

COMPANIES (AMENDMENT) ACT, 2016-1

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Cap. 308
3. Amendment of section 197 of Cap. 308
4. Deleting and replacing Division G of Part III of Cap. 308

BARBADOS

I assent
ELLIOTT F. BELGRAVE
Governor-General
12th February, 2016.

2016–1

An Act to amend the *Companies Act*, Cap. 308 to provide for the establishment of incorporated cell companies.

[Commencement: 18th February, 2016]

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Companies (Amendment) Act, 2016*.

Amendment of section 2 of Cap. 308

2. *Section 2(1) of the Companies Act, Cap. 308, in this Act referred to as the principal Act, is amended by inserting in the appropriate alphabetical order the following definitions:*

““ cell” has the meaning assigned to it in *Division G.1* of Part III;

““incorporated cell” has the meaning assigned to it in *Division G* of Part III;

““incorporated cell company” has the meaning assigned to it in *Division G* of Part III;

““segregated cell company” has the meaning assigned to it in *Division G.1* of Part III.”.

Amendment of section 197 of Cap. 308

3. *Section 197 (1) of the principal Act is amended by*

(a) *deleting the full stop at the end of paragraph (m) and substituting a semi-colon; and*

(b) *inserting immediately after paragraph (m) the following new paragraphs:*

“(n) where the company is an incorporated cell company,

(i) to establish incorporated cells;

(ii) to transfer incorporated cells to another incorporated cell company;

(iii) to transfer incorporated cells to a segregated cell company;

- (o) where the company is a segregated cell company,
 - (i) to transfer cells to another segregated company;
 - (ii) to transfer cells to an incorporated cell company.”.

Deleting and replacing Division G of Part III of Cap. 308

4. *The principal Act is amended by deleting Division G of Part III and substituting the following:*

“DIVISION G

Incorporated Cell Companies and Incorporated Cells

Application of Division

356.21.(1) This Division applies to every company incorporated or continued under this Act for the purposes of carrying on financial services activities including insurance, banking and mutual fund activity in accordance with a plan whereby the assets and business operations are divided into incorporated cells in the manner provided in accordance with this Division.

(2) When a provision of this Division is inconsistent with or repugnant to any other provisions of this Act, the provision of this Division shall, in so far as it affects an incorporated cell company, prevail over other provisions of this Act.

Application of certain sections of the Act

356.22. Subject to section 356.21, the following provisions shall, with such modifications as the circumstances require, apply to an incorporated cell company and to an incorporated cell as if the reference to the term company were to an incorporated cell:

- (a) Divisions A, B, D, E, F, G, H, I, J, K and L of Part I;

- (b) Division D of Part III;
- (c) Part V.

Interpretation

356.23. In this Division

“incorporated cell” means a cell of an incorporated cell company;

“incorporated cell company” means a company with separate incorporated cells.

Formation of incorporated cell companies

356.24. For the purposes of conducting business activity,

- (a) a company may incorporate in Barbados as an incorporated cell company in accordance with the provisions of this Division;
- (b) an existing company incorporated under this Act may be converted to an incorporated cell company in the manner prescribed; or
- (c) an external company may be
 - (i) registered as an incorporated cell company in Barbados; or
 - (ii) continued as an incorporated cell company in Barbados.

Incorporated cell companies

356.25.(1) A company may be incorporated as an incorporated cell company if its articles of incorporation and by-laws provide that it is an incorporated cell company.

(2) An incorporated cell company shall file its by-laws with the Registrar within 21 days of its incorporation.

- (3) Notwithstanding section 10, the name of an incorporated cell company shall include the expression "Incorporated Cell Company" or the abbreviation "ICC" after its name.
- (4) A company incorporated under the laws of a jurisdiction other than Barbados as an incorporated cell company and continued as an incorporated cell company under this Act shall use the name designated in the Articles of Continuation with the addition of either the suffix "Incorporated Cell Company" or the abbreviation "ICC".
- (5) An incorporated cell company may by special resolution agree to establish an incorporated cell.
- (6) The special resolution referred to in subsection (5) shall assign to the incorporated cell a name distinctive from any other incorporated cells and the name shall include the suffix "Incorporated Cell" or the abbreviation "IC".

Status of an incorporated cell

356.26.(1) An incorporated cell is a legal person separate from its incorporated cell company.

(2) Where an incorporated cell is established in accordance with section 356.25, the incorporated cell shall

(a) establish by-laws which state that

(i) it is an incorporated cell;

(ii) it may not own shares in its incorporated cell company;
and

(b) file the by-laws within 21 days of being established as an incorporated cell.

(3) An incorporated cell may have directors other than directors of its incorporated cell company.

- (4) Notwithstanding section 356.22, an incorporated cell shall have the same registered office as its incorporated cell company.

Records of incorporated cells

356.27.(1) An incorporated cell company shall maintain separate records of the members of each of its incorporated cells.

- (2) The incorporated cell company shall, in respect of the maintenance of records of its incorporated cells, apply subsection (1) of section 170 and subsection (2) of section 170.

Transactions of incorporated cell companies and incorporated cells

356.28.(1) An incorporated cell company shall have no power, by virtue of its position as an incorporated cell company, to enter into transactions on behalf of any of its incorporated cells.

- (2) An incorporated cell shall have no power, by virtue of its position as an incorporated cell, to enter into transactions on behalf of its incorporated cell company or any other incorporated cell of the incorporated cell company.

- (3) The directors and officers of an incorporated cell company and an incorporated cell shall ensure that where a transaction is entered into, it is stated in writing

- (a) whether the transaction is entered into by the incorporated cell company or the incorporated cell; and
- (b) where the transaction is being entered into by an incorporated cell, the name of the incorporated cell.

Assets and liabilities of incorporated cell companies and incorporated cells

356.29.(1) The directors of an incorporated cell company and the directors of an incorporated cell of that company shall ensure that the assets and liabilities of the incorporated cell company

- (a) are kept separately from the assets and liabilities of the incorporated cell; and
- (b) can be identified separately from the assets and liabilities of the incorporated cell.

(2) The directors of an incorporated cell shall ensure that

- (a) the assets and liabilities of the incorporated cell are kept separately from the assets and liabilities of other incorporated cells; and
- (b) can be identified separately from the assets and liabilities of other incorporated cells.

(3) The directors are not in breach of subsection (1) or (2) by reason only that the directors cause or permit assets of the incorporated cell company or any of the incorporated cells to be collectively invested or managed by an investment manager where the assets invested or managed are separately identifiable.

(4) Where a creditor of an incorporated cell company has a claim against that company in respect of a transaction between the creditor and the company, the creditor may not make a claim against the assets of the incorporated cells of the company.

(5) Where a creditor of an incorporated cell has a claim against the incorporated cell in respect of a transaction between the creditor and the incorporated cell, the creditor may not make a claim against the

- (a) assets of the incorporated cell company of the incorporated cell; or
- (b) assets of any other incorporated cell of the incorporated cell company.

Annual returns of incorporated cells

356.30.(1) Notwithstanding section 356. 22, sections 147 and 148 do not apply to incorporated cells.

(2) An incorporated cell company shall submit an annual return for each of its incorporated cells in accordance with section 147.

(3) The incorporated cell company shall ensure that its financial statements are not consolidated with the financial statements of its incorporated cells.

Expulsion of incorporated cell

356.31.(1) An incorporated cell company may apply to the court to expel an incorporated cell on the following grounds:

- (a) the affairs of the incorporated cell are being or have been conducted in a manner which is unfairly prejudicial to
 - (i) the incorporated cell company;
 - (ii) another incorporated cell of the incorporated cell company;
 - (iii) the members of the incorporated cell company or another incorporated cell company; or
- (b) the incorporated cell is being used for fraudulent purposes.

(2) Where the court approves the application to expel the incorporated cell, the Registrar shall

- (a) strike off the name of the incorporated cell from the Register of Companies; and
- (b) within 14 days of striking the name from the register, publish in the *Gazette* that the name of the incorporated cell has been struck off the register in accordance with this section and the date from which the name is struck off.

Transfer of an incorporated cell

356.32.(1) An incorporated cell of an incorporated cell company may be transferred to another incorporated cell company or to a segregated cell company.

(2) In order to effect a transfer under subsection (1),

- (a) an incorporated cell company and another incorporated cell company; or
- (b) an incorporated cell company and a segregated cell company,

shall enter into a written agreement that sets out the terms of the transfer.

(3) Notwithstanding subsection (2),

- (a) the directors of each company shall approve the agreement in writing;
- (b) each company involved in the transfer shall pass a special resolution authorising the transfer set out in the agreement; and
- (c) the incorporated cell being transferred shall pass a special resolution approving the transfer.

(4) Where a director of the incorporated cell approves the agreement, he shall within 21 days

- (a) sign a declaration which states that he reasonably believes that the incorporated cell is, where applicable, able to discharge its liabilities when they become due and the transfer has been agreed to in accordance with subsection (3); and
- (b) deliver a copy of the declaration to the company to which the incorporated cell is to be transferred.

(5) A director who makes a false statement on a declaration is guilty of an offence.

(6) The company to which the incorporated cell is to be transferred shall submit the following documents to the Registrar for approval of the transfer:

- (a) a copy of the special resolution of each company authorising the transfer;
- (b) a copy of the special resolution of the incorporated cell approving the transfer;
- (c) a copy of the transfer agreement;
- (d) subject to subsection (4), a copy of the declaration of each director;
- (e) a copy of its by-laws.

(7) The incorporated cell company from which the incorporated cell is to be transferred shall submit a copy of its by-laws to the Registrar.

(8) The Registrar shall not approve a transfer where the transfer of the incorporated cell is inconsistent with the by-laws of the incorporated cell, the company transferring the cell or the company to which the incorporated cell is to be transferred.

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- (9) Where the Registrar approves a transfer,
- (a) the Registrar shall record the transfer in the Register of Companies;
 - (b) the incorporated cell ceases to be a cell of the incorporated cell company from which it was transferred;
 - (c) the incorporated cell becomes a cell or an incorporated cell, as the case may be, of the company to which it has been transferred.
- (10) Where an incorporated cell is transferred
- (a) to another incorporated cell company,
 - (i) the property and rights to which the incorporated cell was entitled to immediately before the transfer shall remain its property and rights;
 - (ii) all liabilities, contracts, debts and other obligations to which the incorporated cell was subject to immediately before the transfer shall remain the liabilities, contracts, debts and obligations of the incorporated cell;
 - (iii) all actions and other legal proceedings which before the transfer could have been instituted or continued by or against the incorporated cell may be instituted or continued by or against the incorporated cell after the transfer;
 - (iv) any conviction, ruling, order or judgment in favour or against the incorporated cell before the transfer may be enforced by or against the incorporated cell after the transfer;

- (b) to a segregated cell company to become a cell of that company,
 - (i) the property and rights to which the incorporated cell was entitled to immediately before the transfer shall become the property and rights of the segregated cell company;
 - (ii) all liabilities, contracts, debts and other obligations to which the incorporated cell was subject immediately before the transfer shall remain the liabilities, contracts, debts and obligations of the segregated cell company;
 - (iii) all actions and other legal proceedings which immediately before the transfer could have been instituted or continued by or against the incorporated cell may be instituted or continued by or against the segregated cell company;
 - (iv) any conviction, ruling, order or judgment in favour or against the incorporated cell before the transfer may be enforced by or against the segregated cell company.

Winding up of an incorporated cell company or an incorporated cell

356.33.(1) Part IV of this Act shall, with such modifications as the circumstances require, apply to

- (a) an incorporated cell company;
 - (b) an incorporated cell as if the reference to a company were to an incorporated cell.
- (2) Notwithstanding subsection (1), an incorporated cell company that is being wound up shall not be dissolved until each of its incorporated cells ceases to exist as an incorporated cell of the incorporated cell company.

(3) Notwithstanding section 412, where an incorporated cell company is dissolved, the company shall not be struck off the Register of Companies until each of its incorporated cells has been

(a) incorporated independently of the incorporated cell company;

(b) merged with a company;

(c) continued as a company, a cell of a segregated company or an incorporated cell of another incorporated cell company under the law of another jurisdiction;

(d) transferred to another incorporated cell company or to a segregated cell company; or

(e) wound up.

(4) Subject to Part IV, the winding up of an incorporated cell company shall be carried out in such a manner so as not to prejudice the affairs and assets of its incorporated cells.

Regulations

356.34.(1) The Minister may make regulations for the purposes of this Division.

(2) Any regulations made under subsection (1) may

(a) provide for the procedure and conditions for an existing company to become an incorporated cell company;

(b) provide for the sound management of an incorporated cell company and incorporated cells;

(c) impose such reporting obligations as the Minister may deem necessary including a report in respect of the liquidity analysis and the profit and loss statement of an incorporated cell company;

- (d) provide for the paying of fees and levying of charges; and
- (e) provide for any person who commits an offence under the regulations to be liable to a fine of \$5 000 or to imprisonment for a term of one year or to both.

DIVISION G.1

Segregated Cell Companies and Cells

Application of this Division

356.35.(1) This Division applies to every company incorporated or continued under this Act for the purposes of carrying on financial services activities including insurance, banking and mutual fund activity in accordance with a plan whereby the assets and business operations are divided into cells in the manner provided for in accordance with this Division.

(2) When a provision of this Division is inconsistent with or repugnant to any other provisions of this Act, the provisions of this Division shall, in so far as it affects a segregated cell company, prevail over other provisions of this Act.

Application of certain sections of the Act

356.36. Subject to section 356.35, the following provisions shall, with such modifications as the circumstances require, apply to a segregated cell company:

- (a) Divisions A, B, D, E, F, G, H, I, J, K and L of Part I;
- (b) Division D of Part III;
- (c) Part V.

Interpretation**356.37.(1)** In this Division

“cell” means a cell of a segregated cell company;

“cell shares” means shares created and issued by a segregated cell company in respect of one of its cells pursuant to section 356. 42;

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

“cellular assets” means the assets of a segregated cell company attributable to the cells of the segregated cell company pursuant to section 356. 41;

“cellular dividend” means a dividend payable by a segregated cell company in respect of cell shares pursuant to subsection (4) of section 356. 42;

“non-cellular assets” in relation to a segregated cell company means the assets of the segregated cell company which are not cellular assets pursuant to section 356.41;

“segregated cell company” means a company with one or more cells of which the assets and liabilities of a cell are segregated from the non-cellular assets of the company and any other cell;

“transaction” means any dealing of whatever nature, including the issue of any security, by which the assets or liabilities linked to a segregated account are affected or, in the case of assets intended by the parties to be applied to a risk of any nature, any dealing which exposes such assets to liability or loss.

(2) For the purposes of this Division, 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 the business and assets of the company shall be managed by a person, hereinafter

referred to as an “administrator”, appointed by the court for that purpose.

(3) For the purposes of this Division, a “receivership order” is an order directing that the business and cellular assets of or attributable to a cell shall be managed by a person, hereinafter referred to in this Division as a “receiver”, specified by the court in the order.

Formation of segregated cell companies

356.38. For the purposes of conducting business activity,

- (a) a company may incorporate in Barbados as a segregated cell company in accordance with the provisions of this Division;
- (b) an existing company incorporated under this Act may be converted to a segregated cell company in the manner prescribed; or
- (c) an external company may be
 - (i) registered as a segregated cell company in Barbados; or
 - (ii) continued as a segregated cell company in Barbados.

Segregated cell companies

356.39.(1) A company is a segregated cell company if its by-laws provides that is a segregated cell company.

(2) A segregated cell company shall file its by-laws with the Registrar within 21 days of its incorporation.

(3) A segregated cell company may create one or more cells for the purposes of segregating and protecting cellular assets.

(4) Notwithstanding subsection (3), a segregated cell company is a single legal person and the creation of a cell by the segregated cell company does not create, in respect of that cell, a legal person separate from the company.

(5) Notwithstanding section 10, the name of a segregated cell company shall include the suffix “Segregated Cell Company” or the abbreviation “SCC”.

(6) A company incorporated under the laws of a jurisdiction other than Barbados and continued as a segregated cell company under this Act shall use the name designated in the Articles of Continuation with the addition of either the suffix “Segregated Cell Company” or the abbreviation “SCC”.

(7) Each cell of a segregated cell company shall have its own distinct designation or denomination which shall be clearly set out in the agreement governing the subscription for cell shares.

Records of segregated cell companies

356.40. A segregated cell company shall

- (a) maintain records in accordance with this Act for the preparation of financial statements and the records shall clearly show the share capital, proceeds of securities, reserves, assets, liabilities, income and expenses, dividends and distributions that are linked in the company;
- (b) maintain a record of each transaction linked to a cell account maintained by the company;
- (c) maintain a general account which records in accordance with this Act all the assets and liabilities of the company which are linked to a cell account.

Cellular and non-cellular assets

356.41.(1) The assets of a segregated cell company may comprise cellular assets or a combination of both cellular and non-cellular assets.

- (2) The directors of a segregated cell company shall
 - (a) keep cellular assets separate and separately identifiable from non-cellular assets; and
 - (b) keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.
- (3) The directors of a segregated cell company may cause or permit
 - (a) cellular assets and non-cellular assets to be held
 - (i) by or through a trustee or other custodian; or
 - (ii) by a company, the shares and capital interests of which may be cellular assets or non-cellular assets or a combination of both;
 - (b) cellular assets or non-cellular assets or a combination of both to be collectively managed by an investment manager, provided that the assets remain identifiable.
- (4) The assets attributable to a cell of a segregated cell company shall comprise
 - (a) assets represented by the stated capital and reserves attributable to the cell; and
 - (b) all other assets attributable to or held within the cell.
- (5) For the purposes of subsection (4), “reserves” includes retained earnings, capital reserves, revaluation surpluses and contributed surpluses.

Cell shares and cell share capital

356.42.(1) A segregated cell company may, in respect of any of its cells, create and issue shares and the cell share capital shall be part of 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 segregated cell company, shall form part of the company's non-cellular assets.

(3) Subject to section 51, a segregated cell company may pay 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 attributable to the cell in respect of which the cell shares were issued.

(5) In determining the cellular dividend payment, no account needs to be taken of

- (a) the profits and losses or the assets and liabilities attributable to any other cell of the segregated cell company; or
- (b) non-cellular profits and losses or assets and liabilities.

Reduction of cell share capital of a segregated cell company

356.43.(1) Subject to subsection (2), a segregated cell company or a holder of cell shares in a cell of a segregated cell company may by special resolution of the cell shareholders reduce the cell share capital of the company in accordance with sections 44 and 45.

(2) Any creditor who is prejudiced by the authorised reduction of capital under subsection (1) may apply to the court for redress or for an order restraining or prohibiting the reduction of cell share capital.

(3) The court, in determining any application brought under this section, shall have regard to the provisions of this section and such other factors or circumstances as the court deems fit and appropriate.

Liability of a cell

356.44.(1) Where a liability of a segregated cell company to a person arises from a transaction or is otherwise imposed, in respect of a particular cell,

- (a) that liability of the company shall extend only to that person and that person shall, in respect of that liability, be entitled to have recourse only to
 - (i) the cellular assets attributable to that cell which shall be primarily liable; and
 - (ii) the extent that the cellular assets attributable to that cell may be insufficient, the company's non-cellular assets, which shall be secondarily liable;
- (b) that liability of the company shall not extend to that person and that person shall not, in respect of that liability, be entitled to have recourse to the cellular assets attributable to any other cell.

(2) Where a liability of a segregated cell company to a person

- (a) arises otherwise than from a transaction related to a particular cell; or
- (b) is imposed otherwise than in respect of a particular cell,

the liability of the company shall extend only to that person and that person shall, in respect of that liability, be entitled to have recourse only to the company's non-cellular assets.

Application of cellular assets to liabilities

356.45.(1) Subject to the provisions of subsection (2), and save to the extent that a segregated cell company may have agreed that a liability shall be discharged from the cellular assets attributable to a particular