

REPUBLIC OF VANUATU

THE PROTECTED CELL COMPANIES ACT NO. 37 OF 2005

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REPUBLIC OF VANUATU

BILL FOR THE
PROTECTED CELL COMPANIES
ACT NO. OF 2005

An Act to provide for the formation and regulation of protected cell companies.

BE IT ENACTED by the President and Parliament as follows:

PART 1 – PRELIMINARY

1 Interpretation

(1) In this Act, unless the context requires otherwise:

administration order means an order of the Court directing that, during the period for which the order is in force, the business and assets of or attributable to the cell or, as the case may be, the business and assets of the company, be managed by a person (an “administrator”) appointed by the Court under section 24 to ensure:

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

administrator means the person appointed as administrator of a protected cell company under an administration order.

cell means a cell created by a protected cell company to segregate and protect cellular assets as provided by this Act.

cell shares means shares created and issued by a protected cell company for one of its cells under section 7.

cell share capital means the proceeds of the issue of cell shares.

cell transfer order means an order of the Court under subsection 19(3) authorising the transfer of the cellular assets of a cell to another person.

cellular assets, of a protected cell company, means the assets of the company that are attributable to the company's cells under subsection 4(4).

cellular dividend means a dividend payable by a protected cell company on cell shares under subsection 7(3).

Commissioner means the Commissioner of the Vanuatu Financial Services Commission appointed under section 9 of the *Vanuatu Financial Services Commission Act No. 35 of 1993*.

Court means the Supreme Court of Vanuatu.

non-cellular assets, of a protected cell company, means the assets of the company that are not cellular assets.

protected cell company means a company incorporated as, or converted to, a protected cell company in accordance with this Act.

receiver means a person appointed as a receiver under a receivership order.

receivership order means an order directing that the business and cellular assets of or attributable to a cell 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 them.

transaction means anything (including an agreement, arrangement, dealing, disposition, event or relationship) by which a liability arises or is imposed.

- (2) An expression used in this Act that is used in the *Companies Act [CAP 191]* has the same meaning given to it under the *Companies Act [CAP 191]*.
- (3) A reference to assets of a protected cell company, or of a cell of a protected cell company, is a reference to assets wherever situated.

PART 2 - FORMATION & ATTRIBUTES

2 Protected cell company

- (1) Subject to section 12, a company may be:
 - (a) incorporated as a protected cell company; or
 - (b) converted into a protected cell company, if its articles authorise it to do so.
- (2) For the avoidance of doubt, and although a protected cell company may have created one or more cells under this Act:
 - (a) a protected cell company is a single legal person; and
 - (b) the creation by a protected cell company of a cell does not create, in respect of that cell, a legal person separate from the company.
- (3) Subject to the provisions of this Act, the *Companies Act [CAP 191]* applies to a protected cell company,

3 Operation of a protected cell company

A protected cell company may operate:

- (a) within Vanuatu; or
- (b) outside Vanuatu; or
- (c) both within and outside Vanuatu.

4 Cellular and non-cellular assets

- (1) A protected cell company may create one or more cells to segregate and protect cellular assets, as provided by this Act.
- (2) The assets of a protected cell company are either cellular assets or non-cellular assets.
- (3) The directors of a protected cell company must:
 - (a) keep cellular assets separate and separately identifiable from non-cellular assets; and
 - (b) keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.
- (4) The cellular assets of a protected cell company consist of the assets of the company that are attributable to the cells of the company.
- (5) The assets attributable to a cell of a protected cell company 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) For the purposes of subsection (5), **reserves** include retained earnings, capital reserves and share premiums.
- (7) The non-cellular assets of a protected cell company are the assets of the company that are not cellular assets.
- (8) In spite of subsection (3), the directors of a protected cell company may cause or permit cellular assets and non-cellular assets to be held:
 - (a) by or through a nominee; or
 - (b) by a company, the shares and capital interests of which are cellular assets or non-cellular assets, or a combination of both.
- (9) Subsection (3) does not prevent cellular assets or non-cellular assets, or a combination of both, from being collectively invested, or collectively managed by an investment manager, as long as the assets in question remain separately identifiable in accordance with subsection (3).

5 Position of creditors

- (1) The rights of creditors of a protected cell company correspond with the liabilities provided for in section 14.
- (2) No creditor of a protected cell company has any rights other than the rights referred to in this section and in sections 6 and 14.
- (3) The following terms are implied in every transaction entered into by a protected cell company, unless they are expressly excluded in writing:
 - (a) a party to the transaction must not seek, whether in any proceedings or by any other means, to make or attempt to use any cellular assets attributable to one cell of the company to satisfy a liability not attributable to that cell; and
 - (b) if a party uses cellular assets attributable to one cell of the company to satisfy a liability not attributable to that cell, that party is liable to the company to pay a sum equal to the value of the benefit he or she obtains by doing this; and
 - (c) if a party seizes, attaches by any means or otherwise levies execution against cellular assets attributable to one cell of the company to satisfy 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.
- (4) All sums recovered from a protected cell company under paragraph (3)(c) must be credited against any concurrent liability imposed under the implied term set out in paragraph (3)(b).
- (5) Any asset or sum recovered by a protected cell company under paragraph (3)(b) or (3)(c) or by any other means in the events referred to in those paragraphs must be applied by the company:

- (a) to pay the costs of recovery; and
 - (b) to compensate the cell affected.
- (6) If:
- (a) cellular assets attributable to a cell of a protected cell company are taken in execution for a liability; and
 - (b) that liability is not attributable to that cell; and
 - (c) the assets (or compensation for them) is not able to be restored to the cell affected;
- the events set out in subsection (7) must occur.
- (7) For the purposes of subsection (6):
- (a) the company's auditor must certify the value of the assets lost by the cell affected; and
 - (b) the company must transfer or pay to the cell affected, from the cellular or non-cellular assets to which the liability was attributable, assets or sums sufficient to restore to the cell affected the value of the assets lost.
- (8) If under paragraph 7(b) a protected cell company is obliged to make a transfer or payment from cellular assets attributable to a cell of the company, and those assets are insufficient, the company must, where practicable, provide for the deficiency, from its non-cellular assets.
- (9) This section applies to cellular and non-cellular assets of a protected cell company wherever situated.

6 Recourse to cellular assets by creditors

- (1) This section is subject to sections 5 and 14 of this Act.
- (2) Cellular assets attributable to a cell of a protected cell company:
- (a) are only available to the creditors of the company who are creditors of that cell and entitled under this Act to have recourse to the cellular assets attributable to that cell; and
 - (b) are absolutely protected from the creditors of the company who are not creditors of that cell and not entitled to have recourse to the cellular assets attributable to that cell.

7 Cell shares and share capital

- (1) A protected cell company may create and issue shares in any of its cells ("cell shares").
- (2) Cell shares:
- (a) are capable of being divided into fractions; and
 - (b) may be of no par value.

- (3) The proceeds of the issue of cell shares (called “cell share capital”) are part of the cellular assets attributable to the cell in which the cell shares were issued.
- (4) The proceeds of the issue of shares other than cell shares in a protected cell company are part of the company’s non-cellular assets.
- (5) A protected cell company may pay a dividend (a “cellular dividend”) on cell shares.
- (6) Cellular dividends are paid on cell shares by reference only to the cellular assets and liabilities, or the profits, attributable to the cell in which the cell shares were issued.
- (7) In determining whether or not profits are available to pay a cellular dividend, no account need be taken of:
 - (a) the profits and losses, or the assets and liabilities, attributable to any other cell of the company; or
 - (b) non-cellular profits and losses, or assets and liabilities.

8 Reduction of cell share capital

- (1) No reduction of cell issued share capital of a protected cell company may be made except under the authority of, and in accordance with, an order of the Court under this section.
- (2) A protected cell company or a holder of cell shares in a cell of a protected cell company may apply to the Court for an order authorising the company to reduce the cell issued share capital:
 - (a) in the case of the applicant being a company- of any of the company ‘s cells; or
 - (b) in the case of the applicant being the holder of cell shares -of the cell in which the cell shares are held.
- (3) This section does not apply to a protected cell company that operates as a collective investment scheme and is redeeming shares in accordance with its scheme particulars.
- (4) The Court may by order authorise the protected cell company:
 - (a) to extinguish or reduce the liability on any cell shares for 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 that is lost or unrepresented by available cellular assets; or
 - (ii) to redeem any paid-up cell shares representing capital the company no longer requires.
- (5) 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.
- (6) The Court may dispense with the consent of a creditor if the company secures payment of its liability to the creditor according to the direction of the Court.
- (7) An order of the Court authorising the reduction of cell share capital:
- (a) is taken to be substituted for the corresponding part of the protected cell company's memorandum; and
 - (b) has effect as if originally contained in the memorandum; and
 - (c) does not affect anything done in accordance with the memorandum before the date of the order.
- (8) Subject to section 10, if a protected cell company's cell share capital is reduced, no past or present holder of cell shares of the cell involved is liable in respect of any cell share to a 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 lesser amount taken to have been paid on it.

9 Notice of application for reduction of cell share capital

- (1) Notice of an application to the Court for an order authorising the reduction of cell share capital must:
- (a) be placed in the Vanuatu Gazette at least four weeks before the application is to be heard; and
 - (b) be given to:
 - (i) the protected cell company (except where the company is itself the applicant); and
 - (ii) the receiver (if any) of the cell; and
 - (iii) the liquidator (if any) of the company; and
 - (iv) the administrator (if any) of the cell or the company; and
 - (v) the Commissioner, if the protected cell company falls under paragraph 12(1)(a) or (b); and
 - (vi) all holders of cell shares of the cell (other than the applicant, in cases where the applicant is the holder of such shares); and
 - (vii) any other persons the Court directs.
- (2) The notice must set out the terms of the application and the date, time and place of the hearing.

- (3) Each person mentioned in subsection (1) must be given the opportunity to make representations to the Court before the order is made.
- (4) The Court may by order dispense with the requirement to give notice to a person mentioned in subsection (1).

10 Absence of consent

- (1) This section applies if:
 - (a) a creditor whose consent is required under section 8 to the reduction of cell share capital 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) the absence of consent is not because of neglect or default by the creditor; and
 - (c) after the reduction of cell share capital, the cellular assets attributable to the cell in question (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 of that cell.
- (2) Every person who, at the date of the order of the Court authorising the reduction of cell share capital, was a holder of cell shares of the cell in question is liable to contribute, towards payment of the liability in question, an amount not exceeding the amount he or she would have been liable to contribute if the winding up of the company had commenced on the day before that date.
- (3) If the protected cell company is wound up, or if a receivership order is made for the cell of the company about which the order of the Court authorising the reduction of cell share capital was made, the Court:
 - (a) on the application of the creditor in question, may determine the persons liable to contribute; and
 - (b) may order that those persons be treated as if they were ordinary contributors in a winding up of a company.
- (4) Nothing in this section affects the rights of the contributors among themselves.
- (5) An officer of a protected cell company who:
 - (a) wilfully conceals the name of a creditor whose consent is required under section 8 to the reduction of the company's cell share capital; or
 - (b) wilfully misrepresents the nature or amount of the debt or claim of a creditor; or
 - (c) aids, abets or knowingly takes part in that concealment or misrepresentation;

is guilty of an offence and is liable on conviction to a fine not exceeding VT 2,000,000 or imprisonment for a period not exceeding 2 years, or both.

11 Name and memorandum of protected cell company

- (1) The name of a protected cell company must include the expression “Protected Cell” or “PCC”.
- (2) The memorandum of a protected cell company must state that it is a protected cell company.
- (3) A protected cell company may alter its memorandum by special resolution to comply with subsection (2).
- (4) A protected cell company is taken not to be a protected cell company until it complies with this section.
- (5) Each cell of a protected cell company must have its own distinct name.

12 Only certain companies may be protected cell company

- (1) Subject to subsection (2), a company may not be incorporated as a protected cell company, and an existing company may not be converted into a protected cell company, unless the company is, or will be:
 - (a) a captive insurer within the meaning of the *Insurance Act No. of 2005*;
or
 - (b) a mutual fund within the meaning of the *Mutual Funds Act No. of 2005*;
or
 - (c) a unit trust within the meaning of the *Unit Trusts Act No. of 2005*.
- (2) The Minister may by regulations prescribe any other class of company which may be incorporated as or converted into a protected cell company.

13 Incorporation of company as protected cell company

The *Companies Act [CAP 191]* applies to the incorporation of a company as a protected cell company.

14 Liability of cellular assets

- (1) This section applies unless a protected cell company has agreed that a liability is:
 - (a) the liability solely of the company’s non-cellular assets; or
 - (b) a liability of the cellular assets attributable to a particular cell of the company.
- (2) Any liability not attributable to a particular cell of a protected cell company is the liability solely of the company’s non-cellular assets.
- (3) Subject to subsection (4), if a liability is attributable to a particular cell of a protected cell company:
 - (a) the cellular assets attributable to that cell must be primarily used to satisfy the liability; and

- (b) the company's non-cellular assets can be used to satisfy the liability only after the cellular assets attributable to the relevant cell have been exhausted; and
 - (c) any cellular assets not attributable to that cell must not be used to satisfy the liability.
- (4) Loss or damage that is attributable to a particular cell of a protected cell company and that is caused by fraud is the liability solely of the company's non-cellular assets, without prejudice to any liability of any person other than the company.
- (5) In spite of the other provisions of this section:
 - (a) the liabilities under paragraph (3)(a) of the cellular assets attributable to a particular cell of a protected cell company abate pro rata until the value of the aggregate liabilities equals the value of those assets, except that this paragraph must be disregarded in assessing the existence and extent of any secondary liability under paragraph (3)(b); and
 - (b) the liabilities of the company's non-cellular assets abate pro rata until the value of the aggregate liabilities equals the value of those assets.

15 Disputes as to liability attributable to cells

- (1) A protected cell company may apply to the Court for a declaration:
 - (a) that a right is or is not in respect of a particular cell; or
 - (b) that a creditor is or is not a creditor of a particular cell; or
 - (c) that a liability is or is not attributable to a particular cell; or
 - (d) of the amount to which any liability is limited.
- (2) After hearing an application for a declaration, the Court may:
 - (a) make the declaration subject to the terms and conditions it thinks fit; and
 - (b) direct that the declaration is binding on the persons the Court specifies.

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

- (1) A protected cell company must:
 - (a) inform all persons with whom it transacts that it is a protected cell company; and
 - (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless the transaction is not a transaction involving a particular cell.
- (2) If a protected cell company fails to comply with paragraph 1(a) and (b):
 - (a) the directors are personally liable to that person for the transaction (in spite of any provision to the contrary in the company's articles or in any contract with the company or otherwise); and

- (b) the directors have a right of indemnity against the non-cellular assets of the company, unless the directors acted fraudulently, recklessly, negligently or in bad faith.
- (3) Despite paragraph (2)(a), the Court may relieve a director of all or part of his or her personal liability if the director satisfies the Court that:
 - (a) he or she did not know of the circumstances giving rise to the liability and, in not knowing, he or she did not act fraudulently, recklessly, negligently or in bad faith; or
 - (b) the director expressly objected, and exercised his or her rights as a director, whether by way of voting power or otherwise, to try to prevent the circumstances giving rise to the liability.
- (4) If the Court relieves a director of all or part of his or her personal liability under paragraph (2)(a), the Court may order that the liability is to be met first by any other director or directors who remain personally liable and then from the cellular or non-cellular assets of the company.
- (5) A provision in the articles of a protected cell company, or in a contract under which the protected cell company may be liable, that purports to indemnify directors for conduct that would otherwise disentitle them to an indemnity against non-cellular assets because of paragraph (2)(b), is void.

17 Attribution of non-cellular assets and liabilities

- (1) Liabilities of a protected cell company not attributable to a cell must be discharged from the company's non-cellular assets.
- (2) Income, receipts and other property or rights of or acquired by a protected cell company not attributable to a cell must be applied to and included in the company's non-cellular assets.

18 Provisions in relation to liquidation of protected cell company

- (1) In spite of any statutory provision or rule of law to the contrary, in the liquidation of a protected cell company, the liquidator:
 - (a) must deal with the company's assets in accordance with paragraphs 4(3)(a) and (b); and
 - (b) in discharge of the claims of creditors of the protected cell company, must apply the company's assets to those entitled to the assets in accordance with this Act.

19 Transfer of cellular assets from protected cell company

- (1) Subject to subsection (3), the cellular assets attributable to a cell of a protected cell company, but not the non-cellular assets, may be transferred to another person, wherever resident or incorporated, and whether or not a protected cell company.

- (2) A transfer of cellular assets attributable to a cell of a protected cell company does not of itself entitle creditors of the protected cell company to have recourse to the assets of the person to whom the cellular assets were transferred.
- (3) No transfer of the cellular assets attributable to a cell of a protected cell company may be made except:
 - (a) in the ordinary course of the protected cell company's business, as set out in subsection (9); or
 - (b) as ordered by the Court under this section (a "cell transfer order").
- (4) The Court must not make a cell transfer order in relation to a cell of a protected cell company 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.
- (5) The Court may attach conditions to a cell transfer order, including conditions about discharging the claims of creditors who are entitled to have recourse to the cellular assets attributable to the cell for which the order is sought.
- (6) The Court may make a cell transfer order for a cell of a protected cell company although:
 - (a) a liquidator has been appointed to the company or the company has passed a resolution for voluntary winding up; or
 - (b) a receiver has been appointed for the cell or any other cell of the company; or
 - (c) an administration order has been made for the cell, the company or any other cell of the company.
- (7) Notice of an application to the Court for a cell transfer order must be served on:
 - (a) the liquidator or receiver of the company or the cell concerned; and
 - (b) the Commissioner, for a protected cell company falling under paragraph 12(1)(a) or (b); and
 - (c) any other persons the Court may direct.
- (8) This section does not affect a power of a protected cell company lawfully to make payments or transfers from the cellular assets attributable to any cell of the company to a person entitled, in accordance with this Act, to those cellular assets.
- (9) To avoid doubt, a protected cell company 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.

PART 3 - RECEIVERSHIP

20 Receivership orders for cells

- (1) Subject to this section, the Court may make a receivership order for a cell of a protected cell company if the Court is satisfied that:
 - (a) the cellular assets attributable to the cell (when account is taken of the company's non-cellular assets, unless there are no creditors 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 of that cell; and
 - (b) it would not be appropriate to make an administration order under section 25 for that cell.
- (2) A receivership order may be made for one or more cells.
- (3) A receivership order:
 - (a) may be made for a cell subject to an administration order under section 25; and
 - (b) may not be made if a liquidator has been appointed for the protected cell company, or the protected cell company has passed a resolution for voluntary winding up; and
 - (c) ceases to have effect if a liquidator is appointed for the protected cell company, but without prejudice to prior acts.
- (4) No resolution for the voluntary winding up of a protected cell company, any cell of which is subject to a receivership order, is effective without leave of the Court.

21 Applications for receivership orders

- (1) An application for a receivership order for a cell of a protected cell company may be made by:
 - (a) the company; or
 - (b) the directors of the company; or
 - (a) a creditor of the company in respect of that cell; or
 - (b) a holder of cell shares in respect of that cell; or
 - (c) the administrator of that cell; or
 - (f) the Commissioner.
- (2) Notice of an application to the Court for a receivership order for a cell of a protected cell company must be served on:
 - (a) the company; and
 - (b) the administrator (if any) of the cell; and

- (c) the Commissioner; and
 - (d) any other person the Court directs.
- (3) Each person on whom the notice is served may make representations to the Court before the order is made.

22 Functions of receiver and effect of receivership order

- (1) The receiver of a cell:
- (a) may do all things necessary for:
 - (i) the orderly winding up of the business of or attributable to the cell; and
 - (ii) the distribution of the cellular assets attributable to the cell to those entitled to them; and
 - (b) has all the functions and powers of the directors in respect of the business and cellular assets of or attributable to the cell.
- (2) The receiver may at any time apply to the Court:
- (a) for directions as to the extent or exercise of any of its functions or powers; or
 - (b) for the receivership order to be discharged or varied; or
 - (c) for an order about any matter arising in the course of the receivership.
- (3) In exercising his or her functions and powers, the receiver is deemed to act as the agent of the protected cell company, and does not incur personal liability unless he or she has acted fraudulently, recklessly, negligently or in bad faith.
- (4) A person who deals with the receiver in good faith is not required to enquire whether the receiver is acting within his or her powers.
- (5) After an application has been made for a receivership order, and while the order is in force:
- (a) no proceedings may be started or continued by or against the protected cell company in relation to the cell for which the receivership order was made without leave of the Court; and
 - (b) no actions 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 for which the receivership order was made without leave of the Court.
- (6) While a receivership order is in force:
- (a) the directors no longer have any functions and powers in respect of the business and cellular assets of or attributable to the cell for which the order was made; and
 - (b) the receiver of the cell is taken to be a director of the protected cell company in respect of the non-cellular assets of the company, unless there

are no creditors of that cell entitled to have recourse to the company's non-cellular assets.

23 Discharge and variation of receivership orders

- (1) The Court must not discharge a receivership order unless the purpose for which the order was made has been achieved or substantially achieved, or cannot be achieved.
- (2) If the Court discharges a receivership order for a cell of a protected cell company on the ground that the purpose for which the order was made has been achieved or substantially achieved:
 - (a) the Court may direct that a payment made by the receiver to a creditor of the company in respect of that cell is in full satisfaction of the liabilities of the company to that creditor in respect of that cell; and
 - (b) the creditor's claims against the company in respect of that cell are taken to be extinguished.
- (3) Subsection (2) does not affect or extinguish any right or remedy of a creditor against any other person, including a surety of the protected cell company.
- (4) Subject to:
 - (a) this Act and any rule of law about preferential payments; and
 - (b) any agreement between the protected cell company and any of its creditors about 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 about which a receivership order has been made must, in the winding up of the business of or attributable to that cell, be applied in satisfaction of the company's liabilities attributable to that cell in proportion to the liabilities.
- (5) Any surplus after payment has been made as set out in subsection (4) must 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) if there are no cell shares and no-one entitled, among the holders of the non-cellular shares;in each case according to their respective rights and interests in or against the company.
- (6) When discharging a receivership order for a cell of a protected cell company, the Court may direct that the cell be dissolved on the date the Court specifies.
- (7) Immediately on the dissolution of a cell of a protected cell company, the company may not undertake business or incur liabilities in respect of that cell.

24 Remuneration of receiver

The remuneration of a receiver and any expenses he or she properly incurs are payable, in priority to all other claims, from:

- (a) the cellular assets attributable to the cell for which the receiver was appointed;
and
- (b) if these are insufficient, the non-cellular assets of the protected cell company.

PART 4 - ADMINISTRATION

25 Administration orders for protected cell companies or cells

- (1) Subject to this section, if the Court is satisfied:
 - (a) that the cellular assets attributable to a particular cell of a protected cell company (when account is taken of the company's non-cellular assets, unless there are no creditors of that cell entitled to the company's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors of that cell; or
 - (b) that the company's cellular assets and non-cellular assets are or are likely to be insufficient to discharge the liabilities of the company;the Court may make an administration order for that cell or (as the case may be) for that company.
- (2) An administration order may be made for one or more cells.
- (3) An administration order, whether for a protected cell company or a cell:
 - (a) may not be made if:
 - (i) a liquidator has been appointed to the company; or
 - (ii) the company has passed a resolution for voluntary winding up; and
 - (b) ceases to have effect on the appointment of a liquidator to act for the company, but without prejudice to prior acts.
- (4) No resolution for the voluntary winding up of a protected cell company which, or any cell of which, is subject to an administration order is effective without the leave of the Court.

26 Applications for administration orders

- (1) An application for an administration order may be made by:
 - (a) the company; or
 - (b) the directors of the company; or
 - (c) the shareholders or any class of shareholders of the company or of a cell; or
 - (d) a creditor of the company or, where the order is sought for a cell, a creditor of the company in respect of that cell; or
 - (e) the Commissioner.
- (2) Notice of an application to the Court for an administration order for a protected cell company or one of its cells must be served on:
 - (a) the company; and

- (b) the Commissioner; and
 - (c) any other persons the Court directs.
- (3) Each person on whom the notice is served may make representations to the Court before the order is made.

27 Functions of administrator and effect of administration order

- (1) The administrator of a cell of a protected cell company:
- (a) may do all things necessary to ensure:
 - (i) either the survival as a going concern of the cell, if appointed for that purpose; or
 - (ii) the more advantageous realisation of the business and assets of or attributable to the cell than would be achieved by a receivership of the cell, if appointed for that purpose; and
 - (b) has all the functions and powers of the directors in respect of the business and cellular assets of or attributable to the cell.
- (2) The administrator of a protected cell company:
- (a) may do all things necessary to ensure:
 - (i) the survival as a going concern of the company, if appointed for that purpose; or
 - (ii) the more advantageous realisation of the business and assets of the company than would be achieved by the liquidation of the company, if appointed for that purpose; and
 - (b) has all the functions and powers of the directors in respect of the business and assets of the company, including its cells.
- (3) The administrator may at any time apply to the Court:
- (a) for directions about the extent or exercise of any of its functions or powers; or
 - (b) for the administration order to be discharged or varied; or
 - (c) for an order about any matter arising in the course of the administration.
- (4) In exercising his or her functions and powers, the administrator is taken to act as the agent of the protected cell company, and does not incur personal liability except to the extent that he or she acts fraudulently, recklessly, negligently or in bad faith.
- (5) A person dealing with the administrator in good faith need not enquire whether the administrator is acting within his powers.
- (6) After an application has been made for an administration order for a protected cell company or one of its cells, and while the order is in force:

- (a) no proceedings may be instituted or continued by or against the company; and
 - (b) no actions may be taken to enforce any security or in execution of legal process in respect of the business or assets of the company or the business or assets of or attributable to the cell, as the case may be;
 - except by leave of the Court which may be conditional or unconditional.
- (7) While an administration order is in force:
- (a) for a cell of a protected cell company:
 - (i) the directors have no functions and powers in respect of the business and cellular assets of or attributable to the cell; and
 - (ii) the administrator is taken to be a director of the company in respect of the company's non cellular assets, unless there are no creditors of the company in respect of that cell entitled to the non-cellular assets; and
 - (b) for a protected cell company- the directors have no functions and powers.

28 Discharge and variation of administration orders

- (1) The Court must not discharge an administration order unless:
- (a) the purpose for which the order was made has been achieved or substantially achieved, or cannot be achieved; or
 - (b) it is desirable or expedient to discharge the order for other reasons.
- (2) When discharging an administration order, the Court may direct:
- (a) if the order was made for a protected cell company - that any payment made by the administrator to a creditor of the company is to be in full satisfaction of the liabilities of the company to that creditor, and the creditor's claims against the company are extinguished; or
 - (b) if the order was made for a cell - that any payment made by the administrator to a creditor of the company for that cell is to be in full satisfaction of the liabilities of the company to that creditor for that cell, and the creditor's claims against the company for that cell are extinguished.
- (3) Nothing in subsection (2) affects or extinguishes any right or remedy of a creditor against another person, including a surety of the protected cell company.

29 Remuneration of administrator

The remuneration of an administrator, and any expenses he or she properly incurs, are payable in priority to all other claims:

- (a) in the case of the administration of a cell:
 - (i) from the cellular assets attributable to the cell; and

- (ii) if the cellular assets attributable to the cell are insufficient - from the non-cellular assets of the protected cell company; and
- (b) in the case of the administration of a protected cell company:
 - (i) from the non-cellular assets of the company; and
 - (ii) if non-cellular assets of the company are insufficient - from the cellular assets, in the shares or proportions the Court directs.

PART 5 - GENERAL PROVISIONS

30 Offences

A person who, in connection with an application under section 12 to incorporate a company as a protected cell company, or to convert an existing company into a protected cell company:

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

is guilty of an offence punishable on conviction by a fine not exceeding VT 1 million, or imprisonment for a period not exceeding one year, or both.

31 Regulations

The Minister may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

32 Commencement

This Act commences on the date on which it is published in the Gazette.