

PROTECTED CELL COMPANIES ACT

Act 37 of 1999 – 1 January 2000

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PROTECTED CELL COMPANIES ACT

PART I – PRELIMINARY

1. Short title

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

2. Interpretation

(1) In this Act—

“Articles” means the Articles of Association of a protected cell company registered with the Registrar;

“cell” means a cell created by a protected cell company for the purpose of segregating and protecting cellular assets;

“cell shares” means shares created and issued by a protected cell company in respect of one of its cells;

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

“cellular assets”, in relation to a protected cell company, means the assets of the company attributable to the company’s cells;

“cellular dividend” means a dividend payable by a protected cell company in respect of cell shares;

“Commission” means the Financial Services Commission deemed to have been established under the Financial Services Act;

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

“creditors” includes present, future and contingent creditors;

“global business” has the same meaning as in the Financial Services Act;

“liability” includes any debt or obligation;

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

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

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

“Registrar” has the same meaning as in the Companies Act.

(2) Subject to this Act, any word or expression defined in the Companies Act and the Financial Services Act have the same meaning in this Act.

[S. 2 amended by s. 46 (8) (b) of Act 13 of 2001 w.e.f. 1 December 2001; s. 362 (3) (a) of Act 15 of 2001 w.e.f. 1 December 2001; s. 132 (3) (a) of Act 21 of 2005 w.e.f. 28 September 2007; s. 97 (8) (b) of Act 14 of 2007 w.e.f. 28 September 2007.]

3. Legal regime applicable to protected cell companies

Subject to this Act—

- (a) the Financial Services Act in so far as it relates to Part X;
- (b) the Companies Act, in so far as it relates to a company holding a Category 1 Global Business Licence under the Financial Services Act;

- (c) the Securities Act in so far as it relates to such class or classes of company as may be prescribed,

shall apply to protected cell companies.

[S. 3 repealed and replaced by s. 46 (8) (c) of Act 13 of 2001 w.e.f. 1 December 2001; amended by s. 362 (3) (b) of Act 15 of 2001 w.e.f. 1 December 2001; s. 156 (11) (c) of Act 22 of 2005 w.e.f. 28 September 2007; s. 97 (8) (c) of Act 14 of 2007 w.e.f. 28 September 2007.]

PART II – PROTECTED CELL COMPANIES

4. Incorporation or registration

(1) For the purposes of conducting a business activity specified in the Schedule and subject to such restrictions as are imposed therein—

- (a) a company may be incorporated under the Companies Act as a protected cell company; or;
- (b) a company established in a jurisdiction other than Mauritius may be registered by way of continuation as a protected cell company; or
- (c) an existing company may, if it is authorised by its constitution, 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 prescribe the procedure and conditions subject to which an existing company may be converted into a protected cell company under subsection (1) (c).

[S. 4 amended by s. 46 (8) (d) of Act 13 of 2001 w.e.f. 1 December 2001; s. 362 (3) (c) of Act 15 of 2001 w.e.f. 1 December 2001; s. 132 of Act 21 of 2005 w.e.f. 28 September 2007; s. 97 (d) of Act 14 of 2007 w.e.f. 28 September 2007.]

5. Continuation

(1) A company incorporated under a foreign law which—

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

may continue as a protected cell company under section 4 (1) (c).

(2) The articles of continuation containing the particulars referred to 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 the constitution of a company in accordance with section 42 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 of the company, or their equivalent, and any evidence satisfactory to the Registrar that the company is in good standing, to the Registrar who shall retain and register them.

(4) On payment of such a fee as may be prescribed and on registration of the articles of continuation, the Registrar shall issue a certificate of continuation, certifying that the company is incorporated as a protected cell company.

[S. 5 amended by Act 25 of 2000; s. 362 (3) (d) of Act 15 of 2001 w.e.f. 1 December 2001.]

6. Name and Memorandum

(1) Notwithstanding section 35 of the Companies Act, the name of a protected cell company shall include clearly the words “Protected Cell Company” or “PCC” after its name.

(2) Each cell 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 a foreign law and continued as a protected cell company may use the name designated in the articles of continuation with the addition of the words “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.

[S. 6 amended by Act 15 of 2001 w.e.f. 1 December 2001.]

7. Creation of one or more cells

(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 Act.

- (2) Notwithstanding subsection (1), no cell shall be created—
- (a) for a business activity different from the business activity of the protected cell company;
 - (b) without the approval of the Commission, subject to such exemption as it may determine.

[S. 7 amended by s. 132 (3) (c) of Act 21 of 2005 w.e.f. 28 September 2007.]

8. Cellular and non-cellular assets

- (1) The assets of a protected cell company may comprise cellular assets or non-cellular assets or a combination of both.
- (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.
- (4) —
- (5) The assets attributable to a cell 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.

9. Cell shares and cell share capital

- (1) A protected cell company may, in respect of any of its cells, create and issue shares the proceeds of the issue of which 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 in respect of cell shares.

(4) A cellular dividend 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 in respect of any cell, no account shall be taken of—

- (a) the profits and losses, or the assets and liabilities, attributable to any other cell; 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 may apply to the Registrar to authorise 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 reduction may 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, to—
 - (i) cancel any paid-up cell share capital which is lost or unrepresented by available cellular assets; or
 - (ii) pay off any paid-up cell share capital which exceeds the company's requirements.

(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 every creditor 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.

(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 any 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 the Court shall, in determining any such application, have regard to this section and such other factors or circumstances which the Court deems fit.

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, that liability—

- (a) shall extend only to, and that person shall be entitled to have recourse only—
 - (i) to 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, to the company's non-cellular assets, which shall be secondarily liable;
- (b) shall not extend to, and that person shall not 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 shall extend only to, and that person shall be entitled to have recourse only to, the company's non-cellular assets.

12. Liability of cellular assets

(1) Subject to this subsection, where the company has agreed that a liability of its non-cellular assets or cellular assets shall be attributed to a particular cell and any liability which is attributable to a particular cell arises—

- (a) the cellular assets attributable to that cell shall be primarily liable;
- (b) the company's non-cellular assets shall be secondarily liable, where 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 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, unless the fraud is the fraud of a 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 shall be the liability of the company's non-cellular assets.

(4) Notwithstanding this section—

- (a) a liability of the cellular assets attributable to a particular cell shall abate rateably until the value of the liability equals the value of those assets, but this paragraph shall be disregarded in assessing the existence and extent of any secondary liability under subsection (1) (b);
- (b) a liability of the company's non-cellular assets shall abate rateably until the value of the liability equals the value of those assets but this paragraph shall not apply in any situation in which any liability 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 a creditor 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) The following terms shall, unless any of them is expressly excluded in writing, be implied in every transaction entered into by a protected cell company—

- (a) no party shall, by any means whatsoever, seek to make or attempt to make liable any cellular assets attributable to any cell in respect of a liability not attributable to that cell;

- (b) if a party succeeds in making liable any cellular assets attributable to any cell 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 obtained by him; and
- (c) that if a party succeeds in seizing or attaching by any means or otherwise levying execution against any cellular assets attributable to any cell 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) Any sum recovered by a protected cell company as a result of any trust as is referred to 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 sum recovered by a protected cell company pursuant to subsection (3) (b) or (c) in the events referred to in those paragraphs shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the cell affected.

(6) Where any cellular assets attributable to a cell are 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 sections 12 and 13, cellular assets attributable to a cell shall—

- (a) only be available to the creditors of the company who are creditors in respect of that cell; and
- (b) be absolutely protected from the creditors of the company who are not creditors in respect of that cell.

15. Transfer of cellular assets

(1) It shall be lawful for the cellular assets attributable to a cell to be transferred in the ordinary course of the company's business, through payments, investments or otherwise to another person, including to another cell, wherever resident or incorporated, whether or not that person is a protected cell company.

(2) A transfer of cellular assets attributable to a cell 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 except where the transfer was made by fraud or with intent to defraud creditors of the particular cell making the transfer.

(3) This section is without prejudice to any power of a protected cell company lawfully to make payments or transfers from the cellular assets attributable to any cell to a person entitled to have recourse to those cellular assets.

16. Liabilities and non-cellular assets

(1) The 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.

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) Where 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 ground for believing 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 ground for knowing which cell he is transacting with,

the directors shall—

- (i) notwithstanding anything to the contrary in the company's Articles or in any contract with the company or otherwise, incur personal liability towards that person in respect of the transaction; and

- (ii) 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 subsection (2) (i), the Court may relieve a director of his personal liability where he satisfies the Court that he ought fairly to be so relieved because he—

- (a) was not aware of the circumstances giving rise to his liability and, in being not so aware, 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 subsection (3), the Court relieves a director of his personal liability, the Court may order that the liability shall 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 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 Commission in respect of guarantee

Where the liabilities of a protected cell company exceed its assets, the Commission may require the company to furnish such guarantees, including policies of insurance, which are in an acceptable form, to the shareholders of each of its cells.

[S. 18 amended by s. 46 (8) (e) of Act 13 of 2001 w.e.f. 1 December 2001.]

PART IV – ADMINISTRATION ORDER

19. Application for administration order

(1) An application to the Court for an administration order in respect of a protected cell company or one of its cells may be made by—

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

(2) The Court, on hearing the application, may make an interim order or adjourn the hearing.

(3) Notice of an application shall be served on—

- (a) the company;
- (b) the Commission;
- (c) the Registrar; and
- (d) such other person as the Court may direct,

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

[S. 19 amended by s. 46 (8) (e) of Act 13 of 2001 w.e.f. 1 December 2001.]

20. Administration order

(1) Subject to this section, where, in relation to a protected cell company, the Court is satisfied that—

- (a) the cellular assets attributed to a particular cell, 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) 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 (3), the Court may make an administration order in respect of that company or in respect of one or more cells.

(2) An administration order shall direct 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 an administrator appointed by the Court for that purpose.

(3) 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.

(4) An administration order—

- (a) may not be made where—
 - (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) (a) 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.

(b) The Court, on hearing an application for leave, may make an interim order or adjourn the hearing.

21. Functions of administrator

(1) The administrator of a cell—

- (a) may do all such things as may be necessary for the purpose 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) An administrator may, at any time, apply to the Court for—

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

(3) In exercising his functions and powers, an administrator shall be 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 an administrator in good faith shall not be required to enquire whether the administrator is acting within his powers.

(5) Where an application has been made for, and during the period of operation of, an administration order—

- (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,

without the leave of the Court.

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

22. Discharge and variation of order

- (1) The Court shall not discharge an administration order unless it considers 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.
- (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 a creditor of the company shall be deemed full satisfaction of the liability of the company to that creditor and the creditor's claims against the company shall be 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 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 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 – RECEIVERSHIP ORDER

24. Application for receivership order

(1) An application to the Court for a receivership order in respect of a cell 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 Commission; or
- (g) the Registrar.

(2) The Court, on hearing an application, may make an interim order or adjourn the hearing.

(3) Notice of an application to the Court under subsection (1) shall be served upon—

- (a) the company;
- (b) the administrator, if any, of the cell;
- (c) the Commission;
- (d) the Registrar; and
- (e) such other persons as the Court may direct,

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

[S. 24 amended by s. 46 (8) (e) of Act 13 of 2001 w.e.f. 1 December 2001.]

25. Receivership order in relation to cells

(1) Subject to this section, where, in relation to a protected cell company, the Court is satisfied that—

- (a) the cellular assets attributable to a particular cell, 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) the making of an administration order in respect of that cell would not be appropriate; and

- (c) the making of a receivership order would achieve the purposes set out in subsection (2),

the Court may make a receivership order in respect of that cell or one or more cells.

(2) A receivership order shall direct that the business and cellular assets of, or attributable to, a cell, shall be managed by a receiver appointed by the Court 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.

(3) 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.

(4) (a) 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.

(b) The Court, on hearing an application for leave, may make an interim order or adjourn the hearing.

26. Functions of receiver

(1) The receiver of a cell—

- (a) may do all such things as may be necessary for the purposes set out in section 25 (2); 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) A receiver may, at any time, apply to the Court for—

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

(3) In exercising his functions and powers, the receiver shall be 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 shall not be required to enquire whether the receiver is acting within his powers.

(5) Where 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,

without the leave of the Court.

(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.

27. Discharge and variation of order

(1) The Court shall not discharge a receivership order unless it considers 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 an interim order or adjourn the hearing.

(3) Where the Court discharges a receivership order in respect of a cell 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 liability 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 deemed to have been extinguished.

(4) Nothing in subsection (3) shall operate 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—

- (a) this Act and the provision of the Code Civil Mauricien relating to privileges and priorities of claims; and
- (b) any agreement between the protected cell company and any of its creditor as to the subordination of the debts due to any creditor to the debts due to the company's other creditors,

the company's cellular assets attributable to any cell in relation to which a receivership order has been made shall, in the winding up of the business of or attributable to that cell, be realised and applied in satisfaction of the company's liability 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 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,

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, direct that the cell shall be dissolved on such date as the Court may specify.

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

28. Remuneration of receiver

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

- (a) from 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, from the non-cellular assets of the protected cell company.

PART VI – LIQUIDATION

29. Liquidation of a protected cell company

(1) Notwithstanding any other enactment, 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 company, shall apply the company's assets to those entitled to have recourse in conformity with this Act.

(2) 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 then 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; and
 - (b) by regulations, amend the Schedule.
- (2) Any regulations made under subsection (1) may—
- (a) provide for the taking of fees and levying of charges;
 - (b) make provision for the sound management of a protected cell company;
 - (c) impose such reporting obligations as the Minister may determine, including a report in respect of the liquidity analysis and the profit and loss statement of a protected cell company; and
 - (d) provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding one year.

31. —

SCHEDULE

[Section 4]

GLOBAL BUSINESS

PERMISSIBLE ACTIVITIES BY PROTECTED CELL COMPANIES

Activities	Descriptions
Asset holding	Holding and managing assets or portfolios of assets in different cells for such class of beneficial owners, high net worth individuals and institutional investors as may be defined by the Commission Restriction: Subject to Category 1 Global Business Licence issued under the Financial Services Act
Structured finance businesses	Businesses established principally for the purpose of issuing bonds, notes or loans or other debt securities or instruments, secured or unsecured, in respect of which the repayment of capital and interest is to be funded from the proceeds of the company's investments, including, without limitation, debt or equity securities, royalties, income flows, derivatives, interest rate, currency or other swaps, or any other credit enhancement arrangements or financial assets Restriction: Subject to Category 1 Global Business Licence issued under the Financial Services Act

SCHEDULE—continued

Activities	Descriptions
Collective investment schemes and close ended funds	<p>A company, whether close ended or open ended, whose business consists of investing its funds principally in securities with the aim of spreading investment risks and giving members of the company the benefit of the profits, income, returns or payments arising from the management of its funds by or on behalf of that company; and under which—</p> <p>(a) the participants do not have day to day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;</p> <p>(b) the property is managed by the company or on behalf of the company by an investment manager; and</p> <p>(c) under which arrangement, the contributions of the participants and the profits and income from which payments are to be made to them are pooled</p> <p>Restriction: Subject to a Category 1 Global Business Licence issued under the Financial Services Act</p>
Specialised collective investment schemes and close ended funds	<p>Collective investment schemes and close ended funds investing in such specialised financial products, or assets other than securities, as may be specified by the Commission</p> <p>Restriction: Subject to a Category 1 Global Business Licence issued under the Financial Services Act</p>
Insurance business	<p>Corporation engaged in insurance business, including external insurance business and captive insurance business under the Insurance Act</p> <p>Restriction: Subject to a Category 1 Global Business Licence issued under the Financial Services Act and to a licence issued under the Insurance Act</p>
External pension scheme	<p>Corporation holding a Category 1 Global Business Licence operating an external pension scheme under the Private Pension Schemes Act</p> <p>Restriction: Subject to an external pension scheme licence issued under section 12 of the Private Pension Schemes Act</p>

[Sch. repealed and replaced by s. 46 (8) (f) of Act 13 of 2001 w.e.f. 1 December 2001; amended by s. 362 (3) (f) of 15 of 2001 w.e.f. 1 December 2001; repealed and replaced by GN 116 of 2005; repealed and replaced by s. 132 (3) (d) of Act 21 of 2005 w.e.f. 28 September 2007; amended by s. 97 (8) (e) of Act 14 of 2007; s. 57 (4) of Act 15 of 2012 w.e.f. 1 November 2012; GN 207 of 2013 w.e.f. 31 August 2013.]