

# Protected Cell Companies Act 2001

## Principal Act

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|-------------------------|-----------------------------------|-----------|
| <b>Act. No. 2001-22</b> | <i>Commencement (LN.2001/136)</i> | 1.11.2001 |
|                         | <i>Assent</i>                     | 12.7.2001 |

| Amending enactments | Relevant current provisions                                                                                                                                                             | Commencement date       |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| Act. 2003-13        | ss. 17, 24(5)(a)(iii).                                                                                                                                                                  | 31.7.2003               |
| 2013-25             | ss. 2, 9(1), (6)(e), 11, 18(8)(b), 20(1)(f), (3)(c), 25(1)(e), (3)(b)                                                                                                                   | 31.10.2013              |
| 2014-14             | ss. 2(1), 2A, 9(6)(b), (12)-(13), 17, 18(7), 19(1)-(3), (3A), (4)-(5), 20(1)-(3), 20A, 21(1)-(6), 22(1)-(3), (4A), (5), (5A), (7), 23, 24(3A), (4)(b), (5)(a), (6), 25(2)(b), 26(6), 28 | 1.11.2014               |
| 2026-20             | ss. 2(1)-(2), 3(3), 8(5), 9(1), (6)(e), 11(1), (a)-(b), (2), (b), (3)-(4), 12, 18(8)(b), 18A-18G, 20(1)(f), (3)(c), 25(1)(e), (3)(b), 30                                                | 30.7. <sup>1</sup> 2026 |

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<sup>1</sup> Notice of Commencement (LN-2026/294)

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**AN ACT TO PROVIDE FOR PROTECTED CELL COMPANIES IN GIBRALTAR.****Title and commencement.**

1. This Act may be cited as the Protected Cell Companies Act 2001 and comes into operation on the day appointed by the Minister by notice in the Gazette.

**Interpretation.**

2.(1) In this Act, unless the context requires otherwise—

“administration order” means an order of the Court under section 24 in relation to a protected cell company or a cell thereof;

“allow-listed” means, in relation to a digital wallet address, that the address has been verified and approved by the protected cell company as eligible for the receipt of share tokens;

“administrator” means the person appointed as such by an administration order;

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

“cell liquidation” means the liquidation of a cell under a cell liquidation order;

“cell liquidation order” means an order made under section 19;

“cell liquidator” means the person appointed as cell liquidator under a cell liquidation order;

“cell shares” means shares created and issued by a protected cell company in respect of one of its cells pursuant to the provisions of section 8, the proceeds of the issue of which (the “cell share capital”) shall be comprised in the cellular assets attributable to that cell;

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

“cell transfer order” means an order of the Court under section 18(3) sanctioning the transfer of the cellular assets attributable to any cell of a protected cell company to another person;

“cellular assets” of a protected cell company means the assets of the company attributable to the company's cells pursuant to section 5(4);

“cellular dividend” means a dividend payable by a protected cell company in respect of cell shares pursuant to the provisions of section 8(3);

“cryptographic signature” means an electronic signature that is uniquely linked to and capable of identifying the signatory which is–

- (a) created using electronic data that the signatory can, with a high level of confidence, use under the signatory’s sole control; and
- (b) linked to any data signed with that signature in such a way that any subsequent change in the data is detectable;

“digital wallet” means a software application or hardware device that stores the cryptographic keys necessary to access, hold and transfer share tokens;

“distributed ledger technology” or “DLT” has the meaning given in paragraph 138(2) of Schedule 2 to the Financial Services Act 2019;

“DLT share register” means a register of members maintained on a distributed ledger in accordance with section 18D;

“GFSC” means the Gibraltar Financial Services Commission within the meaning of section 21(1) of the Financial Services Act 2019;

“licensed insolvency practitioner” has the meaning specified in the Insolvency Act 2011;

“liquidation”, in relation to a protected cell company, means liquidation under the Insolvency Act 2011;

“liquidator”, in relation to a protected cell company, means a liquidator or provisional liquidator appointed under the Insolvency Act 2011 or a voluntary liquidator;

“Minister” means the Minister with responsibility for financial services;

“non-cellular assets” of a protected cell company comprise the assets of the company which are not cellular assets;

“prescribed” means prescribed by regulations;

“protected cell company” means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of this Act;

“Registrar” means the Registrar of Companies;

“share token” means a digital representation of a cell share that–

- (a) is stored in an electronic format on a DLT share register;
- (b) contains, or is linked to or associated with, the information in respect of share certificates required by or under the Companies Act 2014;
- (c) is authorised at the time of issue by one or more electronic messages, commands or transactions signed with the cryptographic signatures of two officers designated in the company's articles or by its board of directors; and
- (d) is capable of being transmitted electronically to the company, the person to whom the share token is issued, and any transferee;

“smart contract” means self-executing code deployed on a distributed ledger that automatically executes, controls or records events and actions according to the terms of an agreement or the protocol rules of the distributed ledger on which it is deployed;

“transaction” means anything (including, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship) whereby any liability arises or is imposed; and cognate expressions shall be construed accordingly.

“voluntary liquidation” means voluntary liquidation under the Companies Act 2014;

“voluntary liquidator” means a liquidator appointed under Part X of the Companies Act 2014;

(2) Expressions used in this Act shall (unless the context requires otherwise) have the same meanings as in the Companies Act 2014.

### **Disapplication of provisions of Insolvency Act 2011.**

2A. Parts 2 and 3 of the Insolvency Act 2011 do not apply in relation to a protected cell company.

## **PART I** **FORMATION & ATTRIBUTES**

### **Protected cell companies.**

3.(1) Subject to the provisions of this Act, a company may be—

- (a) incorporated as a protected cell company;
- (b) converted, if so authorised by its articles, into a protected cell company.

(2) For the avoidance of doubt, and notwithstanding that 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) The provisions of the Companies Act 2014 shall, subject to the provisions of this Act, and unless the context requires otherwise, apply in relation to a protected cell company.

**Creation of cells.**

4. A protected cell company may create one or more cells for the purpose of segregating and protecting cellular assets in the manner provided by this Act.

**Cellular and non-cellular assets.**

5.(1) The assets of a protected cell company shall be either cellular assets or non-cellular assets.

(2) It shall be the duty of the directors of a protected cell company—

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

(3) The cellular assets of a protected cell company comprise the assets of the company attributable to the cells of the company.

(4) The assets attributable to a cell of a protected cell company comprise—

- (a) assets represented by the proceeds of cell share capital and reserves attributable to the cell;
- (b) all other assets attributable to the cell.

(5) For the purposes of subsection (4), the expression “reserves” includes retained earnings, capital reserves and share premiums.

(6) The non-cellular assets of a protected cell company comprise the assets of the company which are not cellular assets.

(7) Notwithstanding the provisions of subsection (2), 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 may be cellular assets or non-cellular assets, or a combination of both.

(8) The duty imposed by subsection (2) is not breached by reason only that the directors of a protected cell company cause or permit cellular assets or non-cellular assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable in accordance with subsection (2).

**Position of creditors.**

6.(1) The rights of creditors of a protected cell company shall correspond with the liabilities provided for in section 13.

(2) No such creditor shall have any rights other than the rights referred to in this section and in sections 7 and 13.

(3) There shall be implied (except in so far as the same is expressly excluded in writing) in every transaction entered into by a protected cell company the following terms—

- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to use any cellular assets attributable to any cell of the company to satisfy a liability not attributable to that cell;
- (b) that if any party succeeds by any means whatsoever or wheresoever in using any cellular assets attributable to any cell of the company to satisfy a liability not attributable to that cell, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him; and
- (c) that if any party succeeds in seizing or attaching by any means or otherwise levying execution against any cellular assets attributable to any cell of the company to satisfy a liability not attributable to that cell, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.

(4) All sums recovered by a protected cell company as a result of any such trust as is described in subsection (3)(c) shall be credited against any concurrent liability imposed under the implied term set out in subsection (3)(b).

(5) Any asset or sum recovered by a protected cell company under the implied term set out in subsection (3)(b) or (3) (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 cell affected.

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

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

(7) Where under subsection (6)(b) a protected cell company is obliged to make a transfer or payment from cellular assets attributable to a cell of the company, and those assets are insufficient, the company shall so far as possible make up the deficiency from its non-cellular assets.

(8) This section shall apply to cellular and non-cellular assets of a protected cell company wherever situated.

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

7. Without prejudice to the provisions of sections 6 and 13, cellular assets attributable to a cell of a protected cell company—

- (a) shall only be available to the creditors of the company who are creditors in respect of that cell and who are thereby entitled, in conformity with the provisions of this Act, to have recourse to the cellular assets attributable to that cell;
- (b) shall be absolutely protected from the creditors of the company who are not creditors in respect of that cell and who accordingly are not entitled to have recourse to the cellular assets attributable to that cell.

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

8.(1) A protected cell company may, in respect of any of its cells, create and issue shares (“cell shares”) the proceeds of the issue of which (“cell share capital”) shall be comprised in the cellular assets attributable to the cell in respect of which the cell shares were issued.

(2) The proceeds of the issue of shares other than cell shares created and issued by a protected cell company shall be comprised in the company's non-cellular assets.

(3) A protected cell company may pay a dividend (a “cellular dividend”) in respect of cell shares.

(4) Cellular dividends may be paid in respect of cell shares by reference only to the cellular assets and liabilities, or the profits, attributable to the cell in respect of which the cell shares were issued; and accordingly, in determining whether or not profits are available for the purpose of paying 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.

(5) Part 1A provides for certain protected cell companies to issue shares in tokenised form.

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

9.(1) Except in the case of a protected cell company which is authorised by the GFSC as a collective investment scheme and which is redeeming units or shares in accordance with its scheme particulars, 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 share capital—

- (a) where the applicant is the company, of any of the company's cells; or
- (b) where the applicant is the holder of cell shares, of the cell in which the cell shares are held;

and no reduction of cell share capital may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section.

(2) In particular, and without prejudice to the generality of subsection (1), the Court may by order authorise the protected cell company—

- (a) to extinguish or reduce the liability on any cell shares in respect of cell share capital not paid up; or
- (b) with or without extinguishing or reducing any liability on any cell shares—
  - (i) to cancel any paid-up cell share capital which is lost or unrepresented by available cellular assets; or

- (ii) to pay off any paid-up cell share capital which exceeds the company's wants;

and the company may, so far as is necessary, alter its memorandum accordingly.

(3) The Court shall 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.

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

(5) Notice of an application to the Court for an order authorising the reduction of cell share capital shall, at least four weeks before the application is made, be placed in the Gazette setting out the terms of the application and the date, time and place of the hearing.

(6) Notice of an application to the Court for an order authorising the reduction of cell share capital shall be given to—

- (a) the protected cell company (except where the company is itself the applicant);
- (b) the cell liquidator (if any);
- (c) the liquidator (if any) of the company;
- (d) the administrator (if any) of the cell or the company;
- (e) the GFSC, in respect of a protected cell company falling under section 11(1)(a) or (b);
- (f) all holders of cell shares of the cell (other than the applicant, in cases where the applicant is the holder of such shares); and
- (g) such other persons as the Court may direct;

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

(7) The Court may dispense with the requirement to give notice to any person or body mentioned in subsection (6).

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

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

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

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

but without prejudice to anything done in accordance with the provisions of the memorandum before the date of the order.

(10) If a protected cell company's cell share capital is reduced, no past or present holder of cell shares of the cell in question shall (subject to the following provisions of this section) be liable in respect of any cell share to any call or contribution exceeding the amount of the difference (if any) between the following amounts–

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

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

(11) Subsection (12) and (13) apply if–

(a) a creditor whose consent is required under this section 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) 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 in respect of that cell.

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

(13) If a liquidator or voluntary liquidator is appointed in relation to a protected cell company, or if a cell liquidation order is made in respect of the cell of the company in relation to which the order of the Court authorising the reduction of cell share capital was made, the

Court, on the application of the creditor in question and upon proof of the matters set out in subsection (11)(a), may if it thinks fit settle a list of persons accordingly so liable to contribute, and may make and enforce calls and orders against the contributories settled on the list as if they were ordinary contributories in the liquidation or voluntary liquidation.

(14) Nothing in subsection (11), (12) or (13) shall affect the rights of the contributories among themselves.

(15) Any officer of a protected cell company who—

- (a) wilfully conceals the name of a creditor whose consent is required under this section to the reduction of the company's cell share capital;
- (b) wilfully misrepresents the nature or amount of the debt or claim of any such creditor; or
- (c) aids, abets, connives in or is privy to any such concealment or misrepresentation as is described in paragraph (a) or (b);

is guilty of an offence and liable—

- (i) on summary conviction, to a fine up to level 5 on the standard scale, imprisonment for a term up to 3 months or both;
- (ii) on conviction on indictment, to a fine, imprisonment for a term up to 2 years or both.

**Name and memorandum of protected cell company.**

10.(1) The name of a protected cell company shall, include the expression “Protected Cell”, “PCC” or any cognate expression approved in writing by the Registrar.

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

(3) A protected cell company may, in order to comply with subsection (2), alter its memorandum by special resolution.

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

(5) Each cell of a protected cell company shall have its own distinct name or designation.

**GFSC's consent required for protected cell company.**

11.(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, except in accordance with the terms and conditions of the written consent of the GFSC, which shall only be granted in the case of a company–

- (a) which is (or which will be) a Gibraltar insurer within the meaning of the Financial Services (Insurance Companies) Regulations 2020; or
- (b) which is (or which will be) a collective investment scheme authorised by the GFSC in accordance with Part 18 of the Financial Services Act 2019.

(2) A company–

- (a) which is established principally for the purposes of issuing bonds, notes or loan or other debt securities or instruments, secured or unsecured, in respect of which the repayment of capital and interest is to be funded from the company's investments; and
- (b) which, in order to carry on that activity, is not required to be authorised under the Financial Services Act 2019,

may not be incorporated as a protected cell company, and an existing company may not be converted into a protected cell company except in accordance with the terms and conditions of the written consent of the GFSC.

(3) The Minister may by regulations prescribe any other class or descriptions of company which may be incorporated as or converted into a protected cell company with the consent of the GFSC.

(4) The GFSC may, from time to time, in such manner as it thinks fit–

- (a) vary or revoke any term or condition subject to which a consent under subsections (1) or (2) was granted; and
- (b) impose any new term or condition in relation to any such consent.

**Incorporation of company as protected cell company.**

12. A person wishing to incorporate a company as a protected cell company shall make an application to the Registrar for the registration of the company's memorandum and articles in accordance with the Companies Act 2014, the provisions of which shall apply accordingly.

**Liability of cellular assets.**

13.(1) Subject to the provisions of subsection (2), and save to the extent that the company may have agreed that a liability shall be the liability solely of the company's non-cellular assets, or of the cellular assets attributable to a particular cell of the company, where any liability arises which is attributable to a particular cell of a protected cell company—

- (a) the cellular assets attributable to that cell shall be primarily used to satisfy the liability;
- (b) the company's non-cellular assets shall be secondarily used to satisfy the liability, provided that the cellular assets attributable to the relevant cell have been exhausted; and
- (c) any cellular assets not attributable to the relevant cell shall not be used to satisfy the liability.

(2) In the case of loss or damage which is attributable to a particular cell of a protected cell company and which is caused by fraud, the loss or damage shall be the liability solely of the company's non-cellular assets, without prejudice to any liability of any person other than the company.

(3) Any liability not attributable to a particular cell of a protected cell company shall be the liability solely of the company's non-cellular assets.

(4) Notwithstanding the above provisions of this section—

- (a) the liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a protected cell company shall abate rateably until the value of the aggregate liabilities equals the value of those assets except that the provisions of this paragraph shall be disregarded in assessing the existence and extent of any secondary liability under subsection (1)(b);
- (b) the liabilities of the company's non-cellular assets shall abate rateably until the value of the aggregate liabilities equals the value of those assets:

(5) This section shall apply to the assets of the company wherever situated.

#### **Disputes as to liability attributable to cells.**

14.(1) In the event of any dispute as to—

- (a) whether any right is or is not in respect of a particular cell;
- (b) whether any creditor is or is not a creditor in respect of a particular cell;
- (c) whether any liability is or is not attributable to a particular cell;

- (d) the amount to which any liability is limited;

the Court, on the application of the protected cell company, and without prejudice to any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

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

- (a) may direct that any person shall be heard on the application;
- (b) may make an interim declaration, or adjourn the hearing, conditionally or unconditionally;
- (c) may make the declaration subject to such terms and conditions as it thinks fit;
- (d) may direct that the declaration shall be binding upon such persons as may be specified.

**Company to inform persons they are dealing with protected cell company.**

- 15.(1) A protected cell company shall–

- (a) inform any person with whom it transacts that it is a protected cell company; and
- (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular cell.

- (2) If, in contravention of subsection (1), a protected cell company–

- (a) fails to inform a person that he is transacting with a protected cell company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a protected cell company; or
- (b) fails to identify or specify the cell in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which cell he is transacting with;

then, in either such case–

- (i) the directors shall (notwithstanding any provision to the contrary in the company's articles or in any contract with the company or otherwise) incur personal liability to that person in respect of the transaction; and

- (ii) the directors shall have a right of indemnity against the non-cellular assets of the company, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(3) Notwithstanding the provisions of subsection (2)(i), the Court may relieve a director of all or part of his personal liability thereunder if he satisfies the Court that he ought to be so relieved because—

- (a) he was not aware of the circumstances giving rise to his liability and, in being not aware, he was neither fraudulent, reckless or negligent, nor acted in bad faith; or
- (b) he expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

(4) Where, pursuant to the provisions of subsection (3), the Court relieves a director of all or part of his personal liability under subsection (2)(i), the Court may order that the liability in question shall instead be met first by any other director or directors whose personal liability is not relieved and thereafter, if necessary, from such of the cellular or non-cellular assets of the protected cell company as may be specified in the order.

(5) Any provision in the articles of a protected cell company, and any other contractual provision under which the protected cell company may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity against non-cellular assets by virtue of subsection (2)(ii), shall be void.

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

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

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

#### **Provisions in relation to winding up of protected cell company.**

17.(1) Notwithstanding the provisions of the Insolvency Act 2011 or Part X of the Companies Act 2014 or any other statutory provision or rule of law to the contrary, in the liquidation or voluntary liquidation of a protected cell company—

- (a) the assets forming part of the estate shall only be the non-cellular assets;
- (b) the liquidation or voluntary liquidation shall not terminate any agency, or in any way whatsoever affect the authority or power, of any officer,

receiver, administrator, servant or agent of the protected cell company in respect of the cellular assets;

- (c) if and to the extent that any liquidator of the protected cell company has any dealing with, or has possession custody or control of, any of the cellular assets, he shall be subject to the duty set out in section 5(2) hereof as if he were a director.

(2) The Insolvency Act 2011 and Part X of the Companies Act 2014 apply to the liquidation or voluntary liquidation of a protected cell company subject to such modifications as are necessary to give effect to subsection (1) and, in the event of any conflict between the provisions in the Insolvency Act 2011, or Part X of the Companies Act 2014, and this Act, this Act prevails.

**Transfer of cellular assets from protected cell company.**

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

(2) A transfer, under subsection (1), of cellular assets attributable to a cell of a protected cell company shall not of itself entitle creditors of that company to have recourse to the assets of the person to whom the cellular assets were transferred.

(3) No transfer of the cellular assets attributable to a cell of a protected cell company may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section (a “cell transfer order”).

(4) The Court shall 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, on hearing an application for a cell transfer order–
- (a) may make an interim order or adjourn the hearing, conditionally or unconditionally;
  - (b) may dispense with any of the requirements of subsection (4).

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

(7) The Court may make a cell transfer order in relation to a cell of a protected cell company notwithstanding that—

- (a) a liquidator or voluntary liquidator has been appointed in respect of the protected cell company;
- (b) a cell liquidation order has been made in respect of the cell or any other cell of the company;
- (c) an administration order has been made in respect of the cell, the company or any other cell thereof.

(8) Notice of an application to the Court for a cell transfer order shall be served upon—

- (a) any liquidator or receiver of the company or any cell liquidator of the cell concerned;
- (b) the GFSC, in respect of a protected cell company falling under section 11(1)(a) or (b); and
- (c) such other persons (if any) as the Court may direct.

(9) The provisions of this section are without prejudice to any power of a protected cell company lawfully to make payments or transfers from the cellular assets attributable to any cell of the company to a person entitled, in conformity with the provisions of this Act, to have recourse to those cellular assets.

(10) For the avoidance of doubt, a protected cell company shall 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 1A TOKENISED SHARES**

### **Application.**

18A.(1) This Part applies to protected cell companies which are (or will be) experienced investor funds authorised by the GFSC in accordance with Part 18 of the Financial Services Act 2019.

(2) In this Part any reference to a protected cell company is limited to a company to which subsection (1) applies.

(3) The Minister may by regulations amend the categories of protected cell companies to which subsection (1) applies.

**Share tokens.**

18B.(1) A protected cell company may, with the consent of the GFSC and where permitted to do so by its articles, issue the cell shares in respect of one or more of its cells in the form of share tokens.

(2) Where a protected cell company issues any cell shares in the form of share tokens, all shares in the same cell must be issued in that form.

(3) A share token issued in accordance with subsection (1) is a valid share certificate for the purposes of the Companies Act 2014 and–

- (a) the holder of a share token is a shareholder with the same rights and obligations as any other holder of cell shares of the same class; and
- (b) the issue of share tokens does not alter or affect the legal nature of the underlying cell shares.

(4) Despite section 153 of the Companies Act 2014, a protected cell company that issues share tokens is not required to issue or deliver physical share certificates in respect of cell shares represented by share tokens.

(5) An application for consent under subsection (1) must–

- (a) be made in the form and manner the GFSC directs; and
- (b) contain or be accompanied by–
  - (i) such information as the GFSC reasonably requires; and
  - (ii) any prescribed fee.

(6) The GFSC may not give consent under subsection (1) unless it is satisfied that the applicant–

- (a) has the competence and capability to issue, manage and safeguard shares in tokenised form; and
- (b) meets any other prescribed requirements.

**Disclosure requirements.**

18C. A protected cell company that issues share tokens must disclose that fact in any offering document in respect to those shares, together with information on—

- (a) the distributed ledger technology used;
- (b) the cybersecurity risks associated with share tokens and how it addresses or mitigates those risks;
- (c) the custody arrangements for share tokens and the procedures for their transfer;
- (d) the procedures that apply in the event of a technology failure or cybersecurity incident; and
- (e) any other matters that the GFSC may specify.

**DLT share registers.**

18D.(1) A protected cell company that issues cell shares in the form of share tokens must maintain its register of the members of that cell on a distributed ledger (a “DLT share register”).

(2) A DLT share register must—

- (a) contain all the information required to be kept in a register of members by section 182 of the Companies Act 2014;
- (b) enable the protected cell company to verify the identity of each shareholder;
- (c) maintain a complete and accurate record of all transactions for the issue, transfer or redemption of cell shares;
- (d) be capable of being produced in a legible printed form; and
- (e) be secure, resilient and subject to appropriate cybersecurity measures.

(3) A DLT share register must be under the ultimate control of the protected cell company and, regardless of the physical location of the register’s distributed ledger nodes, is to be treated as kept at the company’s registered office.

(4) A DLT share register which is maintained in accordance with this section is to be treated as satisfying the requirements in section of 182 of the Companies Act 2014.

(5) A protected cell company that issues share tokens is to be treated as satisfying the requirements of section 183 of the Companies Act 2014 if (subject to the payment of any applicable sum prescribed under that section)–

- (a) it makes its DLT share register available for inspection by providing a member or other person with a means of remote access to the register, such as an internet portal or other appropriate electronic interface; and
- (b) it provides a copy of the register, or of any part of it, to a member or other person, when requested to do so, by providing it in electronic form.

**Custody of share tokens.**

18E.(1) Share tokens may be held–

- (a) by the shareholder in a personal digital wallet, if the wallet address has been verified and allow-listed by the protected cell company; or
- (b) with the GFSC’s consent, in a custodial digital wallet on behalf of the shareholder by–
  - (i) the protected cell company’s administrator; or
  - (ii) a DLT provider.

(2) Where share tokens are held in custodial digital wallets, the protected cell company must take appropriate steps to ensure that its administrator or the DLT provider–

- (a) maintains appropriate segregation of share tokens held on behalf of different shareholders;
- (b) has robust cybersecurity measures in place including, in particular, the use of hardware security modules, multi-signature arrangements and secure key management procedures;
- (c) maintains business continuity and disaster recovery arrangements; and
- (d) complies with any other requirements that may be prescribed.

(3) The protected cell company must ensure that, regardless of whether share tokens are held in personal digital wallets or custodial digital wallets, appropriate procedures are in place for–

- (a) recovering access or reissuing share tokens in the event of the loss of private keys;

- (b) managing share tokens in the event of the death or incapacity of a shareholder; and
  - (c) complying with any court order relating to share tokens.
- (4) An application by a protected cell company for consent under subsection (1)(b) must—
- (a) be made in the form and manner the GFSC directs; and
  - (b) contain or be accompanied by—
    - (i) such information as the GFSC reasonably requires; and
    - (ii) any prescribed fee.
- (5) The GFSC may not give consent under subsection (1)(b) unless it is satisfied that the administrator or DLT provider—
- (a) has the competence and capability to undertake the custody of shares in tokenised form; and
  - (b) meets any other any prescribed requirements.
- (6) In this section—
- “administrator” means an experienced investor fund administrator who meets the requirements in regulation 9(3)(a) or (b) of the Financial Services (Experienced Investor Funds) Regulations 2020; and
- “DLT provider” means a person with permission under Part 7 of the Financial Services Act 2019 to carry on the regulated activity in paragraph 139 of Schedule 2 to that Act.

**Transfer of share tokens.**

18F.(1) The transfer of a share token is a valid transfer of the cell share it represents if it is—

- (a) executed with the company’s consent and in accordance with the distributed ledger’s rules; and
  - (b) recorded on the DLT share register,
- (2) A share token may only be transferred with the consent of the protected cell company, given in accordance with—
- (a) the offering document which applied to the cell share that the share token represents;

- (b) the company's articles; and
  - (c) any applicable statutory or regulatory requirements.
- (3) The company must ensure that share tokens are only transferred to—
  - (a) persons who have been verified as being eligible, in accordance with the applicable statutory or regulatory requirements, to invest in the collective investment scheme of which the cell shares are a part; and
  - (b) digital wallet addresses that have been verified and allow-listed by the company.
- (4) A transfer made in accordance with this section is a valid transfer for the purposes of the Companies Act 2014 and, in particular, for the purposes of section 152 of that Act is to be treated as having been made under a proper instrument of transfer which has been delivered to the company.
- (5) Where a smart contract is used to effect the transfer of a share token—
  - (a) the execution of the smart contract in accordance with its terms constitutes the delivery of a proper instrument of transfer; and
  - (b) the cryptographic signature of the transferor authorising the transfer is—
    - (i) as valid as a handwritten signature for all purposes; and
    - (ii) in particular, in the absence of contrary evidence, presumed to be the signature of the person to whom the corresponding public key for that cryptographic signature is attributed.

**Application of other provisions.**

18G.(1) Subject to any express provision to the contrary, the provisions of this Act and the Companies Act 2014 relating to shares, share certificates and registers of members apply to share tokens and DLT share registers with any necessary modification.

(2) In the event of any conflict between this Part and any other provision of this Act or the Companies Act 2014, the provisions of this Part are to prevail.

**PART II  
CELL LIQUIDATION****Cell liquidation orders.**

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

- (a) that the cellular assets attributable to a particular cell of the company (when account is taken of the company's non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell;
- (b) that the making of an administration order under section 24 in respect of that cell would not be appropriate; and
- (c) that the making of an order under this section would achieve the purposes set out in subsection (3);

the Court may make an order under this section (a cell liquidation order) in respect of that cell.

(2) A cell liquidation order may be made in respect of one or more cells.

(3) A cell liquidation order is an order directing that the business and cellular assets of or attributable to a cell shall be managed by a person specified in the order (the cell liquidator) for the purposes of–

- (a) the orderly winding up of the business of or attributable to the cell; and
- (b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.

(3A) The Court shall not appoint a person as cell liquidator under a cell liquidation order unless the person is a licensed insolvency practitioner.

(4) A cell liquidation order –

- (a) may not be made if a liquidator has been appointed to act in respect of the protected cell company;
- (b) may be made in respect of a cell subject to an administration order under section 24;
- (c) shall cease to be of effect upon the appointment of a liquidator to act in respect of the protected cell company, but without prejudice to prior acts.

(5) No resolution for the appointment of a voluntary liquidator of a protected cell company any cell of which is subject to a cell liquidation order shall be effective without leave of the Court.

**Applications for cell liquidation orders.**

20.(1) An application for a cell liquidation order in respect of a cell of a protected cell company may be made by–

- (a) the company;
- (b) the directors of the company;
- (c) any creditor of the company in respect of that cell;
- (d) any holder of cell shares in respect of that cell;
- (e) the administrator of that cell; or
- (f) the GFSC, in respect of a protected cell company falling under section 11(1)(a) or (b).

(2) The Court, on hearing an application–

- (a) for a cell liquidation order; or
- (b) for leave, pursuant to section 19(5), for a resolution for the appointment of a voluntary liquidator;

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

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

- (a) the company;
- (b) the administrator (if any) of the cell;
- (c) the GFSC in respect of a protected cell company falling under section 11(1)(a) or (b); and
- (d) such other persons (if any) as the Court may direct;

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

**Application of Insolvency Act 2011 to cell liquidations.**

20A.(1) The Insolvency Act 2011 applies to a cell liquidation as if the cell was a company in liquidation under that Act and, for the purposes of the cell liquidation, the cell shall be treated as if it were a separate legal person.

(2) Notwithstanding subsection (1)–

- (a) the appointment of the cell liquidator and the powers and duties of the cell liquidator are confined to the cell in respect of which the cell liquidation order is made; and
- (b) in a cell liquidation, the provisions of the Insolvency Act 2011 are subject to such modifications as are necessary to give effect to this Act and in the event of any conflict between the provisions in the Insolvency Act 2011 and this Act, this Act prevails.

**Functions of cell liquidator and effect of cell liquidation order.**

21.(1) The cell liquidator –

- (a) may do all such things as may be necessary for the purposes set out in section 19(3); and
- (b) shall have all the functions and powers of the directors in respect of the business and cellular assets of or attributable to the cell.

(2) The cell liquidator may at any time apply to Court–

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

(3) In exercising his functions and powers the cell liquidator is deemed to act as the agent of the protected cell company, and shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

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

(5) When an application has been made for, and during the period of operation of, a cell liquidation order, no proceedings may be commenced or continued against the protected cell company in relation to the cell in respect of which the cell liquidation order was applied for or made except with the consent of the cell liquidator or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose.

(5A) Subsection (5) applies in place of section 159 of the Insolvency Act 2011 in relation to an application for a cell liquidation order.

(6) During the period of operation of a cell liquidation order –

- (a) the functions and powers of the directors shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made; and
- (b) the cell liquidator of the cell shall be deemed a director of the protected cell company in respect of the non-cellular assets of the company, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets.

**Discharge and variation of cell liquidation orders.**

22.(1) The Court shall not discharge a cell liquidation 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 cell liquidation order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a cell liquidation order in respect of a cell of a protected cell company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the company in respect of that cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that cell; and the creditor's claims against the company in respect of that cell shall be thereby deemed extinguished.

(4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell company.

(4A) Creditors of a cell that is subject to a cell liquidation order shall be regarded as preferential creditors of the cell to the extent that they would be preferential creditors under the Insolvency Act 2011 if–

- (a) the cell was a company; and
- (b) the cell liquidator was a liquidator appointed under the Insolvency Act 2011.

(5) Subject to the provisions of–

- (a) this Act and, in particular subsection (4A); and

- (b) any agreement between the protected cell company and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the company's other creditors;

the company's cellular assets attributable to any cell of the company in relation to which a cell liquidation order has been made shall, in the winding up of the business of or attributable to that cell under the provisions of this Part of this Act, be realised and applied in satisfaction of the company's liabilities attributable to that cell *pari passu*.

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

- (a) among the holder of the cell shares or the person otherwise entitled to the surplus;  
or
- (b) where there are no cell shares and no such persons, among the holders of the non-cellular shares;

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

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

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

### **Remuneration of cell liquidator.**

23. The remuneration of a cell liquidator shall be fixed by the Court applying the general principles set out in section 466 of the Insolvency Act 2011 and the remuneration, and any expenses properly incurred by him, shall be payable, in priority to all other claims, from–

- (a) the cellular assets attributable to the cell in respect of which the cell liquidator was appointed; and
- (b) to the extent that these may be insufficient, the non-cellular assets of the protected cell company.

## **PART III**

### **ADMINISTRATION ORDERS**

### **Administration orders in relation to protected cell companies or cells.**

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

- (a) that the cellular assets attributable to a particular cell of the company (when account is taken of the company's non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; or
- (b) that the company's cellular assets and non-cellular assets are or are likely to be insufficient to discharge the liabilities of the company;

and the Court considers that the making of an order under this section may achieve one of the purposes set out in subsection (4), the Court may make an order under this section (an "administration order") in respect of that cell or (as the case may be) in respect of that company.

(2) An administration order may be made in respect of one or more cells.

(3) An administration order is an order directing that, during the period for which the order is in force, the business and assets of or attributable to the cell or, as the case may be, the business and assets of the company, shall be managed by a person (an "administrator") appointed for the purpose by the Court.

(3A) The Court shall not appoint a person as administrator under an administration order unless the person is a licensed insolvency practitioner.

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

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

(5) An administration order, whether in respect of a protected cell company or a cell thereof—

- (a) may not be made if:
  - (i) a liquidator has been appointed to act in respect of the protected cell company;
  - (ii) *Deleted*
  - (iii) the company is one which section 11(2) applies and its Memorandum of Association so provides;

- (b) shall cease to be of effect upon the appointment of a liquidator to act in respect of the company, but without prejudice to prior acts.

(6) No resolution for the appointment of a voluntary liquidator of a protected cell company which, or any cell of which, is subject to an administration order shall be effective without the leave of the Court.

**Applications for administration orders.**

25.(1) An application for an administration order may be made by–

- (a) the company;
- (b) the directors of the company;
- (c) the shareholders or any class of shareholders of the company or of any cell;
- (d) any creditor of the company (or, where the order is sought in respect of a cell, any creditor of the company in respect of that cell); or
- (e) the GFSC, in respect of a protected cell company falling under section 11(1)(a) or (b).

(2) The Court, on hearing an application–

- (a) for an administration order; or
- (b) for leave, under section 24(6), for a resolution for the appointment of a voluntary liquidator;

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

(3) Notice of an application to the Court for an administration order in respect of a protected cell company or a cell thereof shall be served upon–

- (a) the company;
- (b) the GFSC in respect of a protected cell company falling under section 11(1)(a) or (b); and
- (c) such other persons (if any) as the Court may direct

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

**Functions of administrator and effect of administration order.**

26.(1) The administrator of a cell of a protected cell company–

- (a) may do all such things as may be necessary for the purpose set out in section 24(4) for which the administration order was made; and
- (b) shall have all the functions and powers of the directors in respect of the business and cellular assets of or attributable to the cell.

(2) The administrator of a protected cell company–

- (a) may do all such things as may be necessary for the purpose set out in section 24(4) for which the administration order was made; and
- (b) shall have all the functions and powers of the directors in respect of the business and assets of the company, including its cells.

(3) The administrator may at any time apply to the Court–

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

(4) In exercising his functions and powers the administrator is deemed to act as the agent of the protected cell company, and shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

(5) Any person dealing with the administrator in good faith need not enquire whether the administrator is acting within his powers.

(6) When an application has been made for, and during the period of operation of, an administration order, no proceedings may be commenced or continued against the protected cell company in relation to the cell in respect of which the administration order was applied for or made except with the consent of the administrator or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose.

(7) During the period of operation of an administration order–

- (a) in respect of a cell of a protected cell company–

- (i) the functions and powers of the directors shall cease in respect of the business and cellular assets of or attributable to the cell; and
  - (ii) the administrator shall be deemed a director of the company in respect of the company's non-cellular assets, unless there are no creditors of the company in respect of that cell entitled to have recourse to the non-cellular assets;
- (b) in respect of a protected cell company, the functions and powers of the directors shall cease.

**Discharge and variation of administration orders.**

27.(1) The Court shall not discharge an administration order unless it appears to the Court that—

- (a) the purpose for which the order was made has been achieved or is incapable of achievement; or
  - (b) it would otherwise be desirable or expedient to discharge the order.
- (2) The Court, on hearing an application for the discharge or variation of an administration order, may make any interim order or adjourn the hearing, conditionally or unconditionally.
- (3) Upon discharging an administration order, the Court may direct—
- (a) where the administration order was made in respect of a protected cell company, that any payment made by the administrator to any creditor of the company shall be deemed full satisfaction of the liabilities of the company to that creditor; and the creditor's claims against the company shall be thereby deemed extinguished;
  - (b) where the administration order was made in respect of a cell, that any payment made by the administrator to any creditor of the company in respect of that cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that cell; and the creditor's claims against the company in respect of that cell shall be thereby deemed extinguished.
- (4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell company.

**Remuneration of administrator.**

28. The remuneration of an administrator shall be fixed by the Court applying the general principles set out in section 466 of the Insolvency Act 2011 and the remuneration, and any expenses properly incurred by him, shall be payable in priority to all other claims—

- (a) in the case of the administration of a cell, from—
  - (i) the cellular assets attributable to the cell; and
  - (ii) to the extent these may be insufficient, the noncellular assets of the protected cell company; and
- (b) in the case of the administration of a protected cell company, from:
  - (i) the non-cellular assets of the company; and
  - (ii) to the extent these may be insufficient, the cellular assets, in such shares or proportions as the Court may direct.

#### **PART IV** **GENERAL PROVISIONS**

##### **Offences.**

29. A person who, in connection with an application under section 12 for the incorporation of a company as a protected cell company, or for the conversion of an existing company into a protected cell company—

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

shall be guilty of an offence and liable on summary conviction to a fine up to level 5 on the standard scale, to imprisonment for a term not exceeding three months, or to both.

##### **Regulations.**

30.(1) The Minister may make regulations generally for the purposes of, in consequence of, or for giving full effect to this Act and specifically in respect of anything required or permitted to be prescribed under this Act.

(2) Without limiting subsection (1), regulations under this section may, in particular—

- (a) make different provision for different purposes;
- (b) amend, repeal, revoke or otherwise modify an enactment; or
- (c) make consequential, incidental, supplementary, transitional, transitory or saving provisions.