PROTECTED CELL COMPANIES ACT 2004

Chapter No.1

Arrangement of Sections

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AN ACT

to provide for the incorporation of companies as protected cell companies; for the conversion of companies into protected cell companies; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):-

PART I

FORMATION : PROTECTED CELL COMPANIES

Protected Cell Companies.

1. (1) A company may be incorporated as a Protected Cell Company (a "PCC") under the Companies Acts 1931 to 1993 ("the Companies Acts").

(2) A company that is not a PCC may be converted into a PCC if the conversion is authorised by its articles.

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

(4) The Companies Acts shall apply in respect of a company that is a PCC as they apply in respect of any other company.

(5) This section is subject to the provisions of this Act.

Fundamental nature of a PCC.

2. (1) A PCC is a single legal person.

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

Names.

3. (1) The name of a PCC must include the expression "Protected Cell Company" or "PCC".

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

(3) A PCC that does not comply with this section is not a PCC.

(4) This section is without prejudice to section 2(1)(a) (use of the word limited) of the Companies Act 1931 [XIII p.235] (“the 1931 Act”) and sections 29 and 30 of the Companies Act 1992 [c.4] (name of public companies).

Memorandum of association of PCC.

4. (1) The memorandum of association of a PCC shall state that it is a PCC.

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

(3) A PCC that does not comply with subsection (1) is not a PCC.

Creation of PCC.

5. (1) To incorporate a company as a PCC there must be delivered to the Financial Supervision Commission –

(a) a statement in the prescribed form signed by or on behalf of the subscribers of the memorandum; and

(b) all other documents, consents and information as are required for the registration of the memorandum of a company under the Companies Acts.

(2) To convert a company that is not a PCC into a PCC there must be delivered to the Financial Supervision Commission a statement of conversion in the prescribed form signed by a director of the company.

(3) A company cannot be incorporated as, nor can a company that is not a PCC be converted into, a PCC unless –

(a) it carries on, or will when incorporated carry on, insurance business within the meaning of the Insurance Act 1986 [c.24]; or

(b) it is (or will be) of such class or description, or carries on (or will carry on) such business or class of business as is prescribed.

(4) Subsection (2) is subject to section 1(2).

PART 2

CELLS

Creation of cells, and cellular and non-cellular assets.

6. (1) A PCC may create one or more cells for the purpose of segregating and protecting cellular assets in the manner provided by this Act.

(2) The assets of a PCC are either cellular assets or non-cellular assets.

(3) The non-cellular assets of a PCC are the assets of the company which are not cellular assets.

(4) The cellular assets of a PCC are the assets of the company attributable to the cells of the company.

(5) The assets attributable to a cell of a PCC are –

(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) In subsection (5), "reserves" includes retained earnings, capital reserves and share premiums.

Cellular and non-cellular assets : directors' duties.

7. (1) It is the duty of the directors of a PCC –

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

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

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

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

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

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

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

PART 3

CELL SHARE CAPITAL AND DIVIDENDS

Cell share capital

Cell shares and share capital.

8. (1) A PCC may create and issue shares in respect of any of its cells ("cell shares").

(2) The proceeds of the issue of cell shares ("cell share capital") are cellular assets attributable to the cell in respect of which the cell shares were issued.

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

(4) In section 341(1) of the 1931 Act, at the end of the definition of “Share” add “and references in this Act to shares include references to cell shares unless the context requires otherwise”.

Cell share dividends

Dividends in respect of cell shares.

9. (1) A PCC may pay a dividend in respect of cell shares ("cellular dividend").

(2) Cellular dividends may be paid in respect of cell shares by reference only to the cellular assets and liabilities, or the profits, attributable to the cell in respect of which the cell shares were issued.

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

(a) the profits and losses, or the assets and liabilities, attributable to any other cell of the company; or

(b) non-cellular profits and losses, or assets and liabilities.

Reduction of cell share capital

Reduction of cell share capital with approval of High Court.

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

Notice of applications to Court.

11. (1) Before an application for an order authorising the reduction of cell share capital is made, public notice of the application must be placed in two newspapers published and circulating in the Island setting out the terms of the application and the date, time and place of the hearing.

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

(a) the PCC (except where the company is itself the applicant);

(b) the receiver (if any) of the cell;

(c) the liquidator (if any) of the company;

(d) all holders of cell shares of the cell (other than the applicant);

(e) such persons as are specified in regulations under section 31; and

(f) such other persons as the Court may direct.

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

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

Order authorising reduction of cell share capital.

12. (1) The Court may, on the application of a PCC or a holder of cell shares, by order authorise the company to reduce the cell share capital –

(a) if the applicant is the company, of any of the company's cells; or

(b) if the applicant is the holder of cell shares, of the cell in which the cell shares are held.

(2) An order under subsection (1) may authorise the PCC –

(a) to extinguish or reduce the liability on any cell shares in respect of cell share capital not paid up; or

(b) with or without extinguishing or reducing any liability on any cell shares –

(i) to cancel any paid-up cell share capital which is lost or unrepresented by available cellular assets; or

(ii) to pay off any paid-up cell share capital which exceeds the needs of the company.

(3) An order of the Court authorising a reduction of cell share capital –

(a) shall be deemed to be substituted for the corresponding part of the PCC's memorandum; and

(b) shall have effect as if originally contained therein.

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

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

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

(7) Subsection (2) does not prejudice the generality of subsection (1).

Safeguards for creditors.

13. (1) The Court must not make an order authorising the reduction of cell share capital unless it is satisfied –

(a) that the creditors of the company entitled to have recourse to the cellular assets attributable to the cell in question consent to the reduction; or

(b) that those creditors would not be unfairly prejudiced by the reduction.

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

(3) Subsections (5) and (6) apply if –

(a) a creditor whose consent is required under subsection (1) has not, without neglect or default on his part, been given written notice by the company that his consent to the reduction is required; and

(b) after the reduction of cell share capital, the cellular assets attributable to the cell in question are or are likely to be insufficient to discharge the claims of creditors in respect of that cell.

(4) In determining the cellular assets attributable to the cell in question under subsection (3)(b), no account is to be taken of the 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.

(5) Every person who, at the date of the Court order authorising the reduction of cell share capital, was a holder of cell shares of the cell in

question shall be liable to contribute, towards payment of the liability in question, an amount not exceeding that which he would have been liable to contribute if the winding up of the company had commenced on the day before that date.

(6) Subsection (7) applies if the PCC is wound up, or if an order is made under section 23 (“a receivership order”) in respect of the cell of the company in relation to which the Court order authorising the reduction of cell share capital was made.

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

(a) may, if it thinks fit, settle a list of persons liable to contribute; and

(b) may make and enforce calls and orders against the contributories settled on the list as if they were ordinary contributories in a winding up.

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

Liability of holders of cell shares.

14. (1) If a PCC's cell share capital is reduced, no past or present holder of cell shares of the cell in question is liable in respect of any cell share to any call or contribution exceeding the amount of the difference (if any) between the following amounts –

(a) the amount of the cell share as fixed by the order of the Court authorising the reduction of cell share capital; and

(b) the amount paid on the cell share or (if appropriate) the reduced amount deemed to have been paid on it.

(2) Subsection (1) is subject to this Act.

Offences.

15. (1) Any officer of a PCC who –

(a) intentionally conceals the name of a creditor whose consent is required under this Part to the reduction of the company's cell share capital;

(b) intentionally misrepresents the nature or amount of the debt or claim of a creditor; or

(c) aids, abets, connives in or is privy to any such concealment or misrepresentation as is described in paragraph (a) or (b),

is guilty of an offence.

(2) A person guilty of an offence under this section is liable –

(a) on summary conviction, to a fine not exceeding £5,000, or custody for a term not exceeding 6 months or both;

(ii) on conviction on information, to a fine, or to custody for a term not exceeding 2 years or both.

PART 4

ASSETS AND LIABILITIES

Attribution of non-cellular assets and liabilities.

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

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

Liability of cellular and non-cellular assets.

17. (1) If any liability arises which is attributable to a particular cell of a PCC –

(a) the cellular assets attributable to that cell will be primarily liable;

(b) the company's non-cellular assets will be secondarily liable, provided that the cellular assets attributable to the relevant cell have been exhausted; and

(c) the liability will not be a liability of any cellular assets not attributable to the relevant cell.

(2) Subsection (1) is subject to subsections (3) to (10).

(3) If the company has agreed with the person in respect of whom the liability arises that a liability is the liability solely of –

(a) the company's non-cellular assets, or

(b) the cellular assets attributable to a particular cell of the company,

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

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

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

(6) The fraud referred to in subsection (4) 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.

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

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

(9) The liabilities of the company's non-cellular assets will reduce proportionally until the value of the aggregate liabilities equals the value of those assets but this subsection will not apply in any situation in which any of the liabilities of the company's non-cellular assets arises from fraud or by reason of a special agreement such as is referred to in subsection (3).

(10) This section has extra-territorial application.

Disputes as to liability attributable to cells.

18. (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 PCC, and without affecting any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

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

(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 is binding upon such persons as are specified.

Position of creditors.

19. (1) The rights of creditors of a PCC shall correspond with the liabilities provided for in section 17.

(2) No such creditor shall have any rights other than the rights referred to in this section and in sections 17 and 20.

(3) There is implied in every transaction entered into by a PCC (unless expressly excluded in writing) the following terms –

(a) that no party will seek, whether in any proceedings or by any other means, to make or attempt to make liable any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell;

(b) that if any party succeeds by any means in making liable any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell, that party is liable to the company to pay a sum equal to the value of that benefit;

(c) that if any party succeeds in arresting, seizing or attaching by any means, or otherwise levying execution against, any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell, that party holds those assets or their proceeds on trust for the company and must keep those assets or proceeds separate and identifiable as such trust property; and

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

(4) All sums recovered by a PCC as a result of a trust under subsection (3)(c) will 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 PCC under the implied term set out in paragraphs (b) or (c) of subsection (3) or by any other means in the events referred to in those paragraphs must, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the cell affected.

(6) In the event of any cellular assets attributable to a cell of a PCC 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 must –

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

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

(7) Where under subsection (6)(b) a PCC 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.

Recourse to cellular assets by creditors.

20. Without prejudice to the provisions of sections 17 and 19, cellular assets attributable to a cell of a PCC –

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

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

Transfer of cellular assets from PCC.

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

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

(3) No transfer of the cellular assets attributable to a cell of a PCC may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under section 22 (a "cell transfer order").

(4) A transfer of cellular assets attributable to a cell of a PCC 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.

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

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

Cell transfer orders.

22. (1) The Court shall not make a cell transfer order in relation to a cell of a PCC unless it is satisfied –

(a) that the creditors of the company entitled to have recourse to the cellular assets attributable to the cell consent to the transfer; or

(b) that those creditors would not be unfairly prejudiced by the transfer.

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

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

(b) may dispense with any of the requirements of subsection (1).

(3) The Court may attach such conditions as it thinks fit to a cell transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the cellular assets attributable to the cell in relation to which the order is sought.

(4) The Court may make a cell transfer order in relation to a cell of a PCC even if –

(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.

PART 5

RECEIVERSHIP ORDERS

Receivership orders in relation to cells.

23. (1) 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 ("the receiver") for the purposes of –

(a) the orderly winding up of the business of or attributable to the cell; and

(b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.

(2) If the Court is satisfied –

(a) that the cellular assets attributable to a particular cell of the 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; and

(b) that the making of an order under this section would achieve the purposes set out in subsection (1),

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

(3) A receivership order –

(a) must not be made if –

(i) a liquidator has been appointed to act in respect of the PCC; or

(ii) the PCC 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 PCC.

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

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

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

Applications for receivership orders.

24. (1) An application for a receivership order in respect of a cell of a PCC 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) such other person as may be specified in regulations under section 31; or

(f) the Official Receiver.

(2) The Court, on hearing an application –

(a) for a receivership order; or

(b) for leave, under section 23(6), for a resolution for voluntary winding up,

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

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

(a) the company;

(b) the Official Receiver;

(c) such other person as may be specified in regulations under section 31; 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.

25. (1) The receiver of a cell -

(a) shall, within 1 month from the date of the receivership order, deliver to the FSC a certified copy of the order;

(b) may do anything necessary for the purposes set out in section 23(1); and

(c) has all the functions of the directors in respect of the business and cellular assets of or attributable to the cell.

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

(a) for directions as to the extent or exercise of any function or power;

(b) for the receivership order to be discharged or varied; or

(c) for an order as to any matter arising in the course of his receivership.

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

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

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

(a) no proceedings may be instituted or continued by or against the PCC in relation to the cell in respect of which the receivership order was made; and

(b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or cellular assets of or attributable to the cell in respect of which the receivership order was made,

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

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

(a) the functions of the directors shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made; and

(b) the receiver of the cell is deemed to be a director of the PCC 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.

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

Discharge and variation of receivership orders.

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

(a) has been achieved or substantially achieved; or

(b) is incapable of achievement.

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

(3) Upon the Court discharging a receivership order in respect of a cell of a PCC 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) Subsection (3) shall not affect or extinguish any right or remedy of a creditor against any other person, including any surety of the PCC.

(5) Subject to the provisions of –

(a) this Act and any rule of law as to preferential payments; and

(b) any agreement between the PCC 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 must, in the winding up of the business of or attributable to that cell pursuant to the provisions of this Act, be realised and applied proportionately in satisfaction of the company's liabilities attributable to that cell.

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

(a) among the holders of the cell shares or the persons otherwise entitled to the surplus; or

(b) where there are no cell shares and no such persons, among the holders of the non-cellular shares,

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

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

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

Remuneration of receiver.

27. 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 PCC.

PART 6

LIQUIDATION

Provisions in relation to liquidation of PCC.

28. (1) Notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a PCC, the liquidator –

(a) must deal with the company's assets in accordance with the requirements of section 7(1);

(b) in discharge of the claims of creditors of the PCC, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Act.

(2) Section 235 of the 1931 Act (distribution of property of a company) [XIII p.235] applies, with the necessary modifications, in relation to PCC’s but subject to this Act.

PART 7

GENERAL PROVISIONS

Company to inform persons they are dealing with PCC.

29. (1) A PCC shall –

(a) inform any person with whom it enters into any transaction in respect of a particular cell that the company is a PCC; and

(b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting.

(2) If, in contravention of subsection (1), a PCC –

(a) fails to inform a person that he is entering into a transaction with a PCC, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is entering into a transaction with a PCC; or

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

then, in both cases –

(i) the directors shall 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) Subsection (2) will apply even if there is a provision to the contrary in the company's articles or in any contract with the company or otherwise.

(4) The Court may none the less relieve a director of all or part of his personal liability under subsection (2)(i) if the Court is satisfied that it is fair to relieve him because –

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

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

(5) Where, under subsection (4), 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 PCC as may be specified in the order.

(6) Any provision in the articles of a PCC, and any other contractual provision under which the PCC 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.

Security interests in respect of cell assets.

30. (1) A company may create any security interest in respect of assets attributable to a particular cell in relation to –

(a) any liability attributable to that cell;

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

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

(3) Without affecting the generality of section 2 –

(a) Part III of the 1931 Act (registration, etc. of charges); and

(b) Part VI of the 1931 Act (receivers and managers),

apply in respect of each cell of a PCC as if each cell were a separate company.

Power of the Treasury to make regulations.

31. (1) The Treasury may make such regulations as are necessary to give full effect to this Act.

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

(a) restricting the business that PCC's may carry out;

(b) the conduct of the business of PCC's;

(c) the manner in which PCC's may carry on, or hold themselves out as carrying on, business;

(d) the form and content of the accounts of PCC's;

(e) the winding up, administration or receivership of PCC's;

(f) the transfer of domicile (in accordance with Schedule 3A to the Insurance Act 1986 [c.24] or the Companies (Transfer of Domicile) Act 1998 [c.6]) of companies that are, or are equivalent to, PCC's.

(3) Regulations under subsection (2) may modify provisions of the Companies Acts in their application to companies that are PCC's but only to such extent as is necessary to prevent conflict between those Acts and this Act .

(4) Regulations under this Act –

(a) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Treasury to be necessary or expedient;

(b) may provide that the provisions of this Act shall apply in relation to any class or description of company specified by or prescribed under regulations subject to such exceptions, adaptations and modifications as may be specified in the regulations.

(5) Before making regulations under this Act, the Treasury shall consult with such bodies as appear to it to be representative of interests likely to affected by the Regulations.

(6) Regulations under this Act shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting fails to approve them, the regulations shall cease to have effect.

Interpretation.

32. (1) In this Act -

"the 1931 Act" has the meaning given in section 3(4);

“cell" means a cell created by a PCC for the purpose of segregating and protecting cellular assets in the manner provided by this Act;

"cell share capital" has the meaning given in section 8;

"cell shares" has the meaning given in section 8;

"cell transfer order" has the meaning given in section 21(3);

"cellular assets" has the meaning given in section 6;

"cellular dividend" has the meaning given in section 9(1);

“the Companies Acts” means the Companies Acts 1931 to 1993;

“the Court” means the High Court;

"creditors" includes present, future and contingent creditors;

“liability" includes any debt or obligation;

"non-cellular assets" has the meaning given in section 6(3);

"prescribed" means prescribed by regulations of the Treasury;

"PCC" means a company incorporated as, or converted into, a PCC in accordance with the provisions of this Act;

"receiver" has the meaning given in section 23(1);

"receivership order" has the meaning given in section 23(1);

"transaction" means anything (including, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship) whereby any liability arises or is imposed.

(2) Expressions used in this Act shall have the same meanings as in the 1931 Act unless the context requires otherwise.

Saving for directors’ functions.

33. (1) This Act does not affect the functions of the directors of a PCC in respect of the affairs of the company including the due administration of the affairs of each cell except as expressly provided.

(2) Subsection (1) does not affect the powers of delegation by directors.

Saving for internal arrangements.

34. (1) This Act does not prevent, in the ordinary course of business of a PCC, arrangements –

(a) as between cells; or

(b) as between cells and the PCC,

in relation to the PCC's business or to the PCC's business attributable to the cells concerned.

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

(3) This section does not affect the generality of section 2.

Financial.

35. There shall be paid out of monies provided by Tynwald any increase in the expenses of the Treasury and the Financial Supervision Commission that are attributable to this Act.

Short title and commencement.

36. (1) This Act may be cited as the Protected Cell Companies Act 2004 and shall be construed as one with the Companies Acts, and those Acts and this Act may together be cited as the Companies Acts 1931 to 2004.

(2) This Act shall come into force on such day as the Treasury may by order appoint and different days may be so appointed for different provisions and for different purposes.