

Appendix 9

In this appendix underlining indicates new text and striking through indicates deleted text.

N.B. As mentioned in paragraph 7 of this consultation paper, these regulations are made under the Companies Law 2009 which is administered by DIFCA and the Registrar of Companies. Accordingly, the proposals in this Appendix 9 are being consulted upon jointly by the DFSA and DIFCA.

Companies Regulations (COR)



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12. PROTECTED CELL COMPANIES

12.1 Application and Interpretation

12.1.1 The Regulations in this chapter may be referred to as the Company (PCC) Regulations.

12.1.2 (1) In these Company (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 Company (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 12.9 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 12.20.
- (f) 'cellular assets' comprise the assets of the Protected Cell Company attributable to the Company's cells pursuant to Regulation 12.11.2;
- (g) a 'cellular dividend' is a dividend payable by a Protected Cell Company in respect of cell shares pursuant to the provisions of Regulation 12.9.4;
- (h) a 'Closed Ended Protected Cell Company' has the meaning given in Regulation 12.2.1(2)(b);
- (i) a 'Fund' and a "Fund Manager" have the respective meanings given in the Collective Investment Law [2010];-
- ~~(h)~~ (j) 'Insolvency (PCC) Regulations' means the Regulations contained in chapter 8 of the Insolvency Regulations;
- ~~(i)~~ (k) 'Insurance Business' has the meaning given in the business rules made under the Regulatory Law 2004;
- ~~(j)~~ (l) 'liquidator' has the meaning given in the Insolvency Law 2009;
- (m) 'Managing a Collective Investment Fund' has the meaning given in the GEN module of the DFSA Rulebook;



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- ~~(k)~~ (n) a reference to a 'shareholder' is, as the context requires, a reference to a holder of a share or of a cell share;
- ~~(l)~~ (o) 'non-cellular assets' are assets of a Protected Cell Company which are not cellular assets, pursuant to Regulation 12.11.4;
- (p) an 'Open Ended Protected Cell Company' has the meaning given in Regulation 12.2.1(2)(a);
- ~~(m)~~ (q) 'Protected Cell Company' is a company incorporated as, or converted into, a Protected Cell Company in accordance with the provisions of these Company (PCC) Regulations; and
- ~~(n)~~ (r) 'receiver' has the meaning given in the Insolvency Law 2004.
- (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 reference to an Umbrella Fund referred to in (2), any references to the terms Fund Manager, Governing Body, Unitholder or any other capitalised term has the meaning given to that term in the Collective Investment Law [2010] or any rules made for the purposes of that law.

12.1.3 In accordance with Article 114 of the Law, and subject only to Regulation 12.1.4, to



the extent that these Company (PCC) Regulations are inconsistent with any provision of the Law or with any other provision of the Company Regulations, these Company (PCC) Regulations shall prevail and shall be taken to exclude, waive or modify the Law or Regulations to the extent of any such inconsistency.

12.1.4 The provisions of the Collective Investment Law [2010], the Regulatory Law 2004 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 in these Regulations.

12.1.5 In accordance with Article 114(2)(b) of the Law, the application of Article 51(1) and (2) of the Law is modified in relation to its application to a Protected Cell Company formed solely for the purpose of conducting business of a Fund so as to permit such a Company to be managed by one director, which may be a body corporate.

12.2 Protected Cell Companies as a type of company

12.2.1 (1) Subject to the provisions of these Company (PCC) Regulations and of the Law, a person may, pursuant to Article 114 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 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 12.4.1.

(2) For the purposes of these Company (PCC) Regulations:

- (a) an Open Ended Protected Cell company is a Company whose Articles comply with Regulation 12.3.3, 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.

12.2.2 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 Company (PCC) Regulations.

12.2.3 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.



12.3 Name and articles of Protected Cell Company

12.3.1 The name of a Protected Cell Company shall, without prejudice to the application of Article 32 of the Law, include the expressions as provided below:

- (a) in the case of a Closed Ended Protected Cell Company, shall include 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).

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

12.3.3 (1) The articles 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 an Open Ended Protected Cell company shall contain a provision to the effect that shareholders are entitled to have their shares redeemed by the Fund Manager upon request at a price based on the net asset value of the property of the relevant cell in the manner provided in section 8.6 of the CIR module of the DFSA Rulebook.

12.3.4 A Company may, in order to comply with Regulation 12.3.3, alter its articles by Special Resolution.

12.4 Permissible uses and DFSA consent

12.4.1 (1) Subject to (2) and (3), 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 sole purpose of conducting Insurance Business or the business of a Fund; and
- (b) the DFSA has given its prior written consent.

(2) A Protected Cell Company formed for the sole purpose of conducting Insurance Business shall be formed as a Closed Ended Protected Cell Company.

(3) A Protected Cell Company formed for the sole purpose of conducting the business of a Fund shall be formed as an Open Ended Protected Cell Company.

12.4.2 Where under Regulation 12.4.1(1) the DFSA grants consent following any representations from an applicant as to the proposed activities or objectives of the Protected Cell Company, including any such representations in a business plan, the Protected Cell Company must not carry out any activity or pursue any objective contrary to the effect of those representations without obtaining the further prior written consent of the DFSA.



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12.4.3 An application for consent under Regulation 12.4.1(1) or 12.4.2 shall be made in such manner as the DFSA may direct.

12.4.4 The DFSA may, in its absolute discretion, refuse to grant its consent under Regulation 12.4.1(1) or 12.4.2.

12.4.5 Without limiting any requirement to which a Protected Cell Company may be subject under other legislation applicable in the DIFC, a Protected Cell Company must provide written notice to the DFSA of any proposed alteration to the Company's articles.

- (a) any proposed reconstruction or amalgamation involving the Company;
- (b) any proposal to appoint a cell receiver, or to appoint a receiver or administrative receiver, or to wind up the affairs of the Company;
- (c) any proposal to replace a director of the Company, to appoint any additional director or to decrease the number of directors; and
- (d) any event or circumstance which may materially adversely affect the fitness and propriety of a director to act as such.

12.4.6 Effect must not be given to any proposal in Regulation 12.4.5 unless the DFSA has given written approval to the proposal.

12.4.7 Upon refusing to grant:

- (a) consent under Regulation 12.4.1(1) or 12.4.2; or
- (b) approval under Regulation 12.4.6;

the DFSA will without undue delay inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal.

12.4.8 In accordance with Article 27(2)(j) of the Regulatory Law 2004, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where:

- (a) an applicant appeals against a decision of the DFSA in relation to an application for consent under Regulation 12.4.1(1) or 12.4.2;
- (b) a person appeals against a decision of the DFSA under Regulation 12.4.4; or
- (c) an applicant appeals against a decision of the DFSA in relation to an application for approval under Regulation 12.4.6.

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

12.5.1 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 11 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 12.4.1.

12.5.2 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 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 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 12.4.1(1).

12.5.3 An application made under Regulation 12.5.1 or 12.5.2 shall be accompanied by the appropriate fee prescribed in App1.

12.6 Withdrawal of DFSA consent

12.6.1 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:
 - (i) has contravened any requirement imposed by or under the Law or these 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 to 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



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- (d) it is in the interests of the DIFC to revoke the consent in order to protect the interests of members or creditors, or potential members or creditors, of the Company.

12.6.2 For the purposes of Regulation 12.6.1 (d), the DFSA may take into account any matter relating to or affecting:

- (a) the Company;
- (b) any person employed by or associated with the Company;
- (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 any director of the Company;
- (f) any director of any such body corporate;
- (g) any person exercising influence over any such body corporate; or
- (h) the interests of a shareholder or creditor.

12.6.3 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.

12.6.4 Upon deciding to revoke its consent, the DFSA will without undue delay inform the Company in writing of such revocation and, where requested by the Company, the reasons for such refusal.

12.6.5 In accordance with Article 27(2)(j) of the Regulatory Law 2004, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where a Protected Cell Company appeals against a decision of the DFSA to revoke its consent under this section.

12.7 Directions by the DFSA

12.7.1 The DFSA may give a direction to a Protected Cell Company or any of its directors under this section 12.7 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:



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- (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.

12.7.2 Without limiting the generality of Regulation 12.7.1, a direction under this section 12.7 may:

- (a) require the Company to cease the issue or redemption, or both the issue and redemption, of cell shares or any class of cell shares; or
- (b) require the Company or any director of the Company 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.

12.7.3 Subject to Regulation 12.7.4, if the consent is revoked, the revocation does not affect the operation of any direction under this section 12.7 which is then in force; and a direction under this section may be given in relation to a Company, in the case of which a consent has been revoked, if a direction under this section was already in force at the time of revocation.

12.7.4 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 section is to take effect in relation to the Company concerned.

12.7.5 The DFSA may, on its own initiative, or on the application of the Company, revoke or vary a direction given under this section 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.

12.7.6 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.

12.7.7 If the DFSA proposes to give a direction under this section, or gives such a direction with immediate effect, it will give written notice to the Company.

12.7.8 The notice will:

- (a) give details of the direction;
- (b) inform the person to whom it is given as to when the direction takes effect;
- (c) state the DFSA's reasons for giving the direction and for its determination as to when the direction takes effect; and
- (d) inform the person to whom it is given that he may make representations to the DFSA within such period as may be specified in the notice.

12.7.9 If, having considered any representations made by a person to whom the notice was given, the DFSA decides:

- (a) to give, or not to give, the direction in the way proposed;
- (b) to give the direction in a way other than proposed; or
- (c) if the direction has been given, to revoke, or not to revoke, the direction;

it will give written notice to the Company and, where requested by the Company, the reasons for such decision.

12.7.10 In accordance with Article 27(2)(j) of the Regulatory Law 2004, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where a Protected Cell Company or director appeals against a decision of the DFSA made under this section in relation to a direction.

12.8 Applications to the Court

12.8.1 This section 12.8 applies if the DFSA could give under Regulation 12.7.1, or has given, a direction in relation to a Protected Cell Company.

12.8.2 The Court may, on application of the DFSA under this section 12.8, 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) 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
- (c) any other order as the Court thinks fit.



12.8.3 The DFSA will:

- (a) give written notice of the making of an application under this section to:
 - (i) the Company; and
 - (ii) where the application seeks the removal of any director of the Company, that director; and
- (b) take such steps as it considers appropriate for bringing the application to the attention of the shareholders of the Company.

12.8.4 The Court may, on application of a person who is subject to a direction under section 12.7, 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.

12.9 Cell shares and share capital

12.9.1 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.

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

12.9.3 The proceeds of the issue of shares other than cell shares created and issued by a Protected Cell Company shall be comprised in the Company's non-cellular assets.

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

12.9.5 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; and accordingly, in determining for the purposes of Article 42 of the Law, 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.



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12.9.6 Except as provided in Regulation 12.9.9, a Protected Cell Company must prepare documentary evidence of title to cell shares (in this section 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.

12.9.7 Certificates need only be prepared in the circumstances referred to in Regulation 12.9.6 (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.

12.9.8 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.

12.9.9 Nothing in these Company (PCC) Regulations require a Company to prepare certificates in the following circumstances:

- (a) where the articles of the Company state that certificates will not be issued and contain provision as to other procedures for evidencing an entitlement to cell shares;



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- (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.

12.9.10 A Closed Ended Protected Cell Company may reduce the share capital of a cell if authorised by a Special Resolution and its articles. Article 40 of the Law shall apply to a reduction in the share capital of a cell as if a cell were a Company and the cell shares the shares of a Company for the purpose of that Article.

12.9.11 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 and the provisions in section 8.6 of the CIR module of the DFSA Rulebook and, where it does so, chapters 4 and 5 of Part 7 of the Law shall not apply to such redemption of shares.

12.10 Register of shareholders

12.10.1 No notice of any trust, express, implied or constructive, is to be entered on the Company's register of shareholders maintained under chapter 2 of Part 6 of the Law or be receivable by the Company.

12.10.2 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 days after the date of any alteration made to the register of shareholders.

12.10.3 The provisions of Article 32 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 12.10.2, with such adaptation as necessary to achieve that purpose.

12.11 Cellular and non-cellular assets

12.11.1 The assets of a Protected Cell Company shall be either cellular assets or non-cellular assets.



12.11.2 The cellular assets of a Protected Cell Company comprise the assets of the Company attributable to the cells of the Company.

12.11.3 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.

12.11.4 The non-cellular assets of a Protected Cell Company comprise the assets of the Company which are not cellular assets.

12.11.5 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 comprised in, the Company's non-cellular assets.

12.12 Prohibition on dealings or transactions between cells

12.12.1 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) amalgamate 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.

12.12.2 In considering whether or not to make an order referred to in Regulation 12.12.1, 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 relevant cells consent to the transfer, amalgamation or consolidation as the case may be or otherwise would not be unfairly prejudiced; and
 - (ii) that the shareholders of the Company and of each relevant cell consent to the transfer, amalgamation or consolidation as the case may be or otherwise would not be unfairly prejudiced; and
- (b) hear the representations, if any, of the DFSA.

12.12.3 The Court, on hearing an application for an order under this section 12.12, may make an interim order or an order adjourning the hearing, conditionally or unconditionally.



12.13 Separation of assets

12.13.1 In this section 12.13, '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).

12.13.2 Directors and officers of a Protected Cell Company 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.

12.13.3 The duty imposed by Regulation 12.13.2 is not breached by reason only that:

- (a) the directors and officers of a Protected Cell Company cause or permit 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) the directors and officers of a Protected Cell Company cause or permit 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.

12.13.4 In the event of a contravention of Regulation 12.13.2:

- (a) each director or officer in contravention, as the case may be, shall incur personal liability for any loss or damage as a consequence of the contravention; and
- (b) each such director or officer 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.

12.13.5 Regulation 12.13.4 is subject to Regulation 12.15.1.



12.14 Disclosure of dealings with Protected Cell Company

12.14.1 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.

12.14.2 If, in contravention of Regulation 12.14.1, 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) the directors shall incur personal liability to that person in respect of the transaction; and
- (e) each director 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.

12.14.3 Regulation 12.14.2 is subject to Regulation 12.15.1.

12.15 Further provisions concerning personal liability

12.15.1 Notwithstanding Regulations 12.13.4 and 12.14.2, the Court may relieve a director or officer, 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 a director or officer, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.



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12.15.2 Where, pursuant to Regulation 12.15.1, the Court relieves a director or officer of all or part of his personal liability under Regulation 12.13.4 or 12.14.2, 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.

12.15.3 Any provision in the articles 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 director or officer in the circumstances described in Regulation 12.13.4 or 12.14.2; or
- (b) indemnify directors or officers in respect of conduct which would otherwise disentitle them to an indemnity against non-cellular assets by virtue of Regulation 12.13.4 or 12.14.2;

shall be void.

12.16 Rights of creditors and implied terms

12.16.1 The rights of creditors of a Protected Cell Company shall correspond with the liabilities provided for in section 12.18.

12.16.2 No such creditor shall have any rights other than the rights referred to in this section 12.16 and in sections 12.17 and 12.18.

12.16.3 The following terms shall be implied in every transaction entered into by 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.



- 12.16.4** All sums recovered by a Protected Cell Company as a result of any such obligation as is described in Regulation 12.16.3 (c) shall be credited against any concurrent liability imposed under the implied term set out in Regulation 12.16.3 (b).
- 12.16.5** Any asset or sum recovered by a Protected Cell Company pursuant to the implied term set out in Regulations 12.16.3 (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.
- 12.16.6** 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.
- 12.16.7** Where under Regulation 12.16.6 (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.

12.17 Availability of cellular assets to creditors

12.17.1 Without prejudice to the provisions of sections 12.16 and 12.18:

- (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.



12.18 Satisfaction of liabilities attributable to cells

12.18.1 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.

12.18.2 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.

12.19 Disputes as to liabilities attributable to cells

12.19.1 In the event of any dispute as to:

- (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;

the Court, on the application of the Protected Cell Company or of the creditor in dispute with the Company, and without prejudice to any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

12.20 Transfer of cellular assets from Protected Cell Company

12.20.1 In this section 12.20, 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.

12.20.2 Subject to Regulation 12.20.3, no transfer of cellular assets attributable to a cell of a Protected Cell Company may be made except under the authority of, and in accordance with the terms and conditions of, a cell transfer order.

12.20.3 Nothing in this section 12.20 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.

12.20.4 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.

12.20.5 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.

12.20.6 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.

12.20.7 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.

12.20.8 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.

12.20.9 The provisions of this section 12.20 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 Company (PCC) Regulations.

12.21 Accounts and Audit

12.21.1 Regulation 6.7.1 does not apply to a Protected Cell Company and accordingly a Protected Cell Company must comply with the requirements of Part 9 of the Law to have its accounts audited and to file accounts with the Registrar, unless it is a Protected Cell Company formed for the sole purpose of conducting the business of a Fund, in which case, it is subject to the accounting, audit and reporting requirements in chapter 9 of the CIR module of the DFSA Rulebook.



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12.21.2 Where:

- (a) the Board of the DFSA makes Rules under the Regulatory Law 2004 or rules or regulations under any other applicable DIFC law; or
- (b) the DFSA imposes or varies a condition or restriction in relation to a consent, licence or authorisation under the Regulatory Law 2004 or under any other DIFC law, including in relation to a consent under these Company (PCC) Regulations;

which, in whole or in part, is, are or may be inconsistent with any of the provisions of chapters 2 and 3 of Part 9 of the Law in their application to, or to any class or category of, a Protected Cell Company, or to a class or category of, cells within a Protected Cell Company, such rule or regulation or condition or restriction shall prevail over the provisions of chapters 2 and 3 of Part 9 of the Law to the extent of the inconsistency.



13. INVESTMENT COMPANIES

13.1 Application and Interpretation

13.1.1 The Regulations in this chapter may be referred to as the Companies (IC) Regulations.

13.1.2 In these Companies (IC) Regulations, the following terms have the following meanings:

- (a) “administrative receiver” has the meaning given in the Insolvency Law 2009;
- (b) “Closed Ended Investment Company” means an Investment Company which is not an Open Ended Investment Company;
- (c) “Fund” has the meaning given in the Collective Investment Law ~~2006~~ [2010];
- (d) “Fund Manager” has the meaning given in the Collective Investment Law [2010];
- ~~(d)~~ (e) “exchange facility” is a facility for the transfer of shares in an Open Ended Investment Company administered by an Authorised Market Institution pursuant to the provisions of the Regulatory Law 2004;
- ~~(e)~~ (f) “Investment Company” has the meaning given in the Collective Investment Law ~~2006~~ [2010];
- ~~(f)~~ (g) “Open Ended Investment Company” means a Company whose Articles comply with Regulations 13.3.4 and 13.3.5, provided that such Company is incorporated as, or converted into, an Open Ended Investment Company in accordance with the provisions of these Regulations; and
- ~~(g)~~ “Operator” has the meaning given in the Collective Investment Law 2006; and
- (h) “receiver” has the meaning given in the Insolvency Law 2009.

13.2 Rules, regulations, general powers of the DFSA

13.2.1 In accordance with Article 114(2)(b) of the Law, the application of Article 51(1) and (2) of the Law is modified in relation to its application to Investment Companies so as to permit an Investment Company to be managed by one director, which may be a body corporate.

13.2.2 Subject to Regulation 13.2.1, these Regulations are additional to any other legislation which may apply to the incorporation of, or conversion to, an Investment Company, or which may apply to the operations and affairs and winding up of an Investment Company, including the Law, the Collective Investment Law ~~2006~~ [2010] and the Insolvency Law 2004 and any Rules or Regulations under such laws.



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13.2.3 Without limiting the generality of powers of the DFSA under Article 23 of the Regulatory Law 2004 and Article 8 of the Collective Investment Law ~~2006~~[2010], the DFSA shall have authority from time to time to make, issue, amend and rescind such Rules as are necessary or appropriate in the interests of the DIFC.

13.3 Incorporation of, or conversion into, an Investment Company

13.3.1 Subject to the provisions of these Regulations, a person may:

- (a) incorporate an Open Ended Investment Company or a Closed Ended Investment Company; or
- (b) convert, if so authorised by its Articles and by a Special Resolution, an existing Company into an Open Ended Investment Company or a Closed Ended Investment Company;

for the sole purpose of carrying on the business of a Fund, provided the DFSA has given its consent to such incorporation or conversion respectively.

13.3.2 An application for the incorporation of a Company as an Investment Company or for the conversion of an existing Company into an Investment Company shall not be made without submission to the Registrar of a copy of any consent of the DFSA given under Regulation 13.3.1.

13.3.3 Without prejudice to the application of Article 32 of the Law:

- (a) the name of an Open Ended Investment Company shall include the expression "Open Ended Investment Company" or "OEIC"; and
- (b) the name of a Closed Ended Investment Company shall include the expression "Closed Ended Investment Company" or "CEIC".

13.3.4 The Articles of an Open Ended Investment Company shall state that it is an Open Ended Investment Company with variable share capital.

13.3.5 The Articles of an Open Ended Investment Company ~~whose shares are traded on an exchange~~ must contain a provision to the effect that shareholders are entitled to have their shares redeemed by the Fund Manager Operator upon request at a price based on the net asset value of the property of the Fund and determined in accordance with the Articles, ~~and~~ section 8.6 of the CIR module of the DFSA Rulebook any other requirements that may from time to time be prescribed by the DFSA in legislation made under the Collective Investment Law ~~2006~~[2010].

13.3.6 In addition to any other requirements under the Regulations, the Articles of an Investment Company must contain provision as to the following matters:

- (a) the objects of the Investment Company, including:
 - (i) detail as to the kind of property in which the Investment Company is to invest; and



(ii) a statement that the object of the Investment Company is to invest in property of that kind with the aim of spreading investment risk or with the aim of investing in a single property, as the case may be, and of giving its shareholders the benefit of the results of the management of that property; and

(b) any other requirements that may from time to time be imposed by the DFSA in legislation made under the Collective Investment Law ~~2006~~[2010].

13.3.7 The Articles of an Investment Company must comply with the requirements imposed under the Companies (IC) Regulations in this Chapter and the Collective Investment Law ~~2006~~[2010] and any legislation made thereunder.

13.3.8 An Investment Company may alter its Articles by Special Resolution in order to comply with the requirements of these Companies (IC) Regulations and the Collective Investment Law ~~2006~~[2010].

13.4 Permissible uses and DFSA consent

13.4.1 An application for consent shall be made to the DFSA by the Company and the Operator and each such application shall be in such form, contain such information and be accompanied by such other particulars, as required from time to time by the DFSA.

13.4.2 The DFSA may in its absolute discretion grant its consent, refuse to grant its consent or withdraw its consent under Regulation 13.3.1 as the DFSA deems it necessary or appropriate in the interests of the DIFC.

13.4.3 (1) The DFSA shall inform the Investment Company of its decision under Regulation 13.4.2 without undue delay, in writing and, where requested by the Investment Company, state the reasons for such decision.

(2) In accordance with Article 27(2)(j) of the Regulatory Law, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where an applicant appeals against a decision of the DFSA in relation to an application for consent under Regulation 13.4.1.

13.5 Withdrawal of consent of the DFSA

13.5.1 Before revoking any consent, the DFSA shall consider whether any necessary and appropriate steps have been taken to secure one or more of the following under the Insolvency Law 2009 and Insolvency Regulations:

(a) appointment of a receiver or administrative receiver to the Investment Company; or

(b) the winding up of the Investment Company.



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- 13.5.2** (1) On withdrawal of a DFSA consent the Investment Company and the Fund Manager Operator shall forthwith notify that fact to:
- (a) each regulatory authority in every country or territory to which the consent related prior to its withdrawal; and
 - (b) each shareholder of the Investment Company in question.
- (2) The notice required of each of the persons respectively referred to in this Regulation may be given by them jointly.

13.6 Directions by the DFSA

13.6.1 The DFSA may, in the interests of the DIFC, give any direction to an Investment Company or to any of its directors.

13.6.2 Without limiting the generality of Regulation 13.6.1, the DFSA may:

- (a) require the Investment Company to cease the issue or redemption, or both the issue and redemption, of shares or any class of shares in the Investment Company;
- (b) require the Investment Company or any director of the Investment Company to present a petition to the Court to:
 - (i) make an order or orders for the appointment of a receiver or administrative receiver to the Company; or
 - (ii) make an order or orders for the winding up of the Investment Company under the Insolvency Regulations.
- (c) require any director of the Investment Company to present a petition to the Court to wind up the Investment Company; or
- (d) require that the affairs of the Investment Company be wound up otherwise than by the Court.

13.6.3 Subject to Regulation 13.6.4:

- (a) if the consent is revoked by the DFSA, such revocation does not affect the operation of any direction given by the DFSA which is then in force; and
- (b) a direction may be given by the DFSA in relation to an Investment Company in the case of which a consent has been revoked, if a direction was already in force at the time of revocation.

13.6.4 Where a winding up order has been made by the Court, no direction given by the DFSA is to have effect in relation to the Investment Company concerned.



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- 13.6.5** The DFSA may, on its own initiative, or on the application of the Investment Company or its Fund Manager Operator, revoke or vary a direction given under this Section if it appears to the DFSA that it would be necessary or appropriate in the interests of the DIFC.
- 13.6.6** In accordance with Article 27(2)(j) of the Regulatory Law 2004, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where an Investment Company or director appeals against a decision of the DFSA made under this section in relation to a direction.

13.7 Applications to the Court

13.7.1 The Court may, on application of the DFSA, 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 appointing a receiver or administrative receiver, or an order for the winding up of the Company pursuant to the Insolvency Regulations; or
- (c) any other order as the Court thinks fit.

13.7.2 The DFSA shall:

- (a) give written notice of the making of an application under Regulation 0 to:
 - (i) the Investment Company; and
 - (ii) where the application seeks the removal of any director of the Investment Company, that director; and
- (b) take such steps as it considers appropriate for bringing the application to the attention of the shareholders of the Investment Company.

13.7.3 The Court may, on application of a person who is subject to an order, make any other orders it thinks fit including, but not limited to, orders:

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



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13.8 Shares, Register of shareholders

- 13.8.1** An Investment Company may, if so authorised by its Articles, issue fractions of shares.
- 13.8.2** (1) The DFSA may prescribe in Rules made under the Collective Investment Law 2006–[2010] the form and contents of share certificates and the manner in which such share certificates may be delivered by an Investment Company.
- (2) Nothing in Paragraph (1) shall prevent an Investment Company issuing share certification in a dematerialised (electronic) form.
- 13.8.3** Subject to any requirements as may be made by the DFSA, an Investment Company may, on giving notice by a press release, direct by communicating with the shareholders, posting on its website and, if listed, filing such notice with the relevant exchange if the Fund is a Listed Fund on that exchange, close the register of shareholders for any time or times not exceeding, in the whole, 30 days in each year.
- 13.8.4** If:
- (a) such evidence is furnished to the Fund Manager Operator as the Fund Manager Operator may require to show that default has been made by a shareholder in making any payment in money or transfer of property due to the Fund Manager Operator under the provisions of these Regulations or the Articles of the Investment Company in respect of the creation and sale or resale of shares to that shareholder; and
- (b) any share certificate in respect of those shares is received by the Fund Manager Operator, the Fund Manager Operator or the Registrar shall cancel or make any necessary amendments to that certificate and make any necessary deletion or alteration in the register and thereafter the Fund Manager Operator shall be entitled to the shares in respect of which the defaulting shareholder's name has been removed from the register until the same be cancelled or resold by the Fund Manager Operator and the name of the purchaser entered in the register.
- 13.8.5** The Fund Manager Operator of an Open Ended Investment Company shall be deemed to hold each share during such times as neither the Fund Manager Operator nor any other person is entered in the register as the holder thereof.

13.9 Share transfers and redemptions

- 13.9.1** The Articles of an Investment Company may contain provision as to share transfers in respect of any matter for which provision is not made in the Law or Regulations.
- 13.9.2** Where any shares of an Investment Company are transferred to the Investment Company, the Investment Company must cancel those shares.
- 13.9.3** For the purposes of Article 40 (5) of the Law, an Investment Company may refuse to register a transfer of shares if:



- (a) there exists a minimum requirement as to the number or value of shares that must be held by any shareholder of the Investment Company and the transfer would result in either the transferor or transferee holding less than the required minimum; or
- (b) the transfer would result in a contravention of any provision of the Investment Company's Articles or would produce a result inconsistent with any provision of the Investment Company's prospectus.

13.9.4 ~~An Open Ended Investment Company may redeem its shares by cancelling them or otherwise as provided by its Articles and Chapters 4 and 5 of Part 7 of the Law shall not apply to the redemption of shares to the extent inconsistent with the Articles. An Open Ended Investment Company shall redeem its shares at a price based on the net asset value of the property of the Company in accordance with its Articles and the provisions in section 8.6 of the CIR module of the DFSA Rulebook and, where it does so, chapters 4 and 5 of Part 7 of the Law shall not apply to such redemptions of shares.~~

13.9.5 No Closed Ended Investment Company shall purchase any shares of any class of which it is the issuer except on an exchange facility or such other open market as the DFSA may prescribe by Rules or Regulations.

13.10 Records, accounts and audit

13.10.1 Every Investment Company shall maintain and preserve such records for such period as the DFSA, by Rules or Regulations, may prescribe

13.10.2 Regulation 6.7.1 shall not apply to an Investment Company.