

cell of the company, where any liability which is attributable to that particular cell of the company arises,

- (a) the cellular assets so identified of the cell shall be primarily attributable to the liability;
 - (b) where the cellular assets of the relevant cell have been exhausted, the company's non-cellular assets shall be secondarily attributable to the liability; and
 - (c) cellular assets not attributable to the relevant cell shall not be used to discharge the liability.
- (2) Where there is any loss or damage which is caused by fraud and is attributable to a particular cell of a segregated cell company, the liability shall be discharged from the company's non-cellular assets without affecting the liability of any person other than the company.
- (3) Any liability not attributable to a particular cell of a segregated cell company shall be discharged solely from the company's non-cellular assets.
- (4) Notwithstanding the other provisions of this section,
- (a) the liability referred to in paragraph (a) of subsection (1) shall abate rateably until the value of the aggregate liability equals the value of the assets referred to in paragraph (a) of subsection (1), but the provisions of this paragraph shall be disregarded in assessing the existence and extent of any secondary liability under paragraph (b) of subsection (1);
 - (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, but the provisions of this paragraph shall not apply in any situation in which any of the liabilities of the company's non-cellular assets arise from fraud or by reason of a special agreement referred to in subsection (1).

Creditors of a segregated cell company

356.46.(1) The rights of creditors of a segregated cell company shall correspond with the liabilities provided in section 356.44.

(2) No creditor shall have any rights other than the rights referred to in this section and in sections 356.45 and 356.48.

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

- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wherever, to make or attempt to make liable any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell;
- (b) that if any party shall succeed by any means whatsoever or wherever in making liable any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him; and
- (c) that if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any cellular assets attributable to any cell of the company in respect of 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 segregated cell company as a result of any such trust as is described in paragraph (c) of subsection (3) shall be credited against any concurrent liability imposed pursuant to the implied term as set out in paragraph (b) of subsection (3).

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

(6) Where any cellular assets attributable to a cell of a segregated cell company are taken 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 to certify the value of the assets lost to the cell affected; and
- (b) transfer or pay, from the cellular or non-cellular assets to which the liability was attributable to the cell affected, assets or sums sufficient to restore to the cell affected the value of the assets lost.

(7) Where under paragraph (b) of subsection (6) a segregated 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.

Recourse to cellular assets by creditors

356.47. Subject to sections 356.45 and 356.46, cellular assets attributable to a cell of a segregated cell company

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

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

Transfer of cellular and non-cellular assets from a segregated cell company

356.48.(1) Cellular assets attributable to a cell of a segregated cell company may be transferred in the ordinary course of the company's business through payments, investments or otherwise to another cell of the segregated cell company or to a person, wherever resident or incorporated.

(2) A transfer of cellular assets, pursuant to subsection (1), attributable to a cell of a segregated 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, except where such transfer of cellular assets was made by fraud or with intent to defraud creditors.

(3) Non-cellular assets shall not be transferred by a segregated cell company unless the transfer is permitted by a special resolution of the segregated cell company.

(4) The provisions of this section shall not affect any power of a segregated cell company to lawfully make payments or transfers from the cellular assets attributable to any cell of the segregated cell company to a person entitled, in conformity with the provisions of the Act, to have recourse to those cellular assets.

Attribution of non-cellular assets and liabilities

356.49.(1) Liabilities of a segregated 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 segregated cell company not otherwise attributable to any cell shall be applied to and comprised in the company's non-cellular assets.

Protection of creditors

356.50.(1) A segregated cell company shall

- (a) inform any persons with whom it transacts that it is a segregated 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) Where, in contravention of subsection (1), a segregated cell company

- (a) fails to inform a person that he is transacting with a segregated cell company and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a segregated 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, they knowingly authorised, acquiesced in or permitted the contravention or acted in bad faith.

(3) Notwithstanding sub-paragraph (i) of subsection (2), the court may relieve a director of all or part of his personal liability thereunder if he satisfies the court that the director ought fairly to be so relieved because

- (a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, nor did he knowingly authorise or acquiesce in, nor permit the contravention, nor did he act in bad faith; or
- (b) he expressly objected and exercised rights as he had as a director, whether by way of voting powers or otherwise, so as to try to prevent the circumstances giving rise to liability.

(4) Where, pursuant to the provisions of subsection (3), the court relieves a director of all or part of his personal liability under sub-paragraph (i) of subsection (2), the court may order that the liability in question shall instead be met from such of the cellular or non-cellular assets of the segregated cell company as may be specified in the order.

Transfer of a cell

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

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

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

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

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- (3) Notwithstanding subsection (2),
- (a) the directors of each company shall approve the agreement in writing; and
 - (b) each company involved in the transfer shall pass a special resolution authorising the transfer set out in the agreement.
- (4) Where a director of the segregated cell company approves the agreement, he shall within 21 days
- (a) sign a declaration which states that he reasonably believes that the 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 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 cell is to be transferred shall submit the following 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 transfer agreement;
 - (c) subject to subsection (4), a copy of the declaration of each director;
 - (d) a copy of its by-laws.
- (7) The segregated cell company from which the 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 cell is inconsistent with the by-laws of the company transferring the cell or the company to which the cell is to be transferred.
- (9) Where the Registrar approves a transfer,
- (a) the Registrar shall record the transfer in the Register of Companies;
 - (b) the cell ceases to be a cell of the segregated cell company from which it was transferred;
 - (c) the cell becomes a cell or an incorporated cell, as the case may be, of the company to which it has been transferred.
- (10) Where a cell is transferred
- (a) to another segregated cell company,
 - (i) the property and rights of the cell immediately before the transfer shall become the property and rights of that segregated cell company;
 - (ii) all liabilities, contracts, debts and obligations of the segregated cell company in respect of the cell immediately before the transfer shall, in respect of the transferred cell, become the liabilities, contracts, debts and obligations of that segregated cell company;
 - (iii) all actions and other legal proceedings which immediately before the transfer could have been instituted or continued by or against a segregated cell company, in respect of the cell, may be instituted or continued by or against the segregated cell company to which the cell is transferred;
 - (iv) any conviction, ruling, order or judgment in favour or against a segregated cell company in respect of the cell immediately before the transfer, may be enforced by or

against the segregated cell company to which the cell is transferred;

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

Application for administration order

356.52.(1) An application to the court for an administration order may be made by

- (a) a segregated cell company;
- (b) the directors of the segregated cell company;
- (c) the shareholders or any class of shareholders of the segregated cell company or any cell; or

(d) any creditor of the segregated cell company, or where the order is sought in respect of a cell, any creditor of the company in respect of that cell.

(2) The court, on hearing an application

(a) for an administration order; or

(b) for leave for a resolution for voluntary winding up pursuant to subsection (5) of section 356.53,

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 segregated cell company or a cell shall be served upon

(a) the company;

(b) the Registrar; and

(c) any other person as the court may direct,

who shall be given an opportunity to make representation to the court before the order is made.

Administration order in relation to segregated cell companies or cells

356.53.(1) Subject to the other provisions of this section, where in relation to a segregated cell company, the court is satisfied that

(a) the cellular assets attributed to a particular cell of the company, when account is taken of 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) 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, hereinafter referred to as “administration order”, under this section in respect of that company.

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

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

- (a) the survival as a going concern of the cell or of the company;
- (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 the receivership of the cell or by the liquidation of the company.

(4) An administration order, whether in respect of a segregated cell company or a cell

(a) may not be made where

- (i) a liquidator has been appointed to act in respect of the company; or
- (ii) the company has passed a resolution for voluntary winding up;

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

(5) No resolution for the voluntary winding up of a segregated cell company or any cell of that company which is subject to an administration order shall be effective without the leave of the court.

Functions of administrator and effect of administration order

356.54.(1) The administrator of a cell of a segregated cell company

- (a) may do all such things as may be necessary for the purposes set out in subsection (3) of section 356.53 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 may at any time apply to the court for

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

(3) In exercising his functions and powers, the administrator is deemed to act as the agent of the segregated cell company and shall not incur personal liability except to the extent that he is fraudulent, acts in bad faith or knowingly authorises, acquiesces in or permits improper conduct.

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

(5) When an application has been made for an administration order and during the period of operation of the order in respect of a segregated cell company or a cell, no proceedings may be instituted or continued by or against the company except by leave of the court, which may be conditional or unconditional.

- (6) Subject to subsection (5), no steps may be taken to enforce any security in respect of the business or assets of the company or the business or assets of or attributable to the cell except by leave of the court, which may be conditional or unconditional.
- (7) During the period of operation of an administration order,
- (a) in respect of a cell,
 - (i) the functions and power 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 company's non-cellular assets;
 - (b) in respect of a segregated cell company, the functions and powers of the directors shall cease.

Discharge and variation of administration order

356.55.(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 an 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 segregated 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 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 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 segregated cell company.

Remuneration of administration

356.56. The remuneration of an administrator and any expenses properly incurred by him shall be payable in priority to all other claims and in the case of

- (a) the administration of a cell, from
 - (i) the cellular assets attributable to the cell; and
 - (ii) to the extent these may be insufficient, the non-cellular assets of the segregated cell company; and
- (b) the administration of a segregated cell company, from
 - (i) the non-cellular asset 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.

Application for receivership order

356.57.(1) An application to the court for a receivership order in respect of a cell of a segregated 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 Registrar.
- (2) The court on hearing an application for
- (a) a receivership order; or
 - (b) for leave for a resolution for voluntary winding up pursuant to subsection (5) of section 356.58,

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

(3) Notice of an application to the court for a receivership order in respect of a cell of a segregated cell company shall be served upon

- (a) the company;
- (b) the administrator, if any, of the cell;
- (c) the Registrar; and
- (d) such other persons as the court may direct,

who shall be given an opportunity to make representations to the court before the order is made.

Receivership order in relation to cells

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

- (a) the cellular assets attributable to a particular cell of the company when account is taken of the company's non-cellular assets are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; and
- (b) the making of an order under this section would achieve the purposes set out in subsection (3),

the court may make an order hereinafter referred to as a "receivership order" in respect of that cell.

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

(3) The purposes for which a receivership order may be made are

- (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.

(4) A receivership order

- (a) may not be made if
 - (i) a liquidator has been appointed to act in respect of the segregated cell company; or
 - (ii) the segregated cell company has passed a resolution for voluntary winding up;
- (b) may be made in respect of a cell subject to an administration order made under section 356.53;

- (c) shall cease to be of effect upon appointment of a liquidator to act in respect of the segregated cell company, but without prejudice to prior acts.
- (5) No resolution for the voluntary winding up of a segregated cell company or any cell of which is subject to a receivership order shall be effective without leave of the court.

Functions of receiver and effects of receivership order

356.59.(1) The receiver of a cell

- (a) may do all such things as may be necessary for the purposes set out in subsection (3) of section 356.58; and
 - (b) shall have all the functions and powers of the directors in respect of the business and cellular assets of the cell or attributable to the cell.
- (2) The receiver may at any time apply to the court for
 - (a) directions as to the extent or exercise of any function or power;
 - (b) the receivership order to be discharged or varied; or
 - (c) an order as to any matter arising in the course of his receivership.
- (3) In exercising his functions and powers, the receiver is deemed to act as the agent of the segregated cell company and shall not incur personal liability except to the extent that he is fraudulent, acts in bad faith or knowingly authorises, acquiesces in or permits improper conduct.
- (4) Any person dealing with a receiver in good faith need not be concerned to enquire whether the receiver is acting within his powers.

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

- (a) no proceedings may be instituted or continued by or against the segregated cell company in relation to the cell in respect of which the receivership order was made; and
- (b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or cellular assets of or attributable to the cell in respect of which the receivership order was made,

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

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

- (a) the functions and powers of the directors shall cease in respect of the business and the cellular assets of or attributable to the cell in respect of which the order was made; and
- (b) the receiver of the cell shall be deemed a director of the segregated 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 receivership order

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

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

(3) Upon the court discharging a receivership order in respect of a cell of a segregated 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 in 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 deemed to be 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 segregated cell company.

(5) Subject to the provisions of

- (a) this Act and any law relating to privileges and priorities of claims; and
- (b) any agreement between the segregated cell company and any creditors as to the subordination of the debts due to the creditor or to the debts due to the company's other creditors,

the company's cellular assets attributable to any cell of the company in relation to which a receivership order has been made shall, in the winding up of the business of or attributable to that cell pursuant to 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) Unless the articles of the segregated cell company provide, any surplus shall thereafter be distributed

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

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

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

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

Remuneration of receiver

356.61. The remuneration of a receiver and any expenses properly incurred by him shall be payable, in priority to all other claims, from

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

Liquidation of a segregated cell company

356.62.(1) Notwithstanding any statutory provision to the contrary, in the liquidation of a segregated cell company, the liquidator

- (a) shall be bound to deal with the company's assets in accordance with the requirements of subsection (2) of section 356. 41;
- (b) in discharge of the claims of creditors of the segregated cell company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Act.

(2) The provisions of this Act relating to the distribution of property on winding up shall apply to a segregated cell company subject to such

modifications as may be necessary to bring them in conformity with this Act.

Miscellaneous

Regulations

356.63.(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 a segregated cell company;
 - (b) provide for the sound management of a segregated cell company;
 - (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 a segregated 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.”.

