

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956
CHAPTER 48
PROTECTED CELL INSURANCE COMPANIES

500.4801 Definitions.

Sec. 4801.

As used in this chapter:

- (a) "Domestic insurer" means an insurer domiciled in this state.
- (b) "Fair value" means the following:
 - (i) For cash, the amount of the cash.
 - (ii) For assets other than cash, the amount at which that asset could be bought or sold in the current transaction between arm's length, willing parties. If available, the quoted mid-market price for the asset in active markets shall be used; and if quoted mid-market prices are not available, a value shall be determined using the best information available considering values of similar assets and other valuation methods, such as present value of future cash flows, historical value of the same and similar assets, or comparison to values of other asset classes, the value of which have been historically related to the subject asset.
- (c) "Fully funded" means that, with respect to any exposure attributed to a protected cell, the fair value of the protected cell assets, on the date on which the insurance securitization is effected, equals or exceeds the maximum possible exposure attributable to the protected cell with respect to such exposures.
- (d) "General account" means the assets and liabilities of a protected cell company other than protected cell assets and protected cell liabilities.
- (e) "Indemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered by its incurring a specified level of losses under its insurance or reinsurance contracts.
- (f) "Nonindemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered solely by some event or condition other than the individual protected cell company incurring a specified level of losses under its insurance or reinsurance contracts.
- (g) "Protected cell" means an identified pool of assets and liabilities of a protected cell company segregated and insulated by means of this chapter from the remainder of the protected cell company's assets and liabilities.
- (h) "Protected cell account" means a specifically identified bank or custodial account established by a protected cell company for the purpose of segregating the protected cell assets of 1 protected cell from the protected cell assets of other protected cells and from the assets of the protected cell company's general account.
- (i) "Protected cell assets" means all assets, contract rights, and general intangibles, identified with and attributable to a specific protected cell of a protected cell company.
- (j) "Protected cell company" means a domestic insurer or captive insurer that has 1 or more protected cells.
- (k) "Protected cell company insurance securitization" means the issuance of debt instruments, the proceeds from which support the exposures attributed to the protected cell, by a protected cell company where repayment of principal or interest, or both, to investors pursuant to the transaction terms is contingent upon the occurrence or nonoccurrence of an event with respect to which the protected cell company is exposed to loss under insurance or reinsurance contracts it has issued.
- (l) "Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell company.

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500.4803 Protected cells; establishment; written approval of commissioner; name or designation; attribution of assets and liabilities; attachment of security interest; contracting with third party; identification of protected cell assets and protected cell liabilities.

Sec. 4803.

- (1) A protected cell company may establish 1 or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments submitted by the protected cell company with respect to each protected cell in connection with an insurance securitization. Upon the written approval of the commissioner of the

plan of operation, which shall include, but is not limited to, the specific business objectives and investment guidelines of the protected cell, the protected cell company, in accordance with the approved plan of operation, may attribute to the protected cell insurance obligations for its insurance business and obligations relating to the insurance securitization and assets to fund the obligations. A protected cell shall have its own distinct name or designation, which shall include the words "protected cell". The protected cell company shall transfer all assets attributable to a protected cell to 1 or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets shall be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(2) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities shall be made by a protected cell company between the protected cell company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell, or from investors in the form of principal on a debt instrument issued by a protected cell company in connection with a protected cell company securitization, shall be in cash or in readily marketable securities with established fair values.

(3) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell company. Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the protected cell company, and the protected cell company shall not be, and shall not hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subsection, the protected cell company may allow for a security interest to attach to protected cell assets or a protected cell account if in favor of a creditor of the protected cell and as otherwise allowed under applicable law.

(4) This chapter shall not be construed to prohibit the protected cell company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell company's general account.

(5) A protected cell company shall establish administrative and accounting procedures necessary to properly identify the 1 or more protected cells of the protected cell company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell company shall keep protected cell assets and protected cell liabilities separate and separately identifiable from the assets and liabilities of the protected cell company's general account and attributable to 1 protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells. If this subsection is violated, the remedy of tracing is applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell company's general account. The remedy of tracing is not an exclusive remedy.

(6) When establishing a protected cell, the protected cell company shall attribute to the protected cell assets with a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

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500.4805 Income credited to or charged against protected cell; insurance securitization; language to be contained in documentation; cessation of business of protected cell.

Sec. 4805.

(1) The protected cell assets of a protected cell shall not be charged with liabilities arising out of any other business the protected cell company may conduct. All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities.

(2) The income, and gains and losses, whether realized or unrealized, from protected cell assets and protected cell liabilities shall be credited to or charged against the protected cell without regard to other income and gains or losses of the protected cell company, including income and gains or losses of other protected cells. Amounts attributed to any protected cell and accumulations on the attributed amounts may be invested and reinvested. The investments in a protected cell or cells shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the protected cell company.

(3) Assets attributed to a protected cell shall be valued at their fair value on the date of valuation or if there is no

readily available market, as provided in the contract or the rules or other written documentation applicable to the protected cell.

(4) A protected cell company with respect to any of its protected cells shall engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell. A protected cell company insurance securitization that is nonindemnity triggered shall qualify as an insurance securitization under the terms of this chapter only after the commissioner by rule, regulation, or order addresses the methods of funding of the portion of this risk that is not indemnity based and addressing accounting, disclosure, risk based capital treatment, and risks associated with such securitizations. A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited. Protected cell assets may be used to pay interest or other consideration on any outstanding debt or other obligation attributable to that protected cell. Nothing in this subsection shall be construed or interpreted to prevent a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing interest or other consideration.

(5) In all protected cell company insurance securitizations, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction will be attributed. In addition, the contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection and subject to the provisions of this chapter and any other applicable law, rule, or regulation, the failure to include such language in the contracts or other documentation shall not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent this chapter.

(6) A protected cell company may attribute to a protected cell account only the insurance obligations relating to the protected cell company's general account. Under no circumstances shall a protected cell be authorized to issue insurance or reinsurance contracts directly to policyholders or reinsureds or have any obligation to the policyholders or reinsureds of the protected cell company's general account.

(7) At the cessation of business of a protected cell in accordance with the plan approved by the commissioner, the protected cell company voluntarily shall close out the protected cell account.

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500.4807 Creditors; recourse; activities, assets, and obligations not subject to chapters 77 and 79; establishment of protected cell not considered fraudulent conveyance.

Sec. 4807.

(1) Protected cell assets are only available to the creditors of the protected cell company that are creditors for that protected cell and are entitled, in conformity with this chapter, to have recourse to the protected cell assets attributable to that protected cell. Protected cell assets are absolutely protected from the creditors of the protected cell company that are not creditors for that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. Creditors for a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the protected cell company's general account. Protected cell assets are only available to creditors of a protected cell company after all protected cell liabilities have been extinguished or otherwise provided for in accordance with the plan of operation relating to that protected cell.

(2) When an obligation of a protected cell company to a person arises from a transaction, or is otherwise imposed, with respect to a protected cell, both of the following apply:

(a) That obligation of the protected cell company extends only to the protected cell assets attributable to that protected cell, and the person, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell.

(b) That obligation of the protected cell company does not extend to the protected cell assets of any other protected cell or the assets of the protected cell company's general account, and that person, with respect to that obligation, is not entitled to have recourse to the protected cell assets of any other protected cell or the assets of the protected cell company's general account.

(3) When an obligation of a protected cell company relates solely to the general account, the obligation of the protected cell company extends only to, and that creditor, with respect to that obligation, is entitled to have recourse only to, the assets of the protected cell company's general account.

(4) The activities, assets, and obligations relating to a protected cell are not subject to the provisions of chapters

77 and 79, and neither a protected cell nor a protected cell company shall be assessed by, or otherwise be required to contribute to, any guaranty fund or guaranty association in this state with respect to the activities, assets, or obligations of a protected cell. Nothing in this subsection affects the activities or obligations of an insurer's general account.

(5) The establishment of 1 or more protected cells alone does not constitute, and shall not be considered to be, a fraudulent conveyance, an intent by the protected cell company to defraud creditors, or the carrying out of business by the protected cell company for any other fraudulent purpose.

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500.4809 Receiver to deal with protected cell company's assets and liabilities; effect of order of conservation, rehabilitation, or liquidation.

Sec. 4809.

(1) Notwithstanding any other provision of law, rule, or regulation, upon an order of conservation, rehabilitation, or liquidation of a protected cell company, the receiver shall deal with the protected cell company's assets and liabilities, including protected cell assets and protected cell liabilities, in accordance with this chapter.

(2) For amounts recoverable under a protected cell company insurance securitization, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the protected cell company, notwithstanding any other provision to the contrary in the contracts or other documentation governing the protected cell company insurance securitization.

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500.4811 Insurance securitization not considered insurance or reinsurance contract; investor not considered as conducting insurance business in state.

Sec. 4811.

A protected cell company insurance securitization is not, and shall not be considered to be, an insurance or reinsurance contract. An investor in a protected cell company insurance securitization, by sole means of this investment, is not, and shall not be considered to be, conducting an insurance business in this state. The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in a protected cell company insurance securitization are not, and shall not be considered to be, conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business by virtue of their activities in connection with that business.

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500.4813 Rules, regulations, or orders.

Sec. 4813.

The commissioner may issue rules, regulations, or orders necessary to effectuate the purposes of this chapter.

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