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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Captive Insurance Company Act of 2004 to provide for the formation and regulation of protected cell captive insurers and protected cells.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Captive Insurance Company Amendment Act of 2006".

Sec. 2. Sections 5 and 6 of the Captive Insurance Company Act of 2004, effective March 17, 2005 (D.C. Law 15-262; D.C. Official Code §§ 31-3931.04 and 31-3931.05), are amended to read as follows:

"Sec 5. Protected cell captive insurers.

Amend
§ 31-3931.04

"(a) For the purposes of this section, the term:

"(1) "Incorporated protected cell" means a protected cell that is established as a corporation or other legal entity separate from the protected cell captive insurer of which it is a part.

"(2) "Protected cell" means a separate account established and maintained by a protected cell captive insurer and shall include an incorporated protected cell

"(3) "Protected cell captive insurer" means a captive insurer that:

"(A) Is formed and licensed under the provisions of this act;

"(B) Insures the risks of separate participants through a contract; and

"(C) Segregates each participant's liability through one or more

protected cells.

"(b)(1) A captive insurer may be organized as a protected cell captive insurer and shall be permitted to form one or more protected cells under this act to insure risks of one or more participants. The assets and liabilities of each protected cell shall be held separately from the assets and liabilities of all other protected cells.

"(2) A protected cell captive insurer may be organized and operated in any form of business organization authorized by the Commissioner.

"(3) An incorporated protected cell may be organized and operated in any form of business organization authorized by the Commissioner.

"(4) A protected cell captive insurer shall, at the time of paying the annual fee, pay an additional annual fee for each protected cell in an amount to be established by the Commissioner.

"(5) Each incorporated protected cell of a protected cell captive insurer shall be treated as a captive insurer for purposes of this act.

"(6) Unless otherwise permitted by the articles of incorporation or other organizational document of a protected cell captive insurer, each incorporated protected cell of

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the protected cell captive insurer shall have the same directors, secretary, and registered office as the protected cell captive insurer.

“(7) A protected cell captive insurer may provide that a protected cell it creates shall be wound up and dissolved upon:

“(A) The bankruptcy, death, expulsion, insanity, resignation or retirement of any participant of the protected cell;

“(B) The happening of some other event that is not the expiration of a fixed period of time; or

“(C) The expiration of a fixed period of time.

“(8) The articles of incorporation of a protected cell captive insurer:

“(A) Shall provide that a protected cell shall not own shares in the protected cell captive insurer of which it is a part; and

“(B) May provide that a protected cell may own shares in any other protected cell of the protected cell captive insurer.

“(9) The name of a protected cell captive insurer shall include the words “Protected cell captive” or the abbreviation “PCC”.

“(10) A name that includes the words “Protected cell captive” may, in setting out or using its name for any purpose under this act, do so in full or in the abbreviated form.

“(11) A protected cell captive insurer shall assign a distinctive name to each of its protected cells that is not an incorporated protected cell that:

“(A) Identifies the protected cell as being part of the protected cell captive insurer;

“(B) Distinguishes the protected cell from any other protected cell of the protected cell captive insurer; and

“(C) Includes the words “Protected Cell” or the abbreviation “PC”.

“(12) An incorporated protected cell must include the words “Incorporated Cell” or the abbreviation “IC”.

“(13) Any captive insurer or protected cell formed prior to the effective date of the Captive Insurance Company Amendment Act of 2006, passed on 2nd reading on December 19, 2006 (Enrolled version of Bill 16-898), shall not be required to change its name or the designation of any of its protected cells to comply with the provisions of paragraphs (6), (8), or (9) of this subsection.

“(14) A protected cell of a protected cell captive insurer, unless created as an incorporated protected cell, has no legal identity separate from that of the protected cell captive insurer of which it is a part.

“(15) A protected cell of a protected cell captive insurer may enter into an agreement with its protected cell captive insurer or with another protected cell of the protected cell captive insurer that shall be enforceable as if each protected cell of the protected cell captive insurer were a separate legal entity, even if the protected cell is not organized as an incorporated protected cell.

“(16) The assets of a protected cell captive insurer shall be cell assets or general assets. The cell assets comprise the assets of the protected cell captive insurer that are held within or on behalf of its protected cells. The general assets of a protected cell captive insurer comprise the assets of the protected cell captive insurer that are not cell assets.

“(17) The liabilities of a protected cell captive insurer shall be cell liabilities or general liabilities. The cell liabilities comprise the obligations of the protected cell captive insurer attributed to its protected cells. The general liabilities of a protected cell captive insurer

comprise the obligations of the protected cell captive insurer that are not cell liabilities.

“(18) Each protected cell shall be accounted for separately on the books and records of the protected cell captive insurer to reflect the financial condition and results of operations of each protected cell, including net income or loss, dividends or other distributions to participants, and such other factors as may be provided by the participant contract or required by the Commissioner.

“(19) Each protected cell captive insurer shall annually file with the Commissioner such financial reports as the Commissioner shall require, which reports shall include financial statements detailing the financial experience of each protected cell.

“(20) The captive manager of a protected cell captive insurer shall immediately notify the Commissioner if any protected cell of the protected cell captive insurer becomes insolvent or is otherwise unable to meet its claims or other obligations.

“(21) A protected cell captive insurer may create and issue shares in one or more classes or series for one or more protected cells. The proceeds of the issue shall be included in the assets of the protected cell that issued the shares.

“(22) The proceeds of the issue of shares, other than protected cell shares, shall be included in the protected cell captive insurer’s general assets.

“(23) A protected cell captive insurer may pay a dividend on protected cell shares of any class or series whether or not a dividend is declared on any other class or series of protected cell shares or any other shares.

“(24) Dividends may be paid on protected cell shares only from the cell assets of the protected cell that issued the shares and otherwise in accordance with the rights of such shares.

“(25) No sale, exchange, or other transfer of assets may be made by a protected cell captive insurer between or among any of its protected cells without the written consent of the participants of the protected cell and the Commissioner.

“(26) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to any person without the Commissioner's prior written approval. An approval shall not be given if the sale, exchange, transfer, dividend, or distribution will result in the insolvency or impairment with respect to a protected cell.

“(27) The owners of a protected cell captive insurer, shall not, by virtue of being owners, be the owners or participants of any protected cell of the protected cell captive insurer.

“(28) The participants of a protected cell shall not, by virtue of being such participants, be the owners of the protected cell captive insurer or participants or owners of any other protected cell of the protected cell captive insurer.

“(29) Any individual or legal entity may be a participant in a protected cell formed under this act.

“(30) A participant in a protected cell need not be a shareholder of the protected cell or of the protected cell captive insurer or any affiliate thereof.

“(31) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new protected cell or the withdrawal or other transfer of any participant from any existing protected cell shall constitute a change in the strategic business plan of that protected cell requiring the Commissioner's prior written approval.

“(32) A protected cell captive insurer shall, in addition to keeping a register of its owners or participants, keep a register of the participants of each of its protected cells.

“(33) If a protected cell captive insurer (A) enters into a transaction in respect of a particular protected cell of the protected cell captive insurer, or (B) incurs a liability arising

from an activity or asset of a particular protected cell, a claim by any person in connection with the transaction or liability extends only to the cell assets of the protected cell.

“(34) If a protected cell captive insurer (A) enters into a transaction in its own right and not in respect of any of its protected cells, (B) incurs a liability arising from an activity its own right and not in respect of any of its protected cells, or (C) incurs a liability arising from an asset held in its own right and not in respect of any of its protected cells, a claim by any person in connection with the transaction or liability shall extend only to the general assets of the protected cell captive insurer.

“(35) Except as provided by paragraphs (37) and (39) of this subsection, a protected cell captive insurer shall not satisfy any liability:

“(A) Attributable to a particular protected cell of the protected cell captive insurer from the general assets of the protected cell captive insurer; or

“(B) Whether attributable to a particular protected cell or not, from the cell assets of another protected cell of the protected cell captive insurer.

“(36) If (A) a protected cell captive insurer is permitted to do so under its articles of incorporation or similar organizational documents, and (B) the requirement set forth in paragraph (68) of this subsection is satisfied, the protected cell captive insurer may satisfy any liability attributable to a particular protected cell from the protected cell captive insurer’s general assets.

“(37) Prior to a protected cell captive insurer satisfying any liability attributable to a particular protected cell from the protected cell captive insurer’s general assets, the directors who authorize the satisfaction of the liability shall state as part of the authorization that, having made the inquiry into the affairs and prospects of the protected cell captive insurer, they have formed the opinion that:

“(A) Immediately following the date on which the liability is proposed to be met by the general assets of the protected cell captive insurer, the protected cell captive insurer will be able to discharge its liabilities as they fall due; and

“(B) Having regard to the prospects of the protected cell captive insurer, the intentions of the directors with respect to the management of the protected cell captive insurer’s business, and the amount and character of the financial resources that will, in their view, be available to the protected cell captive insurer, the protected cell captive insurer will be able to continue to carry on business and will be able to discharge its liabilities as they fall due until the expiration of the period of one year immediately following the date on which the liability is proposed to be satisfied by the general assets of the protected cell captive insurer or until the protected cell captive insurer is dissolved, whichever first occurs.

“(38) A protected cell captive insurer may satisfy any liability, whether attributable to a particular protected cell or not, from the cell assets of another protected cell if:

“(A) It is permitted to do so by the articles of incorporation or other organizational document of that other protected cell, in the case of an incorporated protected cell, or by the participant contract, in the case of all other protected cells; and

“(B) Prior to the protected cell captive insurer satisfying any liability from the cell assets of that other protected cell, the directors who authorize the satisfaction of the liability shall obtain written approval from the Commissioner, upon first having made full inquiry into the affairs and prospects of that protected cell, and stating, as part of the authorization, that they have formed the opinion that:

“(i) Immediately following the date on which the liability is proposed to be met by the cell assets of the protected cell, the protected cell will be able to

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discharge its liabilities as they fall due; and

“(ii) Having regard to the prospects of the protected cell, the intentions of the directors with respect to the management of the protected cell’s business, and the amount and character of the financial resources that will in their view be available to the protected cell, the protected cell will be able to continue to carry on business and will be able to discharge its liabilities as they become due or until the protected cell is dissolved, whichever first occurs.

“(39) A director who makes a statement under paragraph (37) or paragraph (38) of this subsection without having reasonable grounds for the opinion expressed in the statement violates this act and may be removed by order of the Commissioner.

“(40) If a protected cell captive insurer is liable for any penalty, under this act or otherwise, due to an act or failure to act of a protected cell of the protected cell captive insurer or of an officer or director of a protected cell of the protected cell captive insurer, the penalty shall:

“(A) Only be met by the protected cell captive insurer from the cell assets of the protected cell; and

“(B) Not be enforceable in any way against any other assets of the protected cell captive insurer or assets of any other protected cell.

“(41) The directors of a protected cell captive insurer shall establish and maintain, or cause to be established and maintained, procedures:

“(A) To segregate cell assets and liabilities separate and separately identifiable from general assets and liabilities;

“(B) To segregate cell assets and liabilities of each protected cell separate and separately identifiable from cell assets and liabilities of any other protected cell; and

“(C) Where relevant, to apportion or transfer assets and liabilities between protected cells or between protected cells and general assets and liabilities of the protected cell captive insurer.

“(42) If a protected cell captive insurer enters into an agreement with respect to a protected cell of the protected cell captive insurer, a director shall ensure that:

“(A) The other party to the transaction knows, or ought reasonably to know, that the protected cell captive insurer is acting with respect to a particular protected cell; and

“(B) The minutes of any meeting of directors held with regard to the agreement clearly record the fact that the company was entering into the agreement with respect to the protected cell and that the obligation imposed by subparagraph (A) of this paragraph was, or will be, complied with.

“(43) The duties of a director of a protected cell captive insurer under this act shall be in addition to, and not in lieu of, those under other applicable law.

“(44) Any act, matter, deed, agreement, contract, instrument under seal, or other instrument or arrangement which is to be binding on or to inure to the benefit of a protected cell that is not an incorporated protected cell shall be executed by the protected cell captive insurer for and on behalf of the protected cell, shall be identified, and, if in writing, shall indicate that the execution is in the name of, by, or for the account of the protected cell.

“(45) If a protected cell captive insurer fails to comply with paragraph (41) of this subsection:

“(A) The directors of the protected cell captive insurer shall,

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notwithstanding any provisions to the contrary in the protected cell's organizational documents or in any contract with the protected cell captive insurer or otherwise, shall be personally liable for the liabilities of the protected cell captive insurer and the protected cell under the act, matter, deed, agreement, contract, instrument or arrangement that was executed; and

“(B)(i) Unless they were fraudulent, reckless, negligent, or acted in bad faith, the directors of the protected cell captive insurer shall have a right of indemnity, in the case of a matter on behalf of or attributable to a protected cell, against the assets of the protected cell.

“(ii) In the case of a matter not on behalf of or attributable to a protected cell, the directors shall have a right of indemnity against the general assets of the protected cell captive insurer.

“(46) Notwithstanding the provisions of paragraph (45)(A) of this subsection, a court may relieve a director of all or part of the personal liability under paragraph (45) of this subsection if he or she satisfies the court that he or she should be relieved because:

“(A) The director was not aware of the circumstances giving rise to the liability and, in being not so aware, was not fraudulent, reckless, or negligent and did not act in bad faith; or

“(B) The director expressly objected, and exercised such rights as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to the liability.

“(47) If, pursuant to the provisions of paragraph (46) of this subsection, the court relieves a director of all or part of his or her personal liability under paragraph (45)(A) of this subsection, the court may order that the liability in question shall instead be met from such of the protected cell or general assets of the account of the protected cell captive insurer as may be specified in the order.

“(48) Any provision in the organizational document of a captive insurer or any other contractual provision under which the protected cell captive insurer may be liable, which provision purports to indemnify directors in respect of conduct which would otherwise prohibit them from indemnification by virtue of paragraph (46) of this subsection, shall be void.

“(49) A captive insurer may amend its organizational document to become a protected cell captive insurer.

“(50) The amendment of the organizational document of a captive insurer to become a protected cell captive insurer shall require approval by:

“(A) Holders of 2/3 of the outstanding shares or ownership interests of the captive insurer, unless a greater amount is required by the organizational document of the captive insurer; and

“(B) All the creditors of the captive insurer; provided, that if the consent of all the creditors of the captive insurer cannot be obtained, the amendment may be approved by the Commissioner if he or she is satisfied that no creditor will be materially prejudiced by the amendment.

“(51) A protected cell captive insurer may amend its other organizational document to cease to be a protected cell captive insurer.

“(52) The amendment of the other organizational document of a captive insurer to cease to be a protected cell captive insurer shall require approval by:

“(A) The Commissioner;

“(B) Holders of 2/3 of the outstanding shares or ownership interests of the protected cell captive insurer, unless a greater amount is required by the other organizational

document of the protected cell captive insurer;

“(C) Two-thirds of the participants of each protected cell; and

“(D) All the creditors of the protected cell captive insurer and its protected cells; provided, that if the consent of all the creditors of the captive insurer and its protected cells cannot be obtained, the amendment may be approved by the Commissioner upon being satisfied that no creditor will be materially prejudiced by the amendment.

“(53) If a captive insurer or protected cell captive insurer seeks to change its status in accordance with paragraph (49) or (51) of this subsection, the Commissioner shall issue a certificate of authority that is appropriate to the amended status of the company if there is delivered to the Commissioner:

“(A) A copy of the amendment to its name; and

“(B) Evidence satisfactory to the Commissioner that the requirements of paragraph (50) or (52) of this subsection have been met.

“(54) If a company changes its status in accordance with this section, the change of status shall take effect when the Commissioner issues a new certificate of authority.

“(55) A protected cell of a protected cell captive insurer may be transferred to another protected cell captive insurer.

“(56) The protected cell captive insurers between which a protected cell is being transferred shall enter into a written agreement that sets forth the terms of the transfer.

“(57) A transfer of a protected cell shall be approved when the directors of each protected cell captive insurer who authorized the transfer have approved the transfer and:

“(A) When the transfer agreement is approved by the Commissioner as an arrangement in accordance with this act;

“(B) When the transfer agreement is consented to by at least 2/3 of the participants of the protected cell being transferred and all the creditors, if any, of that protected cell; or

“(C) If the agreement of all the creditors of the cell cannot be obtained, when the transfer is approved by the Commissioner upon being satisfied that no creditor of the cell will be materially prejudiced by the transfer.

“(58) Within 30 days of a transfer agreement being approved by the Commissioner, the protected cell captive insurer to which the protected cell is being transferred shall deliver to the Commissioner:

“(A) A copy of the executed transfer agreement; and

“(B) A declaration made in accordance with paragraph (59) of this subsection, signed by a majority of the directors of the protected cell captive insurer transferring the protected cell who authorized the transfer.

“(59) The declaration required in paragraph (58)(B) of this subsection shall state that each director has reason to believe that:

“(A) The protected cell being transferred is able to discharge its liabilities as they become due;

“(B) There are no creditors of the protected cell captive insurer from which the cell is being transferred whose interests will be unfairly prejudiced by the transfer; and

“(C) The transfer agreement has been approved in accordance with this act.

“(60) If a protected cell captive insurer fails to deliver the documents mentioned in paragraph (58) of this subsection within the 30-day period, the Commissioner may void the

“(61) The Commissioner may void the transfer and order the removal of any director who makes a declaration under paragraph (59) of this subsection without having the grounds to do so.

“(62) Upon delivery of the documents referred to in paragraph (58) to the Commissioner, the Commissioner shall, if those documents comply with this act:

“(A) Record the transfer of the protected cell;

“(B) Issue to the protected cell a new certificate of authority; and

“(C) Record that the protected cell has ceased to be a protected cell of the protected cell captive insurer that transferred the protected cell.

“(63) Upon the issuance of the new certificate of authority:

“(A) The protected cell shall cease to be a protected cell of the protected cell captive insurer that transferred it;

“(B) The protected cell becomes a protected cell of the protected cell captive insurer to which it has been transferred;

“(C) If a protected cell was an incorporated protected cell or an unincorporated protected cell;

“(i) All property and rights to which the protected cell was entitled immediately before the issue of the new certificate of authority shall remain the property and rights of the protected cell;

“(ii) The liabilities, and all contracts, debts, and other obligations to which the protected cell was subject immediately before the issue of the new certificate of authority, shall remain the liabilities, contracts, debts, and other obligations of the protected cell; and

“(iii) All actions and other legal proceedings which, immediately before the issue of the new certificate of authority were pending by or against such protected cell may be continued by or against the protected cell.

“(64) The operation of paragraph (63) of this subsection shall not be regarded as:

“(A) A breach of contract or otherwise as a civil wrong;

“(B) A breach of any contractual provision prohibiting, restricting, or regulating the assignment or transfer of rights or liabilities; or

“(C) Giving rise to any remedy by a party to a contract or other instrument as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument or of any obligation or relationship.

“(65) A protected cell shall not be transferred under this act if the transfer would be inconsistent with the articles of incorporation or similar organizational document, if applicable, of the protected cell, the protected cell captive insurer transferring the protected cell, or the protected cell captive insurer to which it is to be transferred.

“(66) Any insurer, including a captive insurer, that is not a protected cell captive insurer, may become a protected cell of a protected cell captive insurer.

“(67) A protected cell of a protected cell captive insurer may apply to the Commissioner to be incorporated as an insurer, including a captive insurer, independent from the protected cell captive insurer.

“(68) An application made under paragraph (67) of this subsection shall be approved by 2/3 of the participants of the protected cell or, if the protected cell has more than one class of participants, 2/3 approval of each class of participants, unless the organizational document of the protected cell provides for a greater percentage.

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“(69) If a protected cell has made an application under paragraph (68) of this subsection, a participant of the protected cell who objects to the protected cell being incorporated as an insurer, including a captive, independent of its protective cell captive may petition the Commissioner for an order denying the application on the grounds that the incorporation or the terms of the incorporation unfairly prejudice his or her interests.

“(70) An application shall not be made under paragraph (69) of this subsection after the expiration of the 30-day period following the application being made under paragraph (67) of this subsection.

“(71) If a protected cell is licensed as a legal entity pursuant to this section, and if the protected cell was either an incorporated protected cell or an unincorporated protected cell of a protected cell captive insurer:

“(A) All property and rights to which the protected cell was entitled immediately before its licensure as a new entity shall remain the property and rights of the new entity;

“(B) The protected cell shall remain subject to all criminal and civil liabilities and all contracts, debts, and other obligations to which the protected cell was subject immediately before its licensure as a new entity;

“(C) All contracts, debts, and other obligations of the protected cell shall remain the contracts, debts, other obligations of the new entity; and

“(D) All actions and other legal proceedings which, immediately before the licensure of the protected cell as a new entity, were pending by or against the protected cell may be continued by or against the new entity.

“(72) The operation of paragraph (71)(B) and (D) of this subsection shall not be regarded as:

“(A) A breach of contract;

“(B) A breach of any contractual provision prohibiting, restricting, or regulating the assignment or transfer of rights or liabilities; or

“(C) Giving rise to any remedy by a party to a contract or other instrument as an event of default under the contract or other instrument or as causing or permitting the termination of any contract or other instrument or of any obligation or relationship.

“Sec. 6. Liquidation and rehabilitation of protected cells.

“(a) If a protected cell captive insurer with one or more protected cells is being liquidated under this act, the protected cell captive insurer shall not be deemed to have no assets and no liabilities if the protected cell captive insurer continues to have a protected cell.

“(b) In the course of the liquidating the protected cell captive insurer, each protected cell shall be:

“(1) Transferred to another protected cell captive insurer;

“(2) Liquidated;

“(3) Continued as a separate legal entity or protected cell under the law of another jurisdiction;

“(4) Incorporated independently of the protected cell captive insurer; or

“(5) Merged with another insurer.

“(c) If a protected cell captive insurer is being liquidated, the liquidation shall not apply with respect to any protected cell of the protected cell captive insurer.

“(d) If a protected cell of a protected cell captive insurer is being liquidated, the liquidation shall not apply with respect to the protected cell captive insurer or any other

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protected cell of the protected cell captive insurer.

“(e) The court, on the application of a protected cell captive insurer, may determine, in accordance with this act, if a liability of the protected cell captive insurer shall be satisfied by its general assets, by the cell assets of a specific protected cell of the company, or by a combination of those assets.

“(f) Notwithstanding any statutory provision or rule of law to the contrary, in the winding-up of a captive insurer, the liquidator shall:

“(1) Deal with the captive insurer’s assets only in accordance with the procedures set out in subsection (h)(6) of this section; and

“(2) In the discharge of the claims of creditors of the captive insurer, shall apply the captive insurer’s assets to those entitled to have recourse thereto under the provisions of section 5.

“(g)(1) A petition for a liquidation or rehabilitation order with respect to a protected cell of a protected cell captive insurer may be made by:

“(A) The protected cell captive insurer;

“(B) The majority of the directors of the protected cell captive insurer;

“(C) Any creditor of that protected cell; or

“(D) The Commissioner.

“(2) Notice of a petition to the court for a liquidation or rehabilitation order with respect to a protected cell of a captive insurer shall be served upon:

“(A) The captive insurer;

“(B) The Commissioner; and

“(C) Such other persons as the court may direct.

“(h)(1) Subject to the provisions of this section, the court may make a liquidation or rehabilitation order with respect to a protected cell if, in relation to a captive insurer, the court is satisfied that:

“(A) The cell assets attributable to a particular protected cell of the captive insurer, and in those cases where creditors of the captive insurer with respect to the protected cell are entitled to have recourse to the captive insurer’s general assets, are, or are likely to be, insufficient to discharge the claims of creditors with respect to that protected cell; and

“(B) An order would achieve the purposes set forth in paragraph (3) of this subsection.

“(2) A liquidation or rehabilitation order may be made with respect to one or more protected cells.

“(3) A liquidation or rehabilitation order shall direct that the business and cell assets of, or attributable to, a protected cell shall be managed by a liquidator or rehabilitator specified in the order for the purpose of:

“(A) The orderly closing or rehabilitation of the business of, or attributable to, the protected cell; and

“(B) The distribution of the cell assets, or assets attributable to the protected cell, to those having recourse thereto.

“(i) The liquidator or rehabilitator of a protected cell:

“(1) Shall have all the functions and powers of the directors responsible for the business and cell assets of, or attributable to, the protected cell;

“(2) May at any time apply to the court for directions as to the extent or exercise of any function or power, for the liquidation or rehabilitation order to be discharged or varied, or

for an order as to any matter occurring during the course of the liquidation or rehabilitation.

“(3) In exercising his functions and powers, shall act as the agent of the captive insurer and shall not incur personal liability except to the extent that he or she acts fraudulently, recklessly, negligently, or in bad faith.

“(j) Upon the filing of a petition for, and during the period of operation of, a liquidation or rehabilitation order:

“(1) No proceedings shall be instituted or continued by or against the captive insurer or protected cell in respect of which the liquidation or rehabilitation order was made; and

“(2) No action shall be taken to enforce any security or in the execution of legal process with respect to the business or cell assets of or attributable to the protected cell with respect to which the liquidation or rehabilitation order was made, except by leave of the court.

“(k) During the period of operation of a liquidation or rehabilitation order:

“(1) The functions and powers of the directors shall cease with respect to the business of, or attributable to, the protected cell or cell assets for which the order was made; and

“(2)(A) The liquidator or rehabilitator of the protected cell shall be entitled to be present at all meetings of the captive insurer or protected cell and to vote at such meetings as if he or she were a director of the captive insurer.

“(B) Unless there are no creditors that are entitled to have recourse to the captive insurer’s general assets, the liquidator’s or rehabilitator’s voting authority shall include matters concerning the captive insurer’s general assets.

“(l)(1) The court shall not discharge a liquidation or rehabilitation order issued pursuant to this section unless it appears to the court that the purpose for which the order was made has been achieved, substantially achieved, or is incapable of being achieved.

“(2) The court, on hearing a petition for the discharge or variation of a liquidation or rehabilitation order, may make any interim order or adjourn the proceeding.

“(3) Upon the court issuing an order discharging a liquidation or rehabilitation order for a protected cell on the ground that the purpose for which the order was made had been achieved or substantially achieved, the court may direct that any payment made by the liquidator or rehabilitator to any creditor of the captive insurer, with respect to that protected cell, shall be deemed full satisfaction of the liabilities of the captive insurer to the creditor with respect to the protected cell, and the creditor’s claims against the captive insurer with respect to that protected cell shall be of its administrative, regulatory, and marketing activities as prescribed by law.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia