

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER P107

PROTECTED CELL COMPANIES ACT

Showing the Law as at 15 December 2014

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates Act 7/2004, in force 1 October 2004

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PROTECTED CELL COMPANIES ACT

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PROTECTED CELL COMPANIES ACT

PART 1

PRELIMINARY

Interpretation

1. (1) In this Act—

"account owner", in relation to a protected cell account, means any person who is—

(a) the registered holder of shares which are—

(i) issued by the protected cell company, and

(ii) linked to that protected cell account;

(b) expressly identified in the governing instrument linked to a protected cell account as being an account owner for the purposes of this Act in respect of that protected cell account; or

(c) expressly designated in the records of the protected cell company as being an account owner in respect of that protected cell account;

and the interests of an account owner in any of the foregoing capacities in relation to any protected cell account are referred to in this Act as "account holdings";

"appointed newspaper" means the *Gazette*;

"Arbitration Act" means the Arbitration Act and includes any statutory modifications made thereto;

"Commission" means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act;

"Companies Act" means the Companies Act and includes any statutory modifications made thereto;

"contract" includes written agreements, instruments or other writings (including electronic records) which create or affect rights or obligations;

"counterparty" means any party (other than the protected cell company itself, save where section 14(1) applies) to a transaction to which the protected cell company is a party, and under which assets or liabilities are wholly or partly linked to a protected cell account, but an account owner shall not (in that capacity) also be a counterparty;

"court" means the High Court;

"creditor" means, in respect of any protected cell account (and in that regard may include a counterparty of the protected cell account) or the general account respectively, any person to whom any liability is owed by the protected cell company and such liability is linked to that

protected cell account or is a liability of the general account, as the case may be; but, except as provided for in section 16(12), an account owner shall not (in that capacity) also be a creditor;

"dollar"or "$" means a dollar in the currency of the United States of America;

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

"general shareholder" means any member of a protected cell company not being the holder of a share linked to a protected cell account;

"governing instrument" means one or more written agreements, instruments, by-laws, prospectuses, resolutions of directors, registers or other documents (including electronic records), setting out the rights, obligations and interests of account owners in respect of a protected cell account;

"Governor" means the Governor in Council;

"insurance business" means insurance business as defined in section 1 of the Insurance Act;

"known creditors" means creditors whose identity and whereabouts are known to, or with due diligence could be discovered by, the company, or other persons known to the company;

"linked" means referable by means of—

(a) an instrument in writing including a governing instrument or contract;

(b) an entry or other notation made in respect of a transaction in the records of a protected cell company; or

(c) an unwritten but conclusive indication;

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

"manager" means any person who, by virtue of the terms of a governing instrument or otherwise with the consent of a protected cell company and the account owners of any protected cell account, has control of a protected cell account;

"mutual fund" means a mutual fund within the meaning of section 1(1) of the Mutual Funds Act;

"officer" in relation to a protected cell company, includes director and secretary;

"operative date" means 1 October 2004;

"protected cell account" means a separate and distinct account (comprising or including entries recording data, assets, rights, contributions, liabilities and obligations linked to such account) of a protected cell company pertaining to an identified or identifiable pool of assets and liabilities of such protected cell company which are protected cell or distinguished from other assets and liabilities of the protected cell company for the purposes of this Act;

"protected cell company" means a company which is registered under section 4 and, unless the context otherwise requires, references to the "company" shall be construed as references to such company;

"register" means the register of protected cell accounts companies maintained under section 4;

"registered" means registered under section 4;

"Registrar" means the Registrar of Companies;

"security", in relation to a protected cell company, means any share, note, bond, debenture, evidence of indebtedness, certificate, unit, warrant, or right conferring an option to acquire shares or any other right issued by or pertaining to the company, but does not include a contract of insurance unless the terms of the contract so provide;

"transaction" means any dealing of whatever nature, which may be evidenced by a governing instrument (in the case of a transaction with an account owner) or contract (in the case of a transaction with a counterparty), including the issue of any security, by which assets or liabilities become linked to a protected cell account or by which the assets or liabilities linked to a protected cell account are otherwise affected, or, in the case of assets linked to a protected cell account which are intended by the parties to be applied to a risk of any nature, any dealing which exposes such assets to liability or loss.

(2) For the purposes of this Act, excluding section 22(1)—

(a) a protected cell company shall be deemed to be solvent if the general account is able to pay its liabilities as they become due; or where a protected cell company is undertaking insurance business it shall be deemed to be solvent if the total amount of its assets exceed the total amount of its liabilities by at least the minimum margin of solvency that it is required to maintain under the Insurance Act;

(b) a protected cell account shall be deemed to be solvent if it is able to pay its liabilities (excluding obligations to account owners in that capacity) as they become due.

PART 2

REGISTRATION

Application for registration to operate protected cell accounts

2. (1) Any company to which the Companies Act applies—

(a) if it is engaged in insurance business; or

(b) if it is not so engaged, with the approval of the Commission;

may, by filing a notice under section 3, apply to be registered under section 4.

(2) From the date of registration under this Act, a protected cell company shall be bound by, and may avail itself of, the provisions of this Act and from such date it may, without in any way limiting the generality of the foregoing, establish one or more protected cell accounts to which the provisions of this Act shall apply.

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

Notice and documents to be filed

3. (1) The notice shall be in such form as the Commission may determine but shall contain the following information—

(a) the name of the company which shall include the expression "Protected Cell", "PCC" or any cognate expression approved by the Commission;

(b) a statement that the company intends to operate protected cell accounts;

(c) the address of the registered office of the company;

(d) the name and address of the protected cell account representative of the company;

(e) the nature of the business of the company;

(f) the date of incorporation of the company;

(g) a statement that the company has made provision to account for protected cell accounts in the manner set out in section 12; and

(h) a statement that the articles of incorporation will include a provision that the company is a protected cell company.

(2) Where the company has conducted business prior to its registration, the company, in filing a notice under subsection (1), shall—

(a) file with the Registrar a statutory declaration made by at least 2 directors as at the date of the notice setting out a true and accurate statement or description of—

(i) the assets and liabilities of the company as at a date within 3 months prior to the date of the notice,

(ii) any transaction or event which, as of the date of the notice, has occurred, or is expected to occur, between the date of the statement of assets and liabilities prepared pursuant to subparagraph (i) and the date of registration of the company as a protected cell company which, if it had occurred before the date of that statement, would have caused material changes to the assets and liabilities disclosed therein, and

(iii) the protected cell accounts the company intends to operate and the assets and liabilities which the company proposes to assign to each of those protected cell accounts,

and declaring that—

(iv) on registration, the company and each protected cell account will be solvent and—

(A) no known creditor of the company will be prejudiced,

(B) the known creditors of the company have consented in writing to the company proceeding to register, or

(C) adequate notice has been given in accordance with subsection (3) to all known creditors of the company and no creditor objects to the registration otherwise than on grounds that are frivolous or vexatious,

(v) no creditor of the company will be prejudiced, or

(vi) the creditors of the company have consented in writing to the company proceeding to register; and

(b) attach evidence of the consent in writing to registration of 75% in number of those persons who would, on the registration of the company, be the account owners of the protected cell accounts of the company and 75% in number of those persons who would, on the registration of the company, be creditors.

(3) For the purposes of subsection (2)(a)(iv)(C) adequate notice is given if—

(a) a notice in writing is sent to each known creditor having a claim against the company that exceeds $1,000; and

(b) notice is published in an appointed newspaper;

in each case stating that the company intends to register and that a creditor of the company may object to the registration within 28 days from the date of such notice, or publication of such notice, as the case may be.

(4) Subject to subsection (5), an account owner or creditor who objects to the registration of the company may apply to the court for the annulment of the registration of the company.

(5) An application under subsection (4) may only be made by—

(a) not less than 20% in number of such persons who would, on the registration of the company, be account owners;

(b) not less than 20% in number of such persons who would, on the registration of the company, be creditors; or

(c) not less than 20% in number of such persons as are mentioned in paragraphs (a) and (b) combined who would be account owners or creditors on registration:

but an application shall not be made by any person who has voted in favour of the registration or has given to the company a statement in writing duly signed that he, having had notice, consents to the registration.

(6) An application under subsection (4) shall be made within 28 days from the date of registration, and may be made on behalf of the persons entitled to make the application by one or more of their number as they may appoint in writing for the purpose.

(7) On an application under subsection (4) the court may make an order annulling or confirming the registration, either wholly or in part, and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase or other disposition of the interests of dissentient persons, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement but no part of the capital of the company or of any protected cell account shall be expended in the purchase or other disposition of the interests of dissentient persons.

(8) Where a company—

(a) has conducted business prior to filing a notice under subsection (1); and

(b) has filed such notice;

it shall cause a copy of the notice to be contemporaneously given to all persons who, on the registration of the company, would be account owners and to its known creditors.

(9) If there is any material alteration of the particulars set out in subsection (2) between the date of the notice filed pursuant to subsection (1) and the date of registration, then the company shall give further notice to the Registrar of such alteration of particulars.

(10) The notice filed pursuant to subsection (1) and any documents accompanying that notice shall be treated as confidential by the Registrar and all public officers having access thereto, but this subsection does not preclude the disclosure of information for the purpose of enabling the Commission to exercise any functions conferred upon it by this Act.

Registration and register of protected cell companies

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

(2) Upon application and upon payment of such fee as may be prescribed, the Registrar, if satisfied—

(a) that the company is capable of complying with this Act; and

(b) that the Commission consents in writing to the registration;

may register the company as a protected cell company.

(3) The Commission may—

(a) impose such conditions, whether on the company or any person with it, on the granting of its consent to the registration of a company as it may consider necessary to ensure the reputation of Anguilla and, in particular, to vet the account owners of protected cell accounts and to ensure compliance with this Act; and

(b) require the company to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its protected cell accounts business in a particular way.

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

(5) After registering a company pursuant to subsection (2), the Registrar shall issue a certificate showing the date of registration.

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

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

(8) Where the Registrar refuses to register a company pursuant to subsection (2), he shall not be bound to assign any reason for his refusal and his decision shall not be subject to appeal or review in any court.

Removal from the register

5. (1) Subject to this section, the Registrar, on receipt of a request in writing by a protected cell company attaching thereto evidence of the consent in writing of 75% in number of the account owners of the protected cell accounts of the company and of 75% in number of any counterparties who are creditors, shall remove the company from the register and the provisions of this Act shall cease to apply to the company.

(2) A request under subsection (1) shall be in such form as the Registrar may determine, but shall include a statutory declaration made by a majority of the directors of the protected cell company to the effect that no creditor of the company will be prejudiced by, or that the known creditors have consented in writing to, the removal of the company from the register and shall have attached to the declaration a true and accurate statement of—

(a) the assets and liabilities of the company as at a date within the 3 months prior to the date of the request;

(b) a description of any transaction or event which, as of the date of the request, is expected to occur between the date of the statement of assets and liabilities prepared pursuant to paragraph (a) and the date of the removal of the company as a protected cell company which, if it had occurred before the date of the statement of assets and liabilities, would have caused significant changes to the assets and liabilities disclosed therein; and

(c) the protected cell accounts which the company has operated and the assets and liabilities which were linked to each of those protected cell accounts.

(3) If there is any material alteration of the particulars set out in subsection (2) between the date of the request given pursuant to subsection (1) and the removal of the company from the register, the company shall give notice to the Registrar of such alteration in particulars.

(4) A protected cell company shall circulate contemporaneously with the request to the Registrar under subsection (1) notice of that request to all account owners of the protected cell company and to all creditors.

(5) An account owner of a protected cell account or any creditor who is aggrieved by a request made pursuant to subsection (1) may, within 21 days of receipt of notice of the request, apply to the Registrar to refuse to remove the protected cell company from the register or, if the removal has already occurred, to reinstate the company on the register.

(6) Where an application has been made under subsection (5) and the Registrar has made a decision on the application, any person who is aggrieved by that decision may, within 21 days of the decision, appeal to the court and the court shall hear the matter and make such order as it thinks fit.

(7) The making of a request pursuant to subsection (1) shall not of itself effect the removal of a protected cell company from the register and the Registrar in his absolute discretion shall determine whether to give effect to the removal of the company from the register and, in this regard, may require such information from the company as he considers necessary to render such decision.

(8) Without prejudice to the provisions of Part 6 Division 2 of the Companies Act (which relates to the powers of the Minister to investigate the affairs of a company), the Registrar may, whether on his own initiative or on application by an account owner or a counterparty, remove a protected cell company from the register where the company has materially breached—

(a) the provisions of this Act or a condition or requirement imposed under section 4(3); or

(b) the terms of any direction given pursuant to section 24 or regulation made under section 25;

but the rights and obligations of any account owner and of any creditor shall be unaffected by the removal, and the powers of the company shall continue in respect of such accrued rights and obligations but solely for the discharge thereof.

(9) Where the Registrar intends to remove a protected cell company from the register pursuant to subsection (8), he shall give the company notice of that intention and, before giving effect to the removal of the company from the register, he shall take into account any representations made by the company within such period as may be specified in the notice.

PART 3

MANAGEMENT AND ADMINISTRATION

Company to inform persons they are dealing with a protected cell company

6. A protected cell company or any person associated with it shall—

(a) inform any person with whom it enters into a transaction that it is a protected cell company;

(b) where the transaction relates to a protected cell account, for the purposes of that transaction, identify or specify that protected cell account; and

(c) include reference to the fact that the company is a company registered under the Protected Cell Companies Act on its letterhead and contracts.

Protected cell account representative

7. (1) A protected cell company shall appoint and maintain a protected cell account representative in Anguilla who shall be a person approved by the Commission as the protected cell account representative of the company.

(2) The particulars of the protected cell account representative of a protected cell company shall be included in the register of directors and officers of the company maintained pursuant to section 154 of the Companies Act[1].

(Am in L.R. 15/12/2014)

(3) It is the duty of the protected cell account representative within 30 days of—

(a) his reaching the view that there is a reasonable likelihood of a protected cell account or the general account of a protected cell company for which he acts becoming insolvent; or

(b) it coming to his knowledge or his having reason to believe that the protected cell company for which he acts—

(i) has failed to comply with—

(A) any requirement or condition imposed under section 4(3),

(B) any requirement imposed by section 8, 11 or 12,

(C) any direction given under section 24, or

(D) any regulation made under section 25; or

(ii) has become involved in any criminal proceedings in Anguilla or elsewhere;

to make a written report to the Commission and the Registrar setting out all the particulars of the case that are available to him relating to the insolvency, failure or involvement.

Governing instruments and contracts

8. (1) The rights, interests and obligations of account owners in a protected cell account shall be evidenced in a governing instrument and the rights, interests and obligations of counterparties shall be evidenced in the form of contracts.

(2) The governing instrument in relation to any protected cell account shall be deemed to be governed by the laws of Anguilla and the parties thereto shall be deemed to submit to the jurisdiction of the courts of Anguilla and, in relation to such governing instrument—

[1] This section has been corrected to reflect the renumbering of the Companies Act, R.S.A. c. C65 *(15/12/2014).*

(a) a person shall become an account owner and shall become bound by the governing instrument if such person complies with the conditions, if any, for becoming an account owner as set out in the governing instrument;

(b) an account owner shall take such interest in a protected cell account as may be stipulated in respect of him in accordance with the terms of the governing instrument and, absent such stipulation or other compelling indication (in the discretion of the directors of the company, exercised reasonably), the extent of the interest of such account owner shall be nil;

(c) if no other provision for management is specified in the governing instrument, the protected cell company shall manage the protected cell account and may—

(i) appoint and supervise the officers, managers, employees and other persons who have management of the protected cell account, and

(ii) enter into financial arrangements for payment for services including the charging of fees, disbursements and other charges which the manager shall be authorized to withdraw from the protected cell account;

(d) unless otherwise provided in the governing instrument, the protected cell company may take any action, including—

(i) the amendment of the governing instrument,

(ii) the appointment of one or more managers,

(iii) for the benefit of the protected cell account only, the sale, lease, exchange, transfer, pledge or other disposition of all or any part of the assets of the protected cell account, or the orderly winding-up of the affairs and termination of the protected cell account,

or may provide for the taking of any action to create under the provisions of the governing instrument a class, group or series of account holdings that was not previously outstanding, without the vote or approval of any particular manager or account owner, or class, group or series of managers or account owners;

(e) the protected cell company may, if and to the extent that voting rights are granted under the governing instrument, set forth provisions relating to—

(i) notice of the time, place or purpose of any meeting at which any matter is to be voted on,

(ii) waiver of any such notice,

(iii) action by consent without a meeting,

(iv) the establishment of record dates,

(v) quorum requirements,

(vi) voting in person, by proxy or in any other manner, or

(vii) any other matter with respect to the exercise of any voting rights;

(f) unless otherwise provided in the governing instrument in relation to a protected cell account, the protected cell company may in respect of that account grant to, or withhold from, all or certain managers or account owners, or a specified class, group or series of managers or account owners, the right to vote, separately or with any or all other classes, groups or series of managers or account owners, on any matter, such voting being on a per capita, number, financial interests, class, group, series or any other basis;

(g) unless otherwise provided in the governing instrument in relation to a protected cell account, the protected cell company in respect of that account may create further protected cell accounts to which all or any part of the assets, liabilities, profits or losses linked to any existing protected cell account may be transferred, and for the conversion of the interest (or any part thereof) of all or certain account owners in an existing protected cell account into interests of account owners in the separate protected cell account; and

(h) unless otherwise provided in the governing instrument in relation to a protected cell account, the protected cell company in respect of that account may set forth provisions therein regarding—

(i) the governance of the business (or any aspect thereof) of the protected cell account and the rights, powers and duties of the company, any manager and the account owner and their respective servants, agents, employees, successors or assigns,

(ii) the identity of the protected cell account to which the transaction and any assets or liabilities are linked, and

(iii) the extent of the interest of the account owners and others (if any) therein and subordination thereof (if any).

(3) Any contract governing a transaction with a counterparty, including those executed outside Anguilla, shall include the name of the counterparty, and, unless otherwise provided therein, shall include an implied term that the parties select the law of Anguilla as its governing law and submit to the jurisdiction of the courts of Anguilla.

(4) Unless otherwise expressly agreed in writing by the parties to the transaction—

(a) by virtue of a governing instrument or contract which is binding on those parties in relation to the affected protected cell accounts or general account, as the case may be, and which is executed by parties having authority in relation to those accounts; and

(b) in the case of a mutual fund only where the document or documents mentioned in paragraph (a) clearly indicate an intention of the parties to extend liability to more than one protected cell account or the general account as permitted by this section and contain a specific reference to this subsection and to section 13(5),

any contract pertaining to a transaction shall be deemed to contain a statement that the rights of the counterparty shall not extend to, and the counterparty will not have recourse to, the assets which are linked to any other protected cell account or to the general account.

(5) For the avoidance of doubt, it is hereby declared that any provision of a contract or governing instrument relating to the segregation of assets or liabilities of a protected cell account shall be governed by and construed in accordance with this Act, and the parties may not contract otherwise in such regard.

Allocation of assets and liabilities

9. (1) Notwithstanding any other provision of this Act, a protected cell company that is not a mutual fund company (and in the case of a mutual fund company only where the relevant contract or governing instrument contains a specific reference to sections 8(4) and 13(5)) may allocate an asset or liability between 2 or more protected cell accounts and the general account.

(2) Where a protected cell company has allocated an asset or liability pursuant to subsection (1), the extent to which the asset or liability is linked to each protected cell account shall be clearly indicated in the contract or governing instrument effecting the allocation.

Issue of securities linked to a protected cell account

10. (1) A protected cell company may create and issue securities in one or more classes linked to the same protected cell account, the proceeds of issue of which shall be included in the assets linked to that protected cell account.

(2) Where a protected cell company has effected a transaction by issuing a security linked to a protected cell account, the issue of the security shall be identified as being linked to the protected cell account in the accounts, books and records required to be kept by the company pursuant to this Act.

(3) Notwithstanding any enactment to the contrary except section 159 of the Companies Act[2], no record or register or that part of a record or register detailing any ownership of such security shall be open to public inspection save that any owner thereof shall be entitled to receive a copy of the information contained therein pertaining to such security.

(Am in L.R. 15/12/2014)

(4) For the avoidance of doubt, the provisions of section 159 of the Companies Act[3] shall not apply to a protected cell company that is a mutual fund.

(Am in L.R. 15/12/2014)

(5) The proceeds of the issue of shares or other securities, other than securities linked to a protected cell account, shall be included in the general assets of the protected cell company only and the general shareholders shall have no rights to the assets of any protected cell account by reason only of being a general shareholder.

Dividends, distributions, redemptions, repurchases and reduction of capital

11. (1) A protected cell company may pay a dividend or make a distribution in respect of securities of any class linked to a protected cell account whether or not a dividend or distribution is

[2] This section has been corrected to reflect the renumbering of the Companies Act, R.S.A. c. C65 *(15/12/2014).*
[3] This section has been corrected to reflect the renumbering of the Companies Act, R.S.A. c. C65 *(15/12/2014).*

declared on any other class of securities linked to the same or any other protected cell account or any other securities issued by the company.

(2) Notwithstanding any other provision of this Act, a dividend shall not be declared or paid, or a distribution declared or made, in respect of securities or other account holdings linked to a protected cell account if there are reasonable grounds for believing that—

(a) the protected cell account is not, or would after the distribution or dividend payment not be, solvent; or

(b) the realisable value of the assets of the protected cell account would thereby be less than the aggregate of its liabilities and stated share capital of all classes.

(3) Dividends or distributions in respect of securities linked to a protected cell account shall be paid or made on or in respect of those securities by reference only to the assets and liabilities of the protected cell account linked to those securities, and not by reference to the general account or any other protected cell account, and otherwise in accordance with the rights of such securities.

(4) Section 52 of the Companies Act does not apply to a protected cell company in relation to a dividend or distribution in respect of a protected cell account, declared, paid or made under this section.

(5) Notwithstanding sections 40(2) and 42(2) of the Companies Act, a protected cell company may repurchase or redeem the shares or other account holdings using the assets linked to the relevant protected cell account provided that—

(a) on the date of repurchase or redemption after taking into account the repurchase or redemption, there are reasonable grounds for believing that the relevant protected cell account is solvent; or

(b) all creditors with claims linked to that protected cell account on that date have expressed in writing their concurrence to the repurchase or redemption.

(6) Paragraph (2)(b) and subsection (5) of this section and section 12(4) shall not apply to a mutual fund.

(7) A protected cell company which is a mutual fund may redeem or repurchase for cancellation shares using the assets linked to the relevant protected cell account provided that, on the date of redemption or repurchase, there are reasonable grounds for believing that the relevant protected cell account is solvent and would remain so after the redemption or repurchase.

(8) A protected cell company which is a mutual fund on the redemption or repurchase of shares linked to a protected cell account may—

(a) repay the capital paid on such shares out of paid in capital, additional paid in capital or other reserves of the company linked to the relevant protected cell account; or

(b) pay the premium, if any, out of realised or unrealised profits, additional paid in capital or other reserves of the company linked to the relevant protected cell account, on such terms and in such manner and at such price as may be determined having regard to the asset value of such shares as ascertained in accordance with the governing instrument.

(9) A protected cell company which is a mutual fund on the redemption or repurchase of shares linked to a protected cell account may effect the redemption or repurchase out of the assets of the company linked to the relevant protected cell account, on such terms and in such manner and at such price as may be determined having regard to the asset value of such shares as ascertained in accordance with the governing instrument.

(10) In any case where a protected cell company in respect of a protected cell account has share capital, if authorised in a general meeting of the account owners of the protected cell account to which the shares are linked and subject to the governing instrument in relation to that protected cell account, on such terms as it may decide, the company may reduce its capital in any way, and in particular, without prejudice to the generality of the foregoing power, by—

(a) extinguishing or reducing the liability on any of its shares in respect of capital not paid up;

(b) either with or without extinguishing or reducing liability on any of its shares, cancelling any paid up capital that is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability of any of its shares and either with or without reducing the number of such shares, paying off any paid up capital that is in excess of the requirements of the company.

(11) No company shall reduce the amount of its share capital in respect of a protected cell account—

(a) unless, at a date not more than 30 days and not less than 15 days before the date on which the reduction of the share capital is to have effect, the company causes a notice to be published in an appointed newspaper stating—

(i) the amount of the capital of the protected cell account as last determined by the company,

(ii) the amount to which the share capital of the protected cell account is to be reduced, and

(iii) the date on which the reduction is to have effect; and

(b) if, on the date the reduction is to be effected, there are reasonable grounds for believing that the protected cell account is not, or after the reduction would not be, solvent.

(12) Unless the governing instrument pertaining to the affected protected cell account otherwise provides, where the capital of a protected cell account is reduced by the cancellation of shares and part only of a class of shares is to be cancelled, the shares to be cancelled shall be selected—

(a) by lot in such manner as the directors shall determine;

(b) as nearly as may be in proportion to the number of shares of the class registered in the name of each account holder; or

(c) in such other manner as the directors determine with the consent of the majority of the account owners of the class to be cancelled.

(13) Where shares are to be cancelled in order to reduce the capital of a protected cell company in respect of a protected cell account, the shares shall be acquired at the lowest price at which, in the opinion of the directors, the shares are obtainable, but not exceeding an amount, if any, stated in or determined by the governing instrument.

(14) Where a company in respect of a protected cell account having share capital reduces the amount of that share capital, then within 30 days after the date as from which the reduction has effect the company shall file a memorandum, with a copy of the notice referred to in subsection (11)(a) in the office of the Registrar stating that this section has been duly complied with.

(15) If any company fails to comply with subsection (11), (12) or (13) every officer of the company is liable to a fine of $5,000, and if the company fails to comply with subsection (14) the company is liable to a fine of $20 for every day during which such failure continues.

Accounts, records and registers

12. (1) A protected cell company shall—

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

(b) maintain a record of each transaction entered into by the company; and

(c) maintain a general account which records in accordance with this Act all of the assets and liabilities of the company which are not linked to a protected cell account and which discloses any assets intended by the parties to be applied to a risk of any nature, and which therefore exposes such assets to liability or loss.

(2) For the purposes of subsection (1)(a), "reserves" includes retained earnings, contributed surplus and stated capital account.

(3) The records referred to in subsection (1) shall be kept in accordance with sections 127 and 128 of the Companies Act[4], provided that in the case of a protected cell company to which the Insurance Act applies, the records may be kept at the principal office.

(Am in L.R. 15/12/2014)

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

(5) A protected cell company shall prepare or cause to be prepared financial statements in respect of each protected cell account and the relevant provisions of Part 2 Division 6 of the Companies Act shall apply, with the necessary modifications, to the preparation of financial

[4] This section has been corrected to reflect the renumbering of the Companies Act, R.S.A. c. C65 *(15/12/2014).*

statements under this section provided that the account owner of a protected cell account may agree in writing to waive his right to have laid before a general meeting financial statements or the auditor's report thereon for an indefinite period but such waiver shall be expressed to be revocable at the option of such account owner.

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

(7) If—

(a) the records maintained with respect to a protected cell account; or

(b) the financial statements of a protected cell account;

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

(8) A protected cell company shall maintain a register of account owners setting out their respective interests in any protected cell account together with the particulars required in respect of members of the company as set out in section 154 of the Companies Act[5].

(Am in L.R. 15/12/2014)

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

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

Nature of protected cell accounts, application of assets and liabilities

13. (1) Notwithstanding any other provision of this Act, the establishment of a protected cell account does not create a legal person distinct from the protected cell company.

(2) Notwithstanding any enactment or rule of law to the contrary, but subject to this Act, any liability linked to a protected cell account shall be a liability only of that account and not the liability of any other account and the rights of creditors in respect of such liabilities shall be rights only in respect of the relevant account and not of any other account, and, for the avoidance of doubt, any asset which is linked by a protected cell company to a protected cell account—

(a) shall be held by the protected cell company as a separate fund which is—

(i) not part of the general account and shall be held exclusively for the benefit of the account owners of the protected cell account and any counterparty to a transaction linked to that protected cell account, and

[5] This section has been corrected to reflect the renumbering of the Companies Act, R.S.A. c. C65 *(15/12/2014).*

(ii) available only to meet liabilities to the account owners and creditors of that protected cell account; and

(b) shall not be available or used to meet liabilities to, and shall be absolutely and for all purposes protected from, the general shareholders and from the creditors of the company who are not creditors with claims linked to protected cell accounts.

(3) For the purposes of this Act, the Companies Act and otherwise at law, the assets recorded in the general account shall be the only assets of a protected cell company available to meet liabilities of the protected cell company that are not linked to a protected cell account.

(4) No assets of the general account may be transferred from the general account to a protected cell account unless, on the date from which the transfer is to be effective, and taking into account that transfer, the general account is solvent or all the shareholders and creditors of the general account on that date have expressed in writing their concurrence to the transfer, and in the event a transfer is made to a protected cell account in breach of this subsection, on an application by an affected party, the court may declare that the transfer is void, without prejudice to the rights of *bona fide* purchasers, for value without notice.

(5) Unless otherwise expressly agreed in writing by the affected parties—

(a) by virtue of one or more contracts, governing instruments or other documents which are binding on those parties in relation to the affected protected cell accounts or general account, as the case may be, and which are executed by parties having authority in relation to those accounts; and

(b) in the case of a mutual fund only where the documents mentioned in paragraph (a) clearly indicate an intention of the parties to extend liability to more than one protected cell account or the general account as permitted by this section and contain a specific reference to this subsection and to section 8(4);

where a liability of a protected cell company to a person arises from a transaction or matter relating to, or is otherwise imposed in respect of or attributable to, a particular protected cell account, that liability shall—

(c) extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the assets linked to that protected cell account;

(d) not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to, the assets linked to any other protected cell account; and

(e) not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to, the general account.

(6) Where a liability of a protected cell company to a person—

(a) arises otherwise than in respect of a particular protected cell account; or

(b) is imposed otherwise than in respect of a particular protected cell account;

that liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the general account.

(7) In the event that a protected cell account has insufficient assets to pay all of its obligations in full, the order and priority of the rights in relation to assets linked to a protected cell account shall (without prejudice to the rights of any parties holding valid security interests against assets linked to that protected cell account and any valid preferential claims in respect of that protected cell account) be determined by the terms of the governing instrument and any contracts pertaining to that account, and any ambiguity in respect of the order and priority rights shall be resolved as follows—

(a) the claims of creditors shall rank ahead of the claims of account owners;

(b) the claims of creditors *inter se* shall rank *pari passu*; and

(c) the claims of account owners *inter se* shall rank *pari passu*.

(8) A protected cell company may, with the consent in writing of all account owners of, or counterparties who are creditors with claims linked to, a given protected cell account, transfer to the general account or another protected cell account an asset from the protected cell account to which it is linked, if the protected cell account to which such asset is linked, taking into account the proposed transfer, remains solvent, and, in the event a transfer is made to the general account in breach of this subsection, on an application by an affected party, the court may declare that the transfer is void, without prejudice to the rights of *bona fide* purchasers for value without notice.

(9) Any asset transferred in accordance with subsection (8) shall cease to be linked to the protected cell account from which it was transferred on the date of the transfer.

(10) Subject to the terms of the governing instrument relating to a given protected cell account, on dissolution of the protected cell company or termination of the protected cell account and after paying creditors of the protected cell account, any property linked to that protected cell account shall be paid *pro rata* to the account owners of such protected cell account or, if there are no account owners, shall be deemed to fall into the general account.

(11) Without prejudice to the rights of parties to resolve disputes by reference to arbitration or to the court, where—

(a) there is, on grounds that are reasonable, uncertainty as to whether any given interest in a protected cell account is an interest as a counterparty or an interest as an account owner, that interest shall be deemed to be an interest as a counterparty;

(b) a given liability is not linked to a particular protected cell account, or where there is, on grounds that are reasonable, uncertainty as to whether the liability is linked to a protected cell account, that liability shall be deemed to be the liability of the general account.

Internal transactions

14. (1) Notwithstanding any enactment or rule of law to the contrary—

(a) a protected cell company acting in respect of the general account may enter into transactions with the company acting in respect of one or more protected cell accounts; and

(b) a protected cell company acting in respect of a protected cell account may enter into transactions with the company acting in respect of one or more other protected cell accounts.

(2) For the avoidance of doubt—

(a) a transaction referred to in subsection(1); and

(b) any transaction between the company in respect of one protected cell account and a third party;

shall have effect or otherwise (as the case may be) as the transaction would have done under the general law if the transaction had been entered into between the company and a third party, and without restricting the generality of the foregoing—

(c) such a transaction shall be void, voidable, illegal or reversible at the instance of any creditor of the company in respect of the relevant protected cell account or at the instance of the company itself in respect of the relevant protected cell account or at the instance of any other person if the transaction would have been void, voidable, illegal, or reversible (as the case may be) by such person under any rule of law which would have applied to the transaction if the transaction had been entered into between the company and a third party in the same circumstances; and

(d) an account owner, counterparty, or receiver of any given protected cell account shall have standing to pursue, on behalf of the relevant protected cell account, any rights of action (including recourse to arbitration under subsection (4)) available to the protected cell company in respect of that protected cell account pursuant to this section.

(3) Notwithstanding any enactment or rule of law to the contrary—

(a) where a manager or officer of or other person on behalf of a protected cell company or a protected cell account is also acting in respect of the general account and one or more of the protected cell accounts or in respect of 2 or more protected cell accounts which are entering into a transaction, he may so act notwithstanding any material interests or conflicts which may exist as between the manager, officer or directors or which any of them may have in acting in respect of such accounts; and

(b) where—

(i) a given protected cell account enters into a transaction as described in paragraph (a), and

(ii) the governing instrument of the protected cell account so authorises, or a majority of the account owners consent in writing to the entry into of such a transaction,

then the manager, officer or such other person, the protected cell company and the company in respect of any protected cell accounts (as the case may be) shall not be held liable to the company in respect of that protected cell account or any of its account owners in respect of any conflict of interest arising in relation to the transaction.

(4) Any dispute which arises in connection with a transaction under subsection (1)—

(a) as between the company in respect of a given protected cell account and the company in respect of any one or more other protected cell accounts; or

(b) as between the company in respect of the general account and the company in respect of one or more protected cell accounts;

may (notwithstanding any submission to the governing law of choice otherwise provided for in this Act or otherwise) be referred to the court or may be submitted to arbitration under the Arbitration Act.

(5) If the managers, officers, legal advisers or others representing the company in respect of the separate interests of the affected accounts cannot agree on whether a particular matter should be referred to court or to arbitration, then that matter shall be referred to arbitration.

Creditor enforcement rights limited to account assets

15. (1) There shall be implied (except in so far as the same is expressly excluded in writing) in every contract and governing instrument entered into by a protected cell company the following terms—

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

(b) that if any party shall succeed by any means whatsoever or wheresoever in making liable any assets attributable to any protected cell account of the company in respect of a liability not attributable to that protected cell account, 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 assets attributable to any protected cell account of the company in respect of a liability not attributable to that protected cell account, 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.

(2) All sums recovered by a protected cell company as a result of any such trust as is described in subsection (1)(c) shall be credited against any concurrent liability pursuant to the implied term set out in subsection (1)(b).

(3) Any asset or sum recovered by a protected cell company pursuant to the implied term set out in subsection (1)(b) or (1)(c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the protected cell account affected.

(4) Notwithstanding section 13(4) and (8), in the event of any assets attributable to a protected cell account being taken in execution in respect of a liability not attributable to that protected cell account, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the protected cell account affected, the company shall—

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

(b) in priority to all other claims against the account, transfer or pay, from the assets of the account to which the liability was attributable, to the protected cell account affected, assets or sums sufficient to restore to the protected cell account affected the value of the assets lost.

Rights and obligations with respect to protected cell accounts

16. (1) Notwithstanding any enactment or rule of law to the contrary, any asset of a protected cell company which is linked to a particular protected cell account is deemed to be owned by the company as a separate fund which is not part of the general account and which is not part of the company's own assets.

(2) To the extent provided in the governing instrument any person (including an account owner) may give directions to the protected cell company or other persons in the management of the protected cell account and the managers shall have regard to such directions.

(3) Except to the extent otherwise provided in the governing instrument but subject to subsection (5)(b), neither the power to give directions to the protected cell company or other persons nor the exercise thereof by any person (including an account owner) shall cause the person giving directions to be a trustee or officer of the company or protected cell account.

(4) Except to the extent otherwise provided in the governing instrument, the account owners are entitled to the same limitation of personal liability as is enjoyed by shareholders of companies limited by shares under the Companies Act.

(5) A protected cell company may—

(a) sue and be sued in respect of a particular protected cell account, and service of process upon the company in accordance with subsection (7) shall be sufficient;

(b) be sued for debts and other obligations or liabilities contracted or incurred by the company in respect of a particular protected cell account, and for any damages to persons or property resulting from the negligence of the company acting in the performance of duties with respect to that account;

(c) exercise the same rights of set-off (if any) as between accounts as apply under the general law in respect of companies, including, on an insolvent liquidation of the

company, the same rights of set-off which arise in an insolvent liquidation of a company.

(6) The property of a protected cell account is subject to orders of the court as it would have been if the protected cell account were a separate legal person (and notwithstanding that it is not a separate legal person).

(7) A protected cell company may be served with process in the manner prescribed in section 245 of the Companies Act[6] in all civil actions or proceedings involving or relating to the activities of a protected cell account or a breach by the company of a duty to the protected cell account, or to any account owner thereof or to a counterparty to a transaction linked thereto.

(Am in L.R. 15/12/2014)

(8) Except to the extent it may be agreed otherwise by virtue of the governing instrument or contract, as the case may be, an account owner of a protected cell account and any counterparty who is a creditor in respect of a transaction linked to that protected cell account shall have an undivided beneficial interest in the assets linked to a protected cell account, and, after satisfying in full the claims of creditors of the protected cell account, account owners shall share in the profits and losses of the protected cell account in such proportions of the residual undivided beneficial interest in the protected cell account owned by that account owner as may be specified in any governing instrument relating to such protected cell account.

(9) An account owner's or counterparty's beneficial interest in a protected cell account is personal property notwithstanding the nature of the property of the protected cell account.

(10) Except to the extent it may be agreed otherwise by virtue of the governing instrument or contract, as the case may be, an account owner or counterparty has no interest in specific protected cell account property.

(11) Except to the extent it may be agreed otherwise by virtue of the governing instrument or contract, as the case may be, an account owner's or counterparty's beneficial interest in the protected cell account is freely transferable.

(12) Subject to the protected cell company complying with section 11, and except to the extent it may be agreed otherwise by virtue of the governing instrument or contract, as the case may be, at the time an account owner or counterparty becomes entitled to receive a payment, distribution, allocation or dividend pursuant to any governing instrument, he has the status of, and is entitled to all remedies available to, a creditor of the protected cell account with respect to the payment, distribution, allocation or dividend, and the governing instrument or contract may provide for the establishment of record dates with respect to such payment, distribution, allocation or dividend.

(13) To the extent that, at law or in equity, a protected cell company or manager has duties (including fiduciary duties) and liabilities relating to a protected cell account or to an account owner or to a counterparty—

(a) that company or manager acting under a governing instrument or contract is not liable to the protected cell account or to any account owner or counterparty for the company's good faith reliance on the provisions of that governing instrument or contract to which that account owner or counterparty is a party; and

[6] This section has been corrected to reflect the renumbering of the Companies Act, R.S.A. c. C65 *(15/12/2014).*

(b) the company's or manager's duties and liabilities may be expanded or restricted by provisions in a governing instrument to which the person is a party.

(14) Subject to section 15(1)(c) and (2), the provisions of this section and section 8 operate to the exclusion of any rule of law relating to trusts treating with the same subject matter, and no rule of law relating to trusts may be pleaded by any person to augment or modify the operation of this Act, but nothing in this section shall be construed so as to deny—

(a) the remedy of tracing in law and in equity the assets or the proceeds of the assets of any protected cell account where such assets or proceeds have been commingled with the assets of any other protected cell account or the general account; or

(b) any remedies available under the doctrine of constructive trusts or similar equitable remedies where those remedies would otherwise be available.

(15) To the extent permitted in the governing instruments of the affected protected cell accounts, a company in respect of a protected cell account may be an account owner of one or more other protected cell accounts of the same protected cell company.

PART 4

RECEIVERSHIP AND WINDING UP

Receivership orders

17. (1) Subject to the provisions of this section, if, in relation to a protected cell company, the court is satisfied that—

(a) a particular protected cell account is not solvent, the general account is not solvent, a liquidation has been commenced in relation to the company, or for other reasons it appears to the court just and equitable that a receiver should be appointed;

(b) the making of a receivership order under this section would achieve the purposes set out in subsection (3);

the court may make a receivership order in respect of that protected cell account.

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

(3) A receivership order shall direct that the business and assets linked to a protected cell account shall be managed by a receiver specified in the order for the purposes of—

(a) the orderly management, sale, rehabilitation, run-off or termination of the business of, or attributable to, the protected cell account; or

(b) the distribution of the assets linked to the protected cell account to those entitled thereto.

(4) No resolution for the winding up of a protected cell company of which any protected cell account is subject to a receivership order shall be effective without leave of the court.

Application for receivership orders

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

(a) the protected cell company;

(b) the directors of the protected cell company;

(c) any creditor of the protected cell company in respect of that protected cell account;

(d) any account owner of that protected cell account;

(e) the Commission;

(f) the Registrar.

(2) The court, on hearing an application—

(a) for a receivership order; or

(b) for leave, pursuant to section 17(4), for a resolution for 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 protected cell account shall be served upon—

(a) the protected cell company;

(b) the Commission;

(c) the Registrar; and

(d) such other persons (if any) as the court may direct;

each of whom shall be given an opportunity to make representations to the court before the order is made.

Functions and powers of receiver

19. (1) The receiver of a protected cell account—

(a) may do all such things as may be necessary for the purposes set out in section 17(3); and

(b) shall have all the functions and powers of the directors and managers of the protected cell company in respect of the business and assets linked to the protected cell account.

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

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

(b) the receivership order to be discharged or varied.

(3) In exercising his functions or powers the receiver is deemed to act as the agent of the protected cell company in respect of the protected cell account, and does not incur personal liability except to the extent that his conduct amounts to misfeasance.

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

(5) During the period of operation of a receivership order the functions and powers of the directors and managers and any liquidator of the protected cell company cease in respect of the business and assets linked to the protected cell account in respect of which the order was made.

(6) At any time after the appointment of a receiver in respect of a protected cell account, the company or any account owner or creditor of that account may, where an action or proceeding against the company in respect of that account is pending, apply to the court for a stay of those proceedings, and, on such an application being made, the court may stay the proceedings accordingly on such terms as it thinks fit.

Discharge and variation of receivership orders

20. (1) The court shall not discharge a receivership order unless it appears to the court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

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

(3) When making an order discharging the receiver, the court may release the receiver from liability save in respect of misfeasance.

Remuneration of receiver

21. The remuneration of a receiver and any expenses properly incurred by him shall be payable in priority to all other unsecured claims from the assets linked to the protected cell account in respect of which the receiver was appointed but not from any assets of the general account or any assets linked to other protected cell accounts.

Winding up of protected cell companies

22. (1) Subject to this section, a protected cell company shall be wound up in accordance with the provisions of this Act, the Companies Act and any other Act which applies to the winding up of a company, save that in the event of any conflict, the provisions of this Act shall prevail.

(2) For the purposes of determining whether a protected cell company may be wound up on the ground of insolvency—

(a) the test of insolvency which applies under section 217 of the Companies Act[7] and (in the case of an insurance company) section 8(13) of the Insurance Act shall apply; and
(Am in L.R. 15/12/2014)

(b) assets and liabilities linked to protected cell accounts shall not be taken into account.

(3) Where—

(a) an application for the winding up of a protected cell company is made pursuant to Part 5 of the Companies Act (which relates to winding up); and

(b) the protected cell company is solvent under section 1(2) of this Act;

the court shall not proceed on the petition on any other ground provided for in the Companies Act unless the court is satisfied that to proceed would be just and equitable in all the circumstances.

(4) A protected cell company shall not be voluntarily wound up without the consent of the Registrar.

Application of assets

23. (1) Notwithstanding any statutory provision or rule of law to the contrary, in the winding up of a protected cell company the liquidator shall deal with the assets and liabilities which are linked to each protected cell account only in accordance with this Act and accordingly the liquidator shall ensure that the assets linked to one protected cell account are not applied to the liabilities linked to any other protected cell account or to the general account, unless an asset or liability is linked to more than one protected cell account, in which case the liquidator shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract.

(2) The remuneration to be paid to the liquidator shall be apportioned by the liquidator to each protected cell account and the general account in such amounts as would best reflect the duties performed by the liquidator and approved by the court.

(3) The liquidator, or any person affected by a decision of the liquidator, may apply to the court for directions in relation to the remuneration of the liquidator.

PART 5

GENERAL

Directions of Commission to modify the provisions of this Act

24. (1) The Commission may, on the application, or with the consent in writing, of any protected cell company or any company intending to file a notice pursuant to section 3, direct that—

(a) any or all of the provisions of sections 3, 5, 8 and 12 shall not apply to such company; or

[7] This section has been corrected to reflect the renumbering of the Companies Act, R.S.A. c. C65 *(15/12/2014).*

(b) those provisions or any of them shall apply to it subject to such modifications as may be specified in the direction.

(2) A direction under this section may be made subject to conditions.

(3) A direction under this section may be revoked by the Commission at any time provided that the company shall be given an opportunity to make representations to the Commission before the revocation takes effect.

(4) An application for a direction under this section shall be supported by a statutory declaration to the effect that no creditor of the company or of any protected cell account thereof shall be prejudiced by the effect of the direction, if given, or that each creditor has consented in writing to the giving of such direction made by at least 2 directors.

(5) A direction under this section is a public document available for inspection on the records maintained by the Registrar in respect of the company.

(6) A direction under this section is not a statutory instrument having legislative effect.

(7) Where a direction is given under subsection (1), the relevant provision shall have effect subject to the direction.

Regulations

25. The Governor may, on the advice of the Commission, make regulations and prescribe fees for the better carrying out of the provisions of this Act.

Effect on transaction and interests in a protected cell account of infringement of this Act

26. Subject to section 13(4) and (8), no transaction or interest in a protected cell account shall be void or voidable by reason only that at the relevant time the protected cell company fails to comply with, or is in breach of, any provision of this Act.

Suits and actions against Registrar

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

(2) Nothing in subsection (1) shall be deemed to interfere with applications or references to the court under Part 5 of the Companies Act (which relates to winding up).

Registrar to be indemnified in respect of foreign suits

28. The Registrar shall not be required to prosecute, defend or take part in any proceedings outside the jurisdiction of the court unless he is indemnified by or on behalf of the person who wishes him to act against any judgment, order or costs that may be awarded against that person by deed, guarantee or deposit, as he may require.

Offences

29. Any person who—

(a) for any purpose under this Act makes a statement or declaration that he knows or has reasonable grounds to believe to be false, deceptive or misleading in a material particular;

(b) fails to comply with a condition or requirement under section 4(3) or section 6; or

(c) being a protected cell account representative, fails to perform his duty under section 7(3),

is guilty of an offence and is liable on summary conviction to a fine of $5,000 or imprisonment for 12 months, or to both.

Fees

30. In addition to the annual fee payable under the Companies Act and licence fee otherwise payable, a protected cell company registered under section 4 of the Protected Cell Companies Act shall pay the annual fees prescribed as per regulations.

Citation

31. This Act may be cited as the Protected Cell Companies Act, Revised Statutes of Anguilla, Chapter P107.