



PROTECTED CELL COMPANY (PCC) REGULATIONS

In force on 12 November 2018

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The Board of Directors of the DIFCA, in the exercise of the powers conferred on them under Articles 132 and 151 of the Companies Law 2018, hereby makes these Regulations.

1. INTRODUCTION

1.1 Application and interpretation

1.1.1 These Regulations apply to:

- (a) a person making an application to incorporate a Protected Cell Company under the Law;
- (b) a Protected Cell Company;
- (c) if a protected Cell Company is a Fund, to the Fund Manager of that Company; or
- (d) an Officer of a Protected Cell Company.

1.1.2 Capitalised terms are defined terms in:

- (a) the Law or Regulations made under the Law;
- (b) the Regulatory Law 2004 and Rules made under that law;
- (c) the Collective Investment Law 2010 and Rules made under that law; and
- (d) the Insolvency Law 2009 and Regulations made under that law.

1.1.3 Where capitalisation of the initial letter is not used, an expression has its natural meaning, unless otherwise provided in Regulation 1.1.5 or the context requires otherwise.

1.1.4 These Regulations are referred to as the PCC Regulations.

1.1.5 (1) In these PCC Regulations, the following terms have, subject to (2), the following meanings:

- (a) ‘administrative receiver’ has the meaning given in the Insolvency Law 2009;
- (b) a ‘cell’ is a cell created by a Protected Cell Company for the purpose of segregating and protecting cellular assets in the manner provided by these PCC Regulations;
- (c) ‘cell share capital’ comprises the proceeds of the issue of cell shares;
- (d) ‘cell shares’ are Shares created and issued by a Protected Cell Company in respect of one of its cells pursuant to the provisions of Regulation 1.9 the proceeds of the issue of which, the “cell share capital”, shall be comprised in the cellular assets attributable to that cell;
- (e) a ‘cell transfer order’ is an order within the meaning given in Regulation 1.20;
- (f) ‘cellular assets’ comprise the assets of the Protected Cell Company attributable to the Company’s cells pursuant to Regulation 1.11.2;

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- (g) a ‘cellular dividend’ is a dividend payable by a Protected Cell Company in respect of cell shares pursuant to the provisions of Regulation 1.9.4;
 - (h) a ‘Closed ended Protected Cell Company’ has the meaning given in Regulation 1.2.1(2)(b);
 - (i) ‘Insolvency (PCC) Regulations’ means the Regulations contained in Chapter 8 of the Insolvency Regulations;
 - (j) ‘liquidator’ has the meaning given in the Insolvency Law 2009;
 - (k) a reference to a ‘Shareholder’ is, as the context requires, a reference to a holder of a Share or of a cell share;
 - (l) ‘non-cellular assets’ are assets of a Protected Cell Company which are not cellular assets, pursuant to Regulation 1.11.4;
 - (m) an ‘Open-ended Protected Cell Company’ has the meaning given in Regulation 1.2.1(2)(a);
 - (n) ‘Protected Cell Company’ is a Company incorporated as, or converted into, a Protected Cell Company in accordance with the provisions of these PCC Regulations; and
 - (o) ‘receiver’ has the meaning given in the Insolvency Law 2009.
- (2) Where an umbrella fund is formed as a protected cell company for the purposes of the collective investment law 2010, any references to the following terms in the regulations must be read in relation to such a fund as meaning, unless otherwise provided, as follows:
- (a) a reference to a “cell” as a reference to a Sub-Fund;
 - (b) a reference to “cell share capital” as a reference to the proceeds of the issue of Units of a Sub-Fund;
 - (c) a reference to “cell shares” as a reference to the Units issued by a Sub-Fund;
 - (d) a reference to “cellular assets” as a reference to the Fund Property of a Sub-Fund;
 - (e) a reference to a “cellular dividend” as a reference to a dividend payable by a Sub-Fund;
 - (f) a reference to a Director of the Company as a reference to a Director of the Fund Manager of the Umbrella Fund;
 - (g) a reference to “non-cellular” assets, as a reference to the assets of the Protected Cell Company which are not cellular assets of any particular Sub-Fund;
 - (h) a reference to a Protected Cell Company as a reference to an Umbrella Fund; and
 - (i) a reference to a “Shareholder”, unless the context requires otherwise, as a reference to a Unitholder of a Sub-Fund.

- (3) In the case of an Umbrella Fund referred to in (2), the Fund Manager of such a Fund shall ensure that the Protected Cell Company complies with any requirement or prohibition imposed on the Company under these PCC Regulations, unless otherwise provided or the context requires otherwise.
- 1.1.6 In accordance with Article 132(2)(b) of the Law, where there is any inconsistency between the provisions of:
- (a) the DFSA administered legislation applicable to a Protected Cell Company; and
 - (b) the Law and Regulations made thereunder,
- the provisions in (a) shall prevail over the provisions in (b) and be taken to exclude, waive or modify the Law or Regulations to the extent of any such inconsistency, unless expressly provided otherwise or the context requires otherwise.
- 1.1.7 For the avoidance of doubt, the provisions of the Regulatory Law 2004, the Collective Investment Law 2010 and the Markets Law 2012, and any Rules made for the purposes of those laws, continue to apply to an Umbrella Fund and its Fund Manager and any other person carrying on any function or service in relation to the Fund unless otherwise provided or the context requires otherwise.
- 1.1.8 In accordance with Article 132(2)(b) of the Law, the application of Article 66(1) and (2) of the Law is modified in relation to its application to a Protected Cell Company formed mainly for the purpose of conducting business of a Fund so as to permit such a Company to be managed by its sole Corporate Director in accordance with the requirements in section 8.1A of the CIR module of the DFSA Rulebook.

1.2 Protected Cell Companies as a type of company

- 1.2.1 (1) Subject to the provisions of these PCC Regulations and of the Law, a person may, pursuant to Article 132(1) of the Law:
- (a) incorporate a type of Company which shall be a Protected Cell Company either as an Open-ended Protected Cell Company or a Closed-ended Protected Cell Company; or
 - (b) convert, if so authorised by its Articles of Association and by a Special Resolution, an existing Company into an Open-ended Protected Cell Company or a Closed-ended Protected Cell Company,
- subject to, and for the purposes of, the requirements in Regulation 1.4.1.
- (2) For the purposes of these PCC Regulations:
- (a) an Open-ended Protected Cell Company is a Company whose Articles of Association comply with Regulation 1.3.3, provided that such a Company is incorporated as, or converted into, an Open-ended Protected Cell Company in accordance with the provisions of these Regulations; and
 - (b) a Closed-ended Protected Cell Company means a Protected Cell Company other than an Open-ended Protected Cell Company.
- 1.2.2 A Protected Cell Company may create one or more cells for the purpose of segregating and protecting cellular assets in the manner provided by these PCC Regulations.

1.2.3 A Protected Cell Company is a single legal person and 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.

1.3 Name and Articles of Association of a Protected Cell Company

1.3.1 The name of a Protected Cell Company shall, without prejudice to the application of Articles 28 and 29 of the Law, include the expressions as provided below:

- (a) in the case of a Closed-ended Protected Cell Company, the expression ‘Protected Cell’ or ‘PCC’; and
- (b) in the case of an Open-ended Protected Cell Company, the expression ‘Open-ended’ immediately preceding the expression ‘Protected Cell Company’ or ‘PCC’ referred to in (a).

1.3.2 Each cell of a Protected Cell Company shall have its own distinct name or designation.

- 1.3.3
- (1) The Articles of Association of a Protected Cell Company shall state that it is an Open-ended Protected Cell Company with a variable Share capital.
 - (2) The Articles of Association of an Open-ended Protected Cell Company shall contain a provision to the effect that its Shareholders are entitled to have their Shares redeemed or repurchased by the Fund Manager, at a value calculated based on the net asset value of the Fund Property in the manner provided in section 8.6 of the CIR module of the DFSA Rulebook.

1.3.4 A Company may, in order to comply with Regulation 1.3.3, alter its Articles of Association by Special Resolution.

1.4 Permissible uses and DFSA consent

- 1.4.1
- (1) A Company shall not be incorporated as, or operate as, a Protected Cell Company, and an existing Company shall not be converted into, or operate as, a Protected Cell Company, unless:
 - (a) the Company is formed, and will operate, for the purpose of conducting Insurance Business or the business of a Fund;
 - (b) the requirements under paragraphs (2), (3) and (4) are met; and
 - (c) the DFSA has given its prior written consent.
 - (2) A Protected Cell Company formed for the main purpose of conducting Insurance Business shall be formed as a Closed-ended Protected Cell Company.
 - (3) A Protected Cell Company formed for the main purpose of conducting the business of an Umbrella Fund shall be formed as an Open-ended Protected Cell Company.
 - (4) An Umbrella Fund referred to in (3) that is, or is intended to be:
 - (a) a Public Fund, shall be registered as a Public Company; and
 - (b) an Exempt Fund or Qualified Investor Fund, shall be registered as a Private Company.

- 1.4.2 An application for consent under Regulation 1.4.1(1)(c) shall be made in such manner as the DFSA may direct.
- 1.4.3 The DFSA may only grant its consent, under Regulation 1.4.1(1)(c), where it is satisfied that the requirements under these PCC Regulations and under other applicable legislation administered by it are met by the applicant.
- 1.4.4 Without limiting any requirement to which a Protected Cell Company may be subject under other legislation applicable in the DIFC, a Protected Cell Company, and if it is an Umbrella Fund, its Fund Manager, must provide written notice to the DFSA of:
- (a) any proposed alteration to the company's Articles of Association;
 - (b) any proposed reconstruction or merger involving the company;
 - (c) any proposal to appoint a cell receiver, or to appoint a receiver or administrative receiver, or to wind up the affairs of the company;
 - (d) any proposal to replace a Director of the company, to appoint any additional Director or to decrease the number of Directors;
 - (e) if the company is an Umbrella Fund, its Fund Manager; and
 - (f) any event or circumstance which may materially adversely affect the fitness and propriety of a Director to act as such.
- 1.4.5 Effect must not be given to any proposal in Regulation 1.4.4 unless the DFSA has given written approval to the proposal.
- 1.4.6 If the DFSA refuses to grant:
- (a) consent under Regulation 1.4.1(1)(c); or
 - (b) approval under Regulation 1.4.5,
- the DFSA shall, without undue delay, inform the applicant in writing of such refusal. The procedures in App 2 shall apply to such a decision.
- 1.4.7 In accordance with Article 29(2) of the Regulatory Law 2004, the Financial Markets Tribunal has jurisdiction to hear and determine any referral where:
- (a) an applicant refers a decision of the DFSA in relation to an application for consent under Regulation 1.4.1(1); or
 - (b) an applicant refers a decision of the DFSA in relation to an application for approval under Regulation 1.4.5.

1.5 Incorporation of, or conversion into, a Protected Cell Company

1.5.1 An application for the incorporation of a Company as a Protected Cell Company shall be made by:

- (a) the filing of an application to the Registrar in accordance with Article 10 of the Law and applicable Regulations or otherwise in such form and manner, and accompanied by such documents and information, verified in such manner, as the Registrar may require; and
- (b) the submission to the Registrar of a copy of any consent of the DFSA given under Regulation 1.4.1(1).

1.5.2 An application for the conversion of an existing Company into a Protected Cell Company shall be made by:

- (a) the filing of an application to the Registrar in such form and manner, and accompanied by such documents and information, verified in such manner, as the Registrar may require;
- (b) the submission to the Registrar of the Company's Articles of Association with such amendments as may be necessary to facilitate the conversion of the Company into a Protected Cell Company;
- (c) the submission of a copy of the Company's Special Resolution approving any such change to its Articles of Association and the conversion of status of the Company to a Protected Cell Company; and
- (d) the submission of a copy of any consent of the DFSA given under Regulation 1.4.1(1).

1.5.3 An application made under Regulation 1.5.1 or 1.5.2 shall be accompanied by the appropriate fee prescribed in Appl.

1.6 Withdrawal of DFSA consent

1.6.1 The DFSA may revoke its consent to operate a Protected Cell Company if it appears to it that:

- (a) any requirement for the continuation of the consent is no longer satisfied;
- (b) the Company or any Director of the Company, and if it is an Umbrella Fund, its Fund Manager:
 - (i) has contravened any requirement under the Law or these PCC Regulations;
 - (ii) has contravened any requirements applicable to the Company under the Regulatory Law 2004, Collective Investment Law 2010 or Rules made under those laws;
 - (iii) has failed to comply with a condition or restriction in relation to the grant of consent; or
 - (iv) has, in purported compliance with any such requirement or any such condition or restriction, knowingly or recklessly given the DFSA or the Registrar information which is false or misleading in a material particular;
- (c) no activity relevant to the grant of the consent has been carried on in relation to the Company for the previous 12 months; or
- (d) it is in the interests of the DIFC to revoke the consent in order to protect the interests of Shareholders or Creditors, or potential Shareholders or Creditors, of the Company.

- 1.6.2 For the purposes of Regulation 1.6.1(d), the DFSA may take into account any relevant matter, including those relating to or affecting:
- (a) the Company, and if it is an Umbrella Fund, its Fund Manager;
 - (b) any person employed by or associated with the Company or the Fund Manager;
 - (c) any Director of the Company;
 - (d) any person exercising influence over any Director of the Company;
 - (e) any body corporate in the same group as the Company;
 - (f) any Director of a body corporate referred to in (e);
 - (g) any person exercising influence over a body corporate referred to in (e); or
 - (h) the interests of a Shareholder or Creditor.
- 1.6.3 Before revoking any consent, the DFSA will consider whether any necessary and appropriate steps have been taken to secure one or more of the following under the Insolvency (PCC) Regulations:
- (a) a cell receivership order in relation to one or more cells;
 - (b) appointment of a receiver or administrative receiver to the Company; or
 - (c) the winding up of the Company.
- 1.6.4 Upon deciding to revoke its consent, the DFSA will, without undue delay, inform the Company in writing of such revocation. The procedures in App 2 shall apply to such a decision.
- 1.6.5 In accordance with Article 29(2) of the Regulatory Law 2004, the Financial Markets Tribunal has jurisdiction to hear and determine any referral where a Protected Cell Company refers a decision of the DFSA to revoke its consent under this Regulation.

1.7 Directions by the DFSA

- 1.7.1 The DFSA may give a direction to a Protected Cell Company and any of its Directors and, if the Protected Cell Company is an Umbrella Fund, to its Fund Manager, under this Regulation 1.7 if it appears to the DFSA that:
- (a) any requirement for the continuation of the DFSA's consent is no longer satisfied;
 - (b) the Company or any of its Directors, or its Fund Manager, as is relevant:
 - (i) has contravened any requirement imposed by or under the Law or the Regulations;
 - (ii) has failed to comply with a condition or restriction in relation to the grant of consent; or
 - (iii) has, in purported compliance with any such requirement or any such condition or restriction, knowingly or recklessly given the DFSA or the Registrar information which is false or misleading in a material particular; or

- (c) it is desirable and in the interest of the DIFC to revoke the consent.
- 1.7.2 Without limiting the generality of Regulation 1.7.1, a direction under this Regulation 1.7 may:
- (a) require the Fund Manager to cease the issue or redemption, or both the issue and redemption, of cell shares or any class of cell shares in an Umbrella Fund; or
 - (b) require the Company or any Director of the Company, or the Fund Manager, as the case may be, to present a petition to the Court to:
 - (i) make a cell receivership order in relation to one or more cells;
 - (ii) make an order or orders for the appointment of a receiver or administrative receiver to the Company; or
 - (iii) make an order or orders for the winding up of the Company;under the Insolvency (PCC) Regulations.
- 1.7.3 Subject to Regulation 1.7.4, if the DFSA revokes its consent, such revocation does not affect the operation of any direction given under this Regulation 1.7 which is then in force. The DFSA may give further directions under this Regulation 1.7 in relation to a Company where the DFSA consent has been revoked, if a direction under this Regulation was already in force at the time of the revocation.
- 1.7.4 If a cell receivership order, an order appointing a receiver or administrative receiver, or a winding up order, has been made by the Court, no direction under this Regulation is to take effect in relation to the Company concerned.
- 1.7.5 The DFSA may, on its own initiative, or on the application of the Company or the Fund Manager, as the case may be, revoke or vary a direction given under this Regulation if it appears to the DFSA:
- (a) in the case of revocation, that it is no longer necessary for the direction to take effect or to continue in force; or
 - (b) in the case of variation, that the direction should take effect or continue in force in a different form.
- 1.7.6 A direction takes effect:
- (a) immediately, if the notice states that that is the case; or
 - (b) on such date as may be specified in the notice.
- 1.7.7 If the DFSA proposes to give a direction under this Regulation on its own initiative, the procedures in App 2 shall apply to the decision to give such a direction.
- 1.7.8 In accordance with Article 29(2) of the Regulatory Law 2004, the Financial Markets Tribunal has jurisdiction to hear and determine any referral where a Protected Cell Company or a Director of the Company, or the Fund Manager, as the case may be, refers a decision of the DFSA made under this Regulation 1.7 in relation to a direction.

1.8 Applications to the Court

1.8.1 This Regulation 1.8 applies if the DFSA could give a direction, or has given a direction, under Regulation 1.7.1, in relation to a Protected Cell Company.

1.8.2 The Court may, on application of the DFSA under this Regulation 1.8, make one or more of the following orders:

- (a) an order removing any Director of the Company and replacing any such person with a person or persons nominated by the DFSA or as the Court may consider appropriate;
- (b) an order removing the Fund Manager of the Company and replacing that manager with an appropriately licensed Fund Manager nominated by the DFSA or by the Shareholders of the Fund;
- (c) a cell receivership order, an order appointing a receiver or administrative receiver, or an order for the winding up of the Company, pursuant to the Insolvency (PCC) Regulations; or
- (d) any other order as the Court thinks fit.

1.8.3 The DFSA will:

- (a) give written notice of the making of an application under this Regulation to:
 - (i) the Company or the Fund Manager in the case of an Umbrella Fund; and;
 - (ii) where the application seeks the removal of any Director of the Company, that individual; and
- (b) take such steps as it considers appropriate for bringing the application to the attention of the Shareholders of the Company.

1.8.4 The Court may, on application of a person who is subject to a direction under Regulation 1.7, make any orders it thinks fit in relation to the making of the direction, including, but not limited to, orders:

- (a) revoking the direction;
- (b) varying the direction;
- (c) requiring the direction to be complied with in a manner that the Court considers appropriate; or
- (d) requiring the DFSA to do any act or thing.

1.9 Cell Shares, Share capital and cellular dividends

1.9.1 Unless the context requires otherwise, for the purposes of application of the Law and Regulations to a Protected Cell Company, a reference to a Share is taken to include a reference to a cell share.

1.9.2 A Protected Cell Company may, in respect of any of its cells, create and issue cell shares. The cell share capital shall comprise the cellular assets attributable to the cell in respect of which the cell shares were issued.

1.9.3 The proceeds of the issue of Shares other than cell shares created and issued by a Protected Cell Company shall comprise the Company's non-cellular assets.

1.9.4 A Protected Cell Company may pay cellular dividends in respect of cell shares.

1.9.5 (1) In the case of a Protected Cell Company conducting Insurance Business, cellular dividends may be paid in respect of cell shares by reference only to the cellular assets and liabilities, or the profits and losses, attributable to the cell in respect of which the cell shares were issued. When determining whether or not profits are available for the purpose of paying a cellular distribution under Article 64 of the Law, no account shall 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.

(2) In the case of an Umbrella Fund, cellular dividends may be paid in respect of cell shares by reference only to the cellular assets and liabilities, or the profits and losses, attributable to the cell in respect of which the cell shares were issued, in accordance with the dividend distribution policy of the Umbrella Fund as set out in its Articles of Association and the most recent Prospectus. When determining whether or not profits are available for the purpose of paying a cellular distribution, 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.

1.9.6 Except as provided in Regulation 1.9.9, a Protected Cell Company must prepare documentary evidence of title to cell shares (in this Regulation referred to as a 'certificate') as follows:

(a) in respect of any new cell shares issued by it;

(b) where a Shareholder has transferred part only of his holding back to the Company, in respect of the remainder of that holding;

(c) where a Company has registered a transfer of cell shares made to a person other than the Company;

(i) in respect of the cell shares transferred to the transferee; and

(ii) in respect of any cell shares retained by the transferor which were evidenced by any certificates sent to the Company for the purposes of registering the transfer; and

(d) in respect of any cell shares for which the certificate has already been issued but where it appears to the Company that the certificate needs to be replaced as a result of being lost, stolen or destroyed, or having become damaged or worn out.

1.9.7 Certificates need only be prepared in the circumstances referred to in Regulation 1.9.6(d) if the Company has received:

(a) a request for a new certificate;

(b) the old certificate, if there is one;

- (c) such indemnity as the Company may require; and
 - (d) such reasonable sum as the Company may require in respect of the expenses incurred by it in complying with the request.
- 1.9.8 Each certificate must state:
- (a) the cell to which the cell shares relate;
 - (b) the number of cell shares, the title to which is evidenced by the certificate;
 - (c) where the Company has more than one class of cell shares, the class of cell shares, the title to which is evidenced by the certificate; and
 - (d) the name of the holder.
- 1.9.9 Nothing in these PCC Regulations require a Company to prepare certificates in the following circumstances:
- (a) where the Articles of Association permit issuing Share certification in dematerialised form;
 - (b) where a Shareholder has indicated to the Company in writing that he does not wish to receive a certificate; or
 - (c) where legislation applicable in the DIFC provides otherwise for evidencing an entitlement to Shares.
- 1.9.10 A Closed-ended Protected Cell Company may reduce the Share capital of a cell if authorised by a Special Resolution and its Articles of Association. Article 56 of the Law shall apply to a reduction in the Share capital of a cell as if the cell were a Company and the cell shares the Shares of a Company for the purpose of that Article.
- 1.9.11 An Open-ended Protected Cell Company shall redeem Shares of a cell at a price based on the net asset value of the property of the cell in accordance with its Articles of Association and the provisions in section 8.6 of the CIR module of the DFSA Rulebook. Where it does so, Chapters 6 and 7 of Part 7 of the Law shall not apply to such redemption of Shares.
- 1.10 Register of Shareholders**
- 1.10.1 No notice of any trust, express, implied or constructive, or foundation is to be entered on the Company's register of Shareholders maintained under Article 44 of the Law or be receivable by the Company.
- 1.10.2 Every Protected Cell Company must keep an index of the names of its Shareholders, which index must:
- (a) contain, in relation to each Shareholder, a sufficient indication to enable the account of that Shareholder in the register to be readily found;
 - (b) specify the particular cell or cells to which an account or accounts of that Shareholder relate;
 - (c) be readily searchable by reference to the account of the Shareholder or by reference to a cell;
 - (d) be kept at all times at the same place as the register of Shareholders; and

- (e) be altered where necessary within fourteen (14) days after the date of any alteration made to the Register of Shareholders.
- 1.10.3 The provisions of Article 48 of the Law relating to inspection of the register of Shareholders shall be taken to apply also in respect of the index kept under Regulation 1.10.2, with such adaptation as necessary to achieve that purpose.
- 1.10.4 Nothing in Regulations 1.10.1 and 1.10.2 is taken to remove the Company's obligations to identify, obtain and maintain information relating to ultimate beneficial owners or controllers of its Shareholders, and the Registrar's powers to obtain such information, for the purposes of Article 61 of the Operating Law.

1.11 Cellular and non-cellular assets

- 1.11.1 The assets of a Protected Cell Company shall be either cellular assets or non-cellular assets.
- 1.11.2 The cellular assets of a Protected Cell Company comprise the assets of the Company attributable to the cells of the Company.
- 1.11.3 The assets attributable to a cell of a Protected Cell Company comprise:
 - (a) assets represented by the proceeds of cell share capital and reserves, including retained earnings, capital reserves and Share premiums, attributable to the cell; and
 - (b) all other assets attributable to the cell.
- 1.11.4 The non-cellular assets of a Protected Cell Company comprise the assets of the Company which are not cellular assets.
- 1.11.5 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 comprise, the Company's non-cellular assets.

1.12 Prohibition on dealings or transactions between cells

- 1.12.1 A Protected Cell Company shall not:
 - (a) transfer a cellular asset attributable to a cell of the Company to another cell of the Company; or
 - (b) merge or consolidate a cell of the Company with, or into, one or more other cells of the Company;except under the authority of, and in accordance with the terms and conditions of, an order of the Court.
- 1.12.2 In considering whether or not to make an order relating to a proposed transfer, merger or consolidation referred to in Regulation 1.12.1, the Court may:
 - (a) hear the representations of the DFSA, if any;
 - (b) require the applicant to establish, to the satisfaction of the Court, that the Creditors of the Company entitled to have recourse to the cellular assets attributable to the relevant cells:
 - (i) consent to the transfer, merger or consolidation; or

- (ii) would not have their interest unfairly prejudiced by the transfer, merger or consolidation; and
 - (c) require the applicant to establish, to the satisfaction of the Court, that the Shareholders of the Company and of each relevant cell:
 - (i) consent to the transfer, merger or consolidation; or
 - (ii) would not have their interests unfairly prejudiced by the transfer, merger or consolidation.
- 1.12.3 The Court, on hearing an application for an order under this Regulation 1.12, may make an interim order or an order adjourning the hearing, conditionally or unconditionally.

1.13 Separation of assets

1.13.1 In this Regulation 1.13 and Regulations 1.14 and 1.15, an ‘officer’ means:

- (a) an Officer as defined in the Law;
- (b) a cell receiver as defined in the Insolvency (PCC) Regulations;
- (c) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of a Protected Cell Company; or
- (d) a person in accordance with whose instructions or wishes the Directors of a Protected Cell Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the Directors or the Protected Cell Company).

1.13.2 Each officer of a Protected Cell Company, and if it is an Umbrella Fund, its Fund Manager, 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.

1.13.3 The duty imposed by Regulation 1.13.2 is not breached by reason only that:

- (a) an officer of a Protected Cell Company, and if it is an Umbrella Fund, its Fund Manager, causes or permits cellular assets and non-cellular assets to be held:
 - (i) by or through a nominee; 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; or
- (b) an officer of a Protected Cell Company, and if it is an Umbrella Fund, its Fund Manager, causes or permits 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.

1.13.4 In the event of a contravention of Regulation 1.13.2, each officer of the Company and, in the case of a Fund Manager, each of its Directors:

- (a) shall incur personal liability for any loss or damage suffered by the Protected Cell Company as a consequence of the contravention; and
- (b) shall severally have a right of indemnity against the non-cellular assets of the Company, unless that person was fraudulent, reckless or negligent, or acted in bad faith.

1.13.5 Regulation 1.13.4 is subject to Regulation 1.15.1.

1.14 Disclosure of dealings with Protected Cell Company

1.14.1 A Protected Cell Company shall:

- (a) inform any person with whom it transacts that it is a Protected Cell Company;
- (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; and
- (c) where the transaction is in respect of a particular cell, inform the person that the cellular assets of that cell, and only those assets, are available to pay the obligations and liabilities of that cell.

1.14.2 If, in contravention of Regulation 1.14.1, 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;
- (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; or
- (c) fails to inform a person that the cellular assets of that cell, and only those assets, are available to pay the obligations and liabilities of that cell;

then, in any such case:

- (d) each officer of the Company and, in the case of a Fund Manager, each Director, shall incur personal liability to that person in respect of the transaction; and
- (e) each person referred to in (d) shall severally have a right of indemnity against the non-cellular assets of the Company, unless he was fraudulent, reckless or negligent, or acted in bad faith.

1.14.3 Regulation 1.14.2 is subject to Regulation 1.15.1.

1.15 Further provisions concerning personal liability

1.15.1 Notwithstanding Regulations 1.13.4 and 1.14.2, the Court may relieve an officer, and in the case of an Umbrella Fund, a Director of its Fund Manager, as the case may be, of all or part of his personal liability thereunder if he satisfies the Court that he 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, reckless or negligent, nor acted in bad faith; or
- (b) he expressly objected, and exercised such rights as he had as such an officer or Director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

1.15.2 Where, pursuant to Regulation 1.15.1, the Court relieves a person of all or part of his personal liability under Regulation 1.13.4 or 1.14.2, the Court may order that the liability in question shall instead be met from such of the:

- (a) assets of the relevant cell in respect of which the person was dealing or transacting; or
- (b) non-cellular assets of the Protected Cell Company;

as may be specified in the order.

1.15.3 Any provision in the Articles of Association of a Protected Cell Company, or any other contractual provision under which the Company may be liable, which purports to:

- (a) avoid the incurring of personal liability upon a person in the circumstances described in Regulation 1.13.4 or 1.14.2; or
- (b) indemnify such a person in respect of conduct which would otherwise disentitle him to an indemnity against non-cellular assets by virtue of Regulation 1.13.4 or 1.14.2;

shall be void.

1.16 Rights of Creditors and implied terms

1.16.1 The rights of Creditors of a Protected Cell Company shall correspond with the liabilities provided for in Regulation 1.18.

1.16.2 No such Creditor shall have any rights other than the rights referred to in this Regulation 1.16 and in Regulations 1.17 and 1.18.

1.16.3 The following terms shall be implied in every transaction entered into by or on behalf of a Protected Cell Company:

- (a) that no party shall seek, whether in any proceedings or by any other means, to use or apply any cellular assets attributable to any cell of the Company to satisfy a liability not attributable to that cell;
- (b) that if any party shall succeed by any means in using or applying 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 shall succeed in seizing or attaching 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 in a fiduciary capacity for the Company and shall keep those assets or proceeds separate and identifiable for that purpose.

- 1.16.4 All sums recovered by a Protected Cell Company as a result of any such obligation as is described in Regulation 1.16.3(c) shall be credited against any concurrent liability imposed under the implied term set out in Regulation 1.16.3(b).
- 1.16.5 Any asset or sum recovered by a Protected Cell Company pursuant to the implied term set out in Regulations 1.16.3 (b) or (c) or by any other means in the events referred to in those Regulations shall, after the deduction or payment of any costs of recovery, be applied by the Company so as to compensate the cell affected.
- 1.16.6 In the event of any cellular assets attributable to a cell of a Protected Cell Company being seized, attached, levied or otherwise 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 to 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.
- 1.16.7 Where under Regulation 1.16.6(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.

1.17 Availability of cellular assets to Creditors

- 1.17.1 Without prejudice to the provisions of Regulations 1.16 and 1.18:
- (a) cellular assets attributable to a particular cell of a Protected Cell Company:
 - (i) are available only to the Creditors of the Company who are Creditors in respect of that cell and who are thereby entitled to have recourse to the cellular assets attributable to that cell; and
 - (ii) shall be absolutely protected from the Shareholders of the Company and 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; and
 - (b) cellular assets not attributable to a particular cell of a Protected Cell Company shall not be used to satisfy any liability attributable to that cell.

1.18 Satisfaction of liabilities attributable to cells

- 1.18.1 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 used to satisfy the liability; and
 - (b) a Creditor in respect of that cell shall not be entitled to have recourse against the cellular assets of any other cell or the non-cellular assets of the Company.
- 1.18.2 Where any liability arises which is not attributable to a particular cell of a Protected Cell Company:

- (a) the liability shall be satisfied solely from the Company's non-cellular assets; and
- (b) a Creditor in respect of that liability shall not be entitled to have recourse to the cellular assets of any cell of the Company.

1.19 Disputes as to liabilities attributable to cells

- 1.19.1 (1) The Court, on the application of the Protected Cell Company, the Fund Manager if the Company is an Umbrella Fund, or a Creditor or Shareholder in dispute with the Company, and without prejudice to any other right or remedy of any person, may issue a declaration in the matter of any dispute relating to any one or more of the following:
- (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; or
 - (d) the amount to which any liability is limited.

1.20 Transfer of cellular assets from Protected Cell Company

- 1.20.1 In this Regulation 1.20, a 'cell transfer order' is an order of the Court authorising the transfer of cellular assets attributable to any cell of a Protected Cell Company, but not the non-cellular assets of a Protected Cell Company, to another person, wherever resident or incorporated, and whether or not a Protected Cell Company.
- 1.20.2 Subject to Regulation 1.20.3, no transfer of cellular assets attributable to a cell of a Protected Cell Company shall be made except under the authority of, and in accordance with the terms and conditions of, a cell transfer order.
- 1.20.3 Nothing in this Regulation 1.20 requires a Protected Cell Company to obtain 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.
- 1.20.4 In considering whether or not to make a cell transfer order in relation to a cell of a Protected Cell Company, the Court may:
- (a) require the applicant to establish to the satisfaction of the Court:
 - (i) that the Creditors of the Company entitled to have recourse to the cellular assets attributable to the cell consent to the transfer; or
 - (ii) that those Creditors would not be unfairly prejudiced by the transfer; and
 - (b) hear the representations, if any, of the DFSA thereon.
- 1.20.5 The Court, on hearing an application for a cell transfer order, may make an interim order or an order adjourning the hearing, conditionally or unconditionally.

- 1.20.6 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.
- 1.20.7 The Court may make a cell transfer order in relation to a cell of a Protected Cell Company notwithstanding that:
- (a) a receiver, administrative receiver, or liquidator has been appointed to act in respect of the Company;
or
 - (b) a cell receiver has been appointed in respect of the cell or any other cell of the Company.
- 1.20.8 A transfer under a cell transfer order 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.
- 1.20.9 The provisions of this Regulation 1.20 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 these PCC Regulations.

1.21 Accounts and audit

- 1.21.1 If a Protected Cell Company is:
- (a) formed for the main purpose of conducting Insurance Business, it shall comply with the requirements in Chapter 8 of the GEN module of the DFSA Rulebook; and
 - (b) formed for the main purpose of conducting the business of an Umbrella Fund, it shall comply with the accounting, audit and reporting requirements in Chapter 9 of the CIR module of the DFSA Rulebook.

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APPENDIX 1

FEES

Table of fees

| | |
|---|---------|
| Upon receipt by the Registrar of: | |
| Application for the incorporation of a Protected Cell Company or for the conversion to a Protected Cell Company | \$1,000 |
| FMT fees: | |
| Making a referral to the FMT (which can be waived by the president of the FMT if the person commencing the reference is an individual and if, in the circumstances, the president considers it is equitable to do so) | \$5,000 |

APPENDIX 2

DECISION MAKING PROCEDURES

1. Interpretation

For the purposes of this Appendix:

- (a) a “Decision Maker” means a person making a decision to which these procedures apply; and
- (b) a “Relevant Person” means a person in relation to whom a power referred to in paragraph 2 of this Appendix is exercised or proposed to be exercised.

2. Application of the Appendix

This Appendix applies to the Decision Maker, subject to paragraph 3 of this Appendix, where a provision requires the Decision Maker to make a decision pursuant to a provision under these Regulations.

3. Decisions to which the procedures do not apply

- (a) The procedures in this Appendix (other than sub-paragraph (b) below) do not apply to a decision by the Decision Maker:
 - (i) to withdraw a direction, requirement, restriction or prohibition;
 - (ii) to withdraw a condition or restriction imposed in relation to a Licence; or
 - (iii) in relation to a person, if the person has requested, or consented in writing to, the making of the decision.
- (b) In the cases referred to in subparagraph (a) above, the Decision Maker shall notify the person in writing of the decision and the date on which it is to take effect.
- (c) If the Decision Maker makes a decision in relation to a person after a decision of the Financial Markets Tribunal or Court relating to the conduct of the person, the requirement to give the person an opportunity to make representations under paragraph 4 or 6 of this Appendix (as applicable), does not apply in relation to findings of fact of the Court.

4. Opportunity to make representations before a decision

- (a) If the Decision Maker proposes to make a decision to which this Appendix applies other than a decision under paragraph 3(a) of this Appendix, the Decision Maker shall first give the Relevant Person:
 - (i) a written notice (a “Preliminary Notice”) containing the information in sub-paragraph (b) below; and

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- (ii) an opportunity to make representations to the Decision Maker in person and in writing concerning the decision the Decision Maker proposes to make.
- (b) The Preliminary Notice shall:
 - (i) specify the proposed decision;
 - (ii) specify the reasons for that proposed decision, including any proposed findings of fact;
 - (iii) include a copy of any relevant materials which were considered in making the proposed decision;
 - (iv) inform the person that the person may make representations to the Decision Maker concerning the proposed decision; and
 - (v) specify how and by when any representations may be made.
- (c) For the purposes of sub paragraph (b)(iii) above, the Decision Maker:
 - (i) may refer to materials (instead of providing a copy) if they are to the knowledge of the Decision Maker already held by the Relevant Person or are publicly available; and
 - (ii) is not required to provide material that is the subject of legal professional privilege.
- (d) If the Decision Maker does not receive any representations within the period specified in the Preliminary Notice, the Decision Maker may proceed to make the proposed decision and give the person a Decision Notice in accordance with paragraph 5.
- (e) If the Decision Maker receives representations within the period specified in the Preliminary Notice, the Decision Maker shall consider the representations in making the decision.
- (f) If, after considering the representations, the Decision Maker decides:
 - (i) to make the proposed decision (either as proposed or with variations), then the Decision Maker shall give the person a Decision Notice under paragraph 5; or
 - (ii) not to make the proposed decision, then the Decision Maker shall as soon as reasonably practicable notify the person in writing that the Decision Maker has decided not to make the decision.
- (g) If the Decision Maker concludes that any delay likely to arise as a result of complying with the procedures in this paragraph would be prejudicial to the interests of a Relevant Person, its Shareholders or members or otherwise prejudicial to the interests of the DIFC, the requirements in subparagraphs (a) to (f) above do not apply and the Decision Maker shall provide the Relevant Person with an opportunity to make representations in accordance with the procedures in paragraph 6, after the Decision Maker has made the decision.

5. Decision Notice

- (a) If the Decision Maker decides to make a decision to which this Appendix applies, the Decision Maker shall, as soon as practicable, give the Relevant Person a written notice (a “Decision Notice”) specifying:
 - (i) the decision;
 - (ii) the reasons for the decision, including any findings of fact and the application of any applicable law to the facts as found;
 - (iii) the date on which the decision is to take effect; and
 - (iv) if applicable, the date by which any relevant action shall be taken by the person.
- (b) The Decision Notice shall include a copy of the relevant materials which were considered in making the decision.
- (c) For the purposes of subparagraph (b), the Decision Maker:
 - (i) may refer to materials (instead of providing a copy) if they are already held to the knowledge of the Decision Maker by the Relevant Person or are publicly available; and
 - (ii) is not required to provide material that is the subject of legal professional privilege.

6. Opportunity to make representations after a decision

- (a) If this paragraph applies under paragraph 4(g), the Decision Maker shall:
 - (i) provide the Relevant Person with an opportunity to make representations to the Decision Maker in person and in writing within a period of fourteen (14) days, or such further period as may be determined by the Decision Maker, from the date on which the Decision Notice is given to the person under paragraph 5 above; and
 - (ii) inform the Relevant Person in the Decision Notice that the person may make representations concerning the decision and specify how and by when any representations may be made.
- (b) If the Decision Maker does not receive any representations within the period specified in the Decision Notice, the Decision Maker shall inform the person in writing that the decision is to stand.
- (c) If the Decision Maker receives representations within the period specified in the Decision Notice, the Decision Maker shall consider the representations in deciding whether to confirm, withdraw or vary the decision.
- (d) If after considering representations received the Decision Maker decides:
 - (i) to confirm the decision, the Decision Maker shall as soon as reasonably practicable notify the person in writing that the decision is to stand;

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- (ii) to withdraw the decision, the Decision Maker shall as soon as reasonably practicable notify the person in writing that the decision has been withdrawn; or
 - (iii) to vary the decision, the Decision Maker shall as soon as reasonably practicable give the person an amended Decision Notice under paragraph 5.
- (e) For the avoidance of doubt, the opportunity to make representations under this paragraph does not arise:
 - (i) if the person was given a Preliminary Notice and the opportunity to make representations under paragraph 4 before the decision was made; or
 - (ii) in respect of an amended Decision Notice given under sub-paragraph (d)(iii) above.