

# THE PROTECTED CELL COMPANIES ACT

Act No. of 1999 – 23 December 1999

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## **An Act**

**To enable a company incorporated for the purposes of carrying out an offshore business activity to segregate its assets into different cells within that company, with a view to protect each cell from any extension of liabilities from one cell to the other**

ENACTED by the Parliament of Mauritius, as follows –

### **PART I - PRELIMINARY**

#### **1. Short title**

This Act may be cited as the Protected Cell Companies Act 1999.

#### **2. Interpretation**

(1) In this Act –

“Articles” means the Articles of Association of a protected cell company as registered with the Registrar from time to time, and in the case of a protected cell company which is registered by way of continuation of a foreign company, means the Articles of Association as registered with the Registrar by way of continuation;

“Authority” means the Mauritius Offshore Business Activities Authority established under the Mauritius Offshore Business Activities Act 1992;

“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 one of its cells pursuant to the provisions of section 9, the proceeds of the issue of which (the “cell share capital”) shall be comprised in the cellular assets attributable to that cell;

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

“cellular assets” of a protected cell company means the assets of the company attributable to the company’s cells pursuant to section 8;

“cellular dividend” means a dividend payable by a protected cell company in respect of cell shares pursuant to the provisions of section 9(4);

“Court” means the Bankruptcy Division of the Supreme Court;

“company” means a protected cell company;

“liability” includes any debt or obligation;

“MOBA Act” means The Mauritius Offshore Business Activities Act 1992;

“Minister” means the Minister to whom responsibility for the subject of financial services is assigned;

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

“offshore business activity” means an offshore business activity as defined in the MOBA Act and which is specified in the Schedule;

“protected cell company” means a company incorporated, registered by way of continuation or converted as such under section 4;

“Registrar” means the Registrar of Companies as defined in the Companies Act 1984.

(2) Subject to this Act, words defined in the Companies Act 1984 and the Mauritius Offshore Business Activities Act 1992 have the same meaning in this Act.

### **3. Legal regime applicable to protected cell companies**

Subject to this Act –

- (a) the MOBA Act 1992; and
- (b) the Companies Act 1984, other than the sections specified in the Third Schedule to the MOBA Act 1992,

shall apply to protected cell companies.

## **PART II- PROTECTED CELL COMPANIES**

### **4. Incorporation or registration of a protected cell company**

(1) Subject to this Act, for the purposes of conducting an offshore business activity –

- (a) a company may be incorporated under the Companies Act 1984 as a protected cell company; or
- (b) a foreign company may be registered by way of continuation as a protected cell company;
- (c) an existing company may, if it is authorised by its articles, be converted into a protected cell company.

(2) For the purposes of this Act, a protected cell company shall, notwithstanding that it may create one or more cells, be a single legal person and 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 Minister may, by regulations, provide for the procedure and conditions subject to which an existing company may be converted into a protected cell company under subsection (1)(c).

## **5. Continuation**

(1) A company incorporated under the laws of a jurisdiction other than the jurisdiction of the Republic of Mauritius which –

- (a) satisfies the requirements prescribed in the Companies Act 1984 for registration of the company; and
- (b) satisfies the requirements of this Act for the incorporation of a protected cell company,

may continue as a company incorporated under the Companies Act 1984.

(2) The articles of continuation containing the particulars set out in subsection (3) shall be approved –

- (a) by a majority of the directors or the other persons who are charged with exercising the powers of the company; or
- (b) in such other manner as may be established by the company for exercising the powers of the company.

(3) The articles of continuation shall –

- (a) contain –
  - (i) the name of the company and the name under which it is being continued;
  - (ii) the name of the jurisdiction under which it is incorporated;
  - (iii) the date on which it was incorporated;
  - (iv) the information required to be included in a Memorandum under section 15 of the Companies Act; and
  - (v) the amendments to its Memorandum and Articles or their equivalent that are to be effective upon registration under this Act of the articles of continuation;
- (b) be submitted, together with a copy of the Memorandum and Articles

the Registrar that the company is in good standing, to the Registrar who shall retain and register them.

(4) On payment of the prescribed fee and registration of the articles of continuation, the Registrar shall issue a certificate of continuation under his hand and seal certifying that the company is incorporated as a protected cell company.

## **6. Name and memorandum of a protected cell company**

(1) Notwithstanding section 11 of the Companies Act 1984, the name of a protected cell company shall include clearly the expression “Protected Cell Company” or ‘PCC’ after its name.

(2) Each cell of a protected cell company shall have its own distinct name or designation or denomination which shall be clearly set out in the agreement governing the subscription for cell shares.

(3) A company incorporated under the laws of a jurisdiction other than the Republic of Mauritius and continued as a protected cell company incorporated under this Act may use the name designated in the Articles of continuation with the addition of either the suffix “Protected Cell Company” or “PCC”.

(4) The memorandum of a protected cell company shall state that it is a protected cell company.

(5) A protected cell company may, in order to comply with subsection (4), alter its memorandum by special resolution.

(6) Unless and until a protected cell company has complied with the provisions of this section, it shall not be deemed to be a protected cell company.

## **7. Creation of one or more cells**

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.

## **8. Cellular and non-cellular assets**

(1) The assets of a protected cell company may comprise of cellular assets or non-cellular assets or a combination of both cellular and non-cellular assets.

(2) The directors of a protected cell company shall –

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

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

- (3) The directors of a protected cell company may cause or permit –
  - (a) cellular assets and non-cellular assets to be held –
    - (i) by or through a nominee; or
    - (ii) by a company the shares and capital interests of which may be cellular assets or non-cellular assets, or a combination of both;
  - (b) cellular assets or non-cellular assets, or a combination of both, to be collectively managed by an investment manager, provided that the assets in question remain separately identifiable.
- (4) The cellular assets of a protected cell company shall comprise the assets of the company attributable to the cells of the company.
- (5) The assets attributable to a cell of a protected cell company shall comprise –
  - (a) assets represented by the proceeds of cell share capital and reserves attributable to the cell; and
  - (b) all other assets attributable to the cell.
- (6) For the purposes of subsection (5), “reserves” includes retained earnings, capital reserves and share premiums.
- (7) The non-cellular assets of a protected cell company shall comprise the assets of the company which are not cellular assets.

## **9. Cell shares and cell share capital**

- (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 attributable to the cell in respect of which the cell shares were issued.

- (5) In determining the cellular dividend payment, no account need to 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.

## **10. Reduction of cell share capital**

(1) A protected cell company or a holder of cell shares in a cell of a protected cell company may apply to the Registrar to authorise the company to reduce the cell share capital -

- (a) where the applicant is the company, or 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) The reduction shall be authorised –

- (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.

(3) The Registrar shall authorise the reduction of cell share capital where he 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 for 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.

(4) For the purposes of subsection (3)(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.

- (5) For the purposes of subsection (4)(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.

(6) Any creditor who is prejudiced by the authorised reduction of capital may apply to the Court for redress or for an order restraining or prohibiting the reduction of cell share capital and that the Court shall in determining any such application have regard to the provisions of this section and such other factors or circumstances which the Court deems fit and appropriate.

### **PART III - CREDITORS**

#### **11. Liability of a protected cell company**

(1) Where a liability of a protected cell company to a person arises from a transaction, or is otherwise imposed, in respect of a particular cell –

- (a) that liability of the company shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to –
  - (i) the cellular assets attributable to that cell which shall be primarily liable; and
  - (ii) to the extent that the cellular assets attributable to that cell may be insufficient, the company’s non-cellular assets, which shall be secondarily liable; but
- (b) that liability of the company shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to, the cellular assets attributable to any other cell.

- (2) Where a liability of a protected cell company to a person –
- (a) arises otherwise than from a transaction in respect of a particular cell;  
or
  - (b) is imposed otherwise than in respect of a particular cell,

that liability of the company shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's non-cellular assets.

## **12. Liability of cellular assets**

(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 attributed to a particular cell of the company, where any liability which is attributable to a particular cell of a protected cell company arises –

- (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 assets 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 other 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);

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 referred to in subsection (1).

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

### **13. Creditors of a protected cell company**

(1) The rights of creditors of a protected cell company shall correspond with the liabilities provided for in section 11.

(2) No such creditor shall have any rights other than the rights referred to in this section and in sections 12 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 wherever, 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 wherever 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 imposed 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 (c) or by any other means whatsoever or wherever 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 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.

#### **14. Recourse to cellular assets by creditors**

Without prejudice to the provisions of sections 12 and 13, 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; and
- (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.

#### **15. Transfer of cellular assets from a protected cell company**

(1) It shall be lawful 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 in the ordinary course of the company's business, through payments, investments or otherwise to another person, including to another cell of the protected cell company, 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 save and except where such transfer of cellular assets was made by fraud or with intent to defraud creditors of the particular cell making the transfer of cellular assets.

(3) 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.

#### **16. Attribution of non-cellular assets and liabilities**

- (1) Liabilities of a protected cell company not otherwise attributable to any of its

(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.

## 17. Protection of creditors

- (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 that, 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

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.

#### **18. Power of authority in respect of guarantee**

Where the liabilities of the company exceed the assets of the company, the Authority may require the company to furnish such guarantees (including policies of insurance) which are in an acceptable form to the shareholders of each of the cells.

### **PART IV - ADMINISTRATION ORDER**

#### **19. Application for administration order**

- (1) An application to the Court 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);
  - (e) the Authority; or
  - (f) the Registrar.
  
- (2) The Court, on hearing an application –
  - (a) for an administration order; or
  - (b) for leave, pursuant to section 20(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;

(d) such other person (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.

## 20. Administration order in relation to protected cell companies or cells

(1) Subject to the other provisions of this section, where, in relation to a protected cell company, the Court is satisfied –

- (a) that the cellular assets attributed 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 order, hereinafter referred to as “administration order”, under this section 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 “administrator” appointed by the Court for that purpose.

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

- (a) the survival as a going concern of the cell or of the company, as the case may be;
- (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

(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.

## 21. Functions of administrator and effects of administration order

- (1) The administrator of a cell of a protected cell company –
  - (a) may do all such things as may be necessary for the purposes set out in section 20(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 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.
- (3) 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.
- (4) Any person dealing with the administrator in good faith is not concerned to enquire whether the administrator is acting within his powers.
- (5) 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.

- (6) During the period of operation of an administration order –
  - (a) in respect of a cell in 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

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.

## **22. Discharge and variation of administration order**

(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 of 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 that creditor and the creditor's claims against the company shall be thereby deemed 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 thereby be deemed 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.

## **23. Remuneration of administrator**

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 –

- (ii) to the extent these may be insufficient, the cellular assets, in such shares or proportions as the Court may direct.

## **PART V - RECEIVERSHIP ORDER**

### **24. Application for receivership order**

(1) An application to the Court 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;
- (f) the Authority; or
- (g) the Registrar.

(2) The Court, on hearing an application –

- (a) for a receivership order; or
- (b) for leave, pursuant to section 25(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;
- (d) the Registrar; and
- (e) 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.

### **25. Receivership order in relation to cells**

(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;

- (b) that the making of an administration order under section 18 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 an order, hereinafter referred to as “receivership order” 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, hereinafter referred to as “receiver”, specified in the order 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.

(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 20;
- (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 which, or any cell of which, is subject to a receivership order shall be effective without leave of the Court.

## **26. Functions of receiver and effects of receivership order**

(1) The receiver of a cell –

- (a) may do all such things as may be necessary for the purposes set out in

- (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 and powers 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 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 or 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.

## **27. Discharge and variation of receivership order**

(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.

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 claims against the company in respect of that cell shall be thereby deemed 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 of the Code Civil relating to privileges and priorities of claims; 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 creditors,

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 that cell pursuant to the provisions of this part of this Act, be realised and applied in satisfaction of the company's liabilities attributable to that cell *pari passu*.

(6) Unless the memorandum or articles of the company otherwise provide, any surplus shall thereafter be distributed –

- (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 shall 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 shall not undertake business or incur liabilities in respect of that cell.

## **28. Remuneration of receiver**

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 VI - LIQUIDATION**

### **29. Liquidation of a protected cell company**

(1) Notwithstanding any statutory provision 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 of section 8(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.

(2) The provisions of section 260 of the Companies Act 1984 relating to the distribution of property on winding up shall apply to a protected cell company subject to such modifications as may be necessary to bring them in conformity with this Act.

## **PART VII - MISCELLANEOUS**

### **30. Regulations**

(1) The Minister may –

- (a) make such regulations as he thinks fit for the purposes of this Act;
- (b) by regulations, amend the Schedule to bring any offshore business activity within the scope of this Act.

(2) Any regulations made under this Act may –

- (a) provide for the taking of fees and levying of charges;
- (b) make provisions for the sound management of a protected cell company;
- (c) impose such reporting obligations as the Minister may deem necessary including a report in respect of the liquidity analysis and the profit and loss statement of the protected cell company;
- (d) provide that any person who contravenes them shall commit an offence

**31. Commencement**

This Act shall come into operation on 1 January 2000.

**SCHEDULE**

*(section 2)*

**Offshore business activities**

1. Offshore insurance
2. Offshore investment funds