrar of Companies.
- (3) The Registrar of Companies may retain and register the memorandum and articles of the company if he is

satisfied that they comply with the provisions of this Act and sections 3 to 9 of the Companies Act.

(4) On the registration of the memorandum and articles of a company under subsection (3), the Registrar of Companies shall issue a certificate under his hand certifying that the company is incorporated under the Companies Act and the date of the incorporation, and inform the Authority thereof.

Application for conversion into a protected cell company

13.(1) An application to convert an existing company into a protected cell company shall be made, in the prescribed form and accompanied by the notice of alteration of memorandum and articles and such other documents and fees as may be prescribed, to the Registrar of Companies, through the Authority, requesting that the company be so converted, subject to the consent of the Authority referred to in section 11.

(2) The Authority shall on receipt of an application under subsection (2) -

- (a) hold such inquiry as it deems necessary to decide whether to grant or refuse its consent;
- (b) communicate its decision to the applicant;
- (c) if the Authority decides to grant the consent forward a copy of written consent, the application and the accompanying documents to the Registrar of Companies,

(3) The Registrar of Companies may if he is satisfied that the provisions of this Act are complied with in relation to the alteration of the memorandum and articles, retain and register such alterations.

(4) The Registrar of Companies shall inform the applicant and the Authority in writing of the action taken under subsection (3).

Liability of protected cell company

14.(1) Subject to the provisions of subsection (2), and save to the extent that the company may have agreed that a liability shall be the liability solely of the company's non-cellular assets or of the cellular assets attributable to a particular cell of the company, where any liability arises which is attributable to a particular cell of a protected cell company -

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

(2) 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 company's non-cellular assets, without prejudice to any liability of any person other than the company:

Provided that, the fraud referred to in this subsection does not include the fraud of any person making a claim, against the company or any of its assets or of that person's servants, employees, officers or agents.

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

(4) Notwithstanding the above provisions of this section -

- (a) the liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a protected cell company shall abate rateably until the value of the aggregate liabilities equals the value of those assets:

Provided that the provisions of this paragraph shall be disregarded in assessing the existence and extent of any secondary liability under subsection (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:

Provided that the provisions of this paragraph shall not apply in any situation in which any of the liabilities of the company's non-cellular assets arises from fraud or by reason of a special agreement such as is referred to in subsection (1).

Disputes as to liability attributable to cell

15.(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;
- (d) the amount to which any liability is limited.

the Court, on the application of the protected cell company, and without prejudice to 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) -

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

Company to inform persons they are dealing with protected cell company

16.(1) A protected cell company shall -

- (a) inform any person with whom it transacts that it 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, unless that transaction is not a transaction in respect of a particular cell.

(2) If, in contravention of subsection (1), a protected cell company -

- (a) fails to inform a person that he is transacting with a protected cell company, and that

person is otherwise unaware and has no reasonable grounds to believe that he is transacting with a protected cell company; or

- (b) fails to identify or specify the cell in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which cell he is transacting with;

then, in either such case-

- (i) the directors shall (notwithstanding any provision to the contrary in the company's articles or in any contract with the company or otherwise) incur personal liability to that person in respect of the transaction; and
- (ii) the directors shall have a right of indemnity against the non-cellular assets of the company, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(3) Notwithstanding the provisions of subsection (2)(i), the Court may relieve a director of all or part of his personal liability thereunder if he satisfies the Court that he ought fairly to be so relieved 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.

(4) Where, pursuant to the provisions of subsection (3), the Court relieves a director of all or part of his personal liability under subsection (2)(i), the Court may order that the liability in question shall instead be met from such of the cellular or non-cellular assets of the protected cell company as may be specified in the order.

(5) 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 non-cellular assets by virtue of subsection (2) (ii), shall be void.

Attribution of non-cellular assets and liabilities

17.(1) Liabilities of a protected cell company not otherwise attributable to any of its cells shall be discharged from the 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 shall be applied to and comprised in the company's non-cellular assets.

Provisions in relation to liquidation of protected cell company

18. Notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a protected cell company, the liquidator-

- (a) shall be bound to deal with the company's assets in accordance with the requirements set out in paragraphs (a) and (b) of section 5(2);
- (b) in discharge of the claims of creditors of the protected cell company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Act.

Transfer of cellular assets from protected cell company

19.(1) It shall be lawful, subject to the provisions of subsection (3), for the cellular assets attributable to any cell of a protected cell company, but not the non-cellular assets of a protected cell company, to be transferred to another person, wherever resident or incorporated, and whether or not a protected cell company.

(2) A transfer, pursuant to subsection (1), of cellular assets attributable to a cell of a protected cell company shall not of itself entitle creditors of that company to have recourse to the assets of the person to whom the cellular assets were transferred.

(3) No transfer of the cellular assets attributable to a cell of a protected cell company may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section, hereinafter referred to as a “cell transfer order”.

(4) The Court shall not make a cell transfer order in relation to a cell of a protected cell company -

(a) unless it is satisfied- -

(i) that the creditors of the company entitled to have recourse to the cellular assets attributable to the cell after having been notified of the application for the order, consent to the transfer; or

(ii) that those creditors would not be unfairly prejudiced by the transfer; and

(b) without hearing the representations of the Authority thereon.

(5) The Court, on hearing an application for a cell transfer order -

(a) may make an interim order or adjourn the hearing, conditionally or unconditionally;

(b) may dispense with any of the requirements of subsection (4)(a).

(6) 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.

(7) The Court may make a cell transfer order in relation to a cell of a protected cell company notwithstanding that -

(a) a liquidator has been appointed to act in respect of the company or the company has passed a resolution for voluntary winding up;

(b) a receivership order has been made in respect of the cell or any other cell of the company;

(c) an administration order has been made in respect of the cell, the company or any other cell thereof.

(8) 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 company to a person entitled, in conformity with the provisions of this Act, to have recourse to those cellular assets.

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

Part III - Receivership Orders

Receivership orders in relation to cell

20.(1) Subject to the provisions of this section, if in relation to a protected cell company the Court is satisfied -

- (a) that the assets attributable to a particular cell of the company (when account is taken of the company's non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell;
- (b) that the making of an administration order under section 25 in respect of that cell would not be appropriate; and
- (c) that the making of an order under this section would achieve the purposes set out in subsection (3);

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

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

(3) A receivership order is an order directing that the business and cellular assets of or attributable to a cell shall be managed by a person specified in the order hereinafter referred to as "receiver" for the purpose 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.

(4) A receivership order -

- (a) may 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) may be made in respect of a cell subject to an administration order under section 25;
- (c) shall cease to be of effect upon the appointment of a liquidator to act in respect of the protected cell company, but without prejudice to prior acts.

(5) 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

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

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

- (d) any holder of cell shares in respect of that cell;
- (e) the administrator of that cell; or
- (f) the Authority.

(2) The Court, on hearing an application -

- (a) for a receivership order; or
- (b) for leave, pursuant to section 20(5), 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 company;
- (b) the administrator (if any) of the cell;
- (c) the Authority; 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

22.(1) The receiver of a cell-

- (a) may do all such things as may be for the purposes set out in section 20(3); and
- (b) shall have all the functions and powers 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 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 his functions the receiver is deemed to act as the agent of the protected cell company, and shall 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 sought; 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 sought;

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 and powers 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 shall be deemed a director of the protected cell company in respect of the non-cellular assets of the company, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets.

Discharge and variation of receivership orders

23.(1) The Court shall not discharge a receivership order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or 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 company in respect of that cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that cell; and the creditor's claim against the company in respect of that cell shall be thereby extinguished.

(4) Nothing in subsection (3) shall operate so as to 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 Act and any rule of law as to preferential payments; and
- (b) 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 company's other creditor,

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

(6) Any surplus shall 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 company.

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

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

Remuneration of receiver

24. 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 non-cellular assets of the protected cell company.

Part IV - Administration Orders

Administration orders in relation to protected cell companies or cells

25.(1) Subject to the provisions of this section, if in relation to a protected cell company the Court is satisfied -

- (a) that the cellular assets attributable to a particular cell of the company (when account is taken of the company's non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; or
- (b) that the company's cellular assets and non-cellular assets are or are likely to be insufficient to discharge the liabilities of the company;

and the Court considers that the making of an order under this section may achieve one of the purposes set out in subsection (4), the Court may make an administration order under this section in respect of that cell or (as the case may be) in respect of that company.

(2) An administration order may be made in respect of one or more cells.

(3) An administration order is an order directing that, during the period for which the order is in force, the business and assets of or attributable to the cell or, as the case may be, the business and assets of the company, shall be managed by a person, hereinafter referred to as an "administrator", appointed for the purpose by the Court.

(4) The purposes for which an administration order may be made are -

- (a) the survival as a going concern of the cell or (as the case may be) of the company;
- (b) the more advantageous realisation of the business and assets of or attributable to the cell or (as the case may be) the business and assets of the company than would be achieved by a receivership of the cell or (as the case may be) by the liquidation of the company.

(5) An administration order, whether in respect of a protected cell company or a cell thereof:-

- (a) may not be made if-
 - (i) a liquidator has been appointed to act in respect of the company; or
 - (ii) the 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 company, but without prejudice to prior acts.

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

Applications for administration orders

26.(1) An application for an administration order may be made by -

- (a) the company;
- (b) the directors of the company;
- (c) the shareholders or any class of shareholders of the company or of any cell;
- (d) any creditor of the company (or, where the order is sought in respect of a cell, any creditor of the company in respect of that cell); or
- (e) the Authority.

(2) The Court, on hearing an application -

- (a) for an administration order; or
- (b) for leave, pursuant to section 25 (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 an administration order in respect of a protected cell company or a cell thereof shall be served upon -

- (a) the company;
- (b) the Authority; and
- (c) 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 administrator and effect of administration order

27.(1) The administrator of a cell of a protected cell company -

- (a) may do all such things as may be necessary for the purpose set out in section 25(4) for which the administration order was made; and
- (b) shall have all the functions and powers of the directors in respect of the business and cellular assets of or attributable to the cell.

(2) The administrator of a protected cell company -

- (a) may do all such things as may be necessary for the purpose set out in section 25(4) for which the administration order was made; and

(b) shall have all the functions and powers of the directors in respect of the business and assets of the company, including its cells.

(3) The administrator 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 administration order to be discharged or varied; or
- (c) for an order as to any matter arising in the course of his administration.

(4) In exercising his functions and powers the administrator is deemed to act as the agent of the protected cell company, and shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

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

(6) When an application has been made for, and during the period of operation of, an administration order in respect of a protected cell company or a cell thereof -

- (a) no proceedings may be instituted or continued by or against the company; and
- (b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or assets of the company or (as the case may be) the business or assets of or attributable to the cell;

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

(7) During the period of operation of an administration order -

- (a) in respect of a cell of a protected cell company -
 - (i) the functions and powers of the directors shall cease in respect of the business and cellular assets of or attributable to the cell; and
 - (ii) the administrator shall be deemed a director of the company in respect of the company's non-cellular assets, unless there are no creditors of the company in respect of that cell entitled to have recourse to the company's non-cellular assets;
- (b) in respect of a protected cell company, the functions and powers of the directors shall cease.

Discharge and variation of administration orders

28.(1) The Court shall not discharge an administration order unless it appears to the Court that -

- (a) the purpose for which the order was made has been achieved or is incapable of achievement; or
- (b) it would otherwise be desirable or expedient to discharge the order.

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

(3) Upon discharging an administration order, the Court may direct-

- (a) where the administration order was made in respect of a protected cell company, that any payment made by the administrator to any creditor of the company shall be deemed full satisfaction of the liabilities of the company to the creditor; and the creditor's claims against the company shall be thereby extinguished;
- (b) where the administration order was made in respect of a cell, that any payment made by the administrator to any creditor of the company in respect of that cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that cell; and the creditor's claims against the company in respect of that cell shall be thereby extinguished.

(4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell company.

Remuneration of administrator

29. The remuneration of an administrator, and any expenses properly incurred by him, shall be payable in priority to all other claims -

- (a) in the case of the administration of a cell, from -
 - (i) the cellular assets attributable to the cell; and
 - (ii) to the extent these may be insufficient, the non-cellular assets of the protected cell company; and
- (b) in the case of the administration of a protected cell company, from
 - (i) the non-cellular assets of the company; and
 - (ii) to the extent these, may be insufficient, the cellular assets, in such shares or proportions as the Court may direct.

Part V-General Provisions

Offences

30.(1) A person who contravenes or fails to comply with, or causes or permits any contravention of or failure to comply with, any term or condition of a consent of the Authority granted under section 11, shall be guilty of an offence and liable on summary conviction to a fine not exceeding R200,000.

(2) A person who, in connection with an application under section 12 or 13 for the consent of the Authority for the incorporation of a company as a protected cell company, or for the conversion of an existing company into a protected cell company -

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive

or misleading in a material particular;

- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular;

shall be guilty of an offence and liable on conviction to a fine not exceeding R200,000, to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Regulations

31.(1) The Minister may, after consultation with the Authority make regulations for carrying out the provisions of this Act and for prescribing anything which under this Act is to be prescribed.

(2) Without limiting the generality of subsection (1), such regulations may make provision in respect of any of the following matters -

- (a) the conduct of the business of protected cell companies;
- (b) the manner in which protected cell companies may carry on, or hold themselves out as carrying on, business;
- (c) the form and content of the accounts of protected cell companies;
- (d) the winding up, administration or receivership of protected cell companies;
- (e) the exemption of protected cell companies from the application of any specified provision of the Companies Act, 1972;
- (f) the amendment of the Schedule.

Exemptions

32.(1) Notwithstanding any provisions of the Stamp Duty Act –

- (a) all transfers of property to or by a protected cell company;
- (b) all transactions in respect of the shares, debt obligations or other securities of a protected cell company; and
- (c) all transactions relating to the business of a protected cell company

shall be exempt from payment of stamp duty.

(2) The Exchange Control Act shall not apply to a protected cell company or to any transactions relating to the securities of such company between the holders of such securities.

Schedule

Section 3

1. Insurance
2. Mutual Funds
3. Any other business activity approved by the Authority.