

Island of  Guernsey

Ordinance of the States

**XXI
2005**

Made 26th October, 2005
Coming into operation 26th October, 2006

**The Protected Cell Companies
(Amendment) Ordinance, 2005**

The Protected Cell Companies (Amendment) Ordinance, 2005

THE STATES, in pursuance of their Resolution of the 28th September, 2005^a, and in exercise of the powers conferred on them by section 1 of the Companies (Enabling Provisions) (Guernsey) Law, 1996^b and all other powers enabling them in that behalf, hereby order:-

Amendment of 1997 Ordinance.

1. In the Protected Cell Companies Ordinance, 1997, as amended^c, after section 14 insert the following section -

"Arrangements between cells affecting cellular assets, etc.

14A. (1) For the avoidance of doubt, a protected cell company may, in the ordinary course of its business or the business attributable to any of its cells, effect an arrangement within the meaning of subsection (2).

(2) An "**arrangement**" is a dealing with, or a transfer, disposition or attribution of, the cellular or non-cellular assets of a protected cell company which has effect -

(a) as between any of the company's cells, or

(b) as between the company and any of its cells,

^a Article XIII of Billet d'État No. XIV of 2005.

^b Order in Council No. XII of 1996.

^c Ordinance No. V of 1997, amended by No. XV of 1998.

but an "arrangement" does not include a transaction between the company and another person.

(3) The Court, on the application of any person mentioned in subsection (4), and on such terms and conditions as it thinks fit, may make, and subsequently vary, rescind, replace or confirm, an order in respect of -

- (a) the execution, administration or enforcement of an arrangement, or
- (b) any cellular or non-cellular assets of a protected cell company subject to, or affected by, an arrangement, including (without limitation) an order as to their attribution, transfer, disposition, tracing, vesting, preservation, application, recovery or delivery.

(4) An application for an order under subsection (3) may be made by -

- (a) the protected cell company,
- (b) a director, liquidator or administrator of the company,
- (c) the receiver or administrator of any cell of the company affected by the arrangement,

- (d) a manager of the business of the company,
- (e) a manager of the business of or attributable to any cell of the company affected by the arrangement, or
- (f) with leave of the Court, any other person who has, directly or indirectly, some interest in, or who is otherwise affected by, the arrangement.

(5) A protected cell company shall, in respect of an arrangement, make such adjustments to its accounting records, including those of or attributable to its cells, as may be necessary or expedient.

(6) For the avoidance of doubt -

(a) the adjustments referred to in subsection (5) may include the transfer, disposition or attribution of assets, rights and liabilities of the protected cell company -

(i) as between any of the company's cells,
or

(ii) as between the company and any of its cells,

but without prejudice to the singular legal personality of the company provided by section 1(2), and

(b) the effecting of an arrangement does not require a cell transfer order.

(7) An order under subsection (3) may be made ex parte.

(8) Where pursuant to an order under subsection (3) a protected cell company is obliged to make a transfer, distribution or attribution from the cellular assets attributable to one cell of the company to the cellular assets attributable to another cell thereof, and the cellular assets attributable to the first cell are insufficient, the Court may order that the company shall so far as possible make up the deficiency from its non-cellular assets, but without prejudice to the liability of any other person.

(9) This section has extra-territorial application."

Citation.

2. This Ordinance may be cited as the Protected Cell Companies (Amendment) Ordinance, 2005.

Commencement.

3. This Ordinance shall come into force on the 26th October, 2005.