

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

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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