

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4775 GIBRALTAR Thursday 29th October 2020

B. 21/20

PROTECTED CELL LIMITED PARTNERSHIPS BILL 2020

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BILL

FOR

AN ACT to provide for protected cell limited partnerships in Gibraltar.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Act may be cited as the Protected Cell Limited Partnerships Act 2020.

(2) This Act comes into operation on the appointed by the Minister by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

Interpretation.

2.(1) In this Act, unless the context otherwise requires—

“administration order” means an order of the Court under section 25 in relation to a protected cell limited partnership or a cell thereof;

“administrator” means the person appointed as such by an administration order;

“cell” means a cell created by a protected cell limited partnership for the purpose of segregating and protecting cellular assets and liabilities in the manner provided by this Act;

“cell capital” means the proceeds of issue of cell interests;

“cell interests” means interests in a protected cell limited partnership in respect of one of its cells pursuant to the provisions of section 9, the proceeds of issue of which (the “cell capital”) shall be comprised in the cellular assets attributable to that cell;

“cell liquidation” means the liquidation of a cell under a cell liquidation order;

“cell liquidation order” means an order made under section 19;

“cell liquidator” means the person appointed as cell liquidator under a cell liquidation order;

“cell transfer order” means an order of the Court under section 18(3) sanctioning the transfer of the cellular assets attributable to any cell of a protected cell limited partnership to another person;

“cellular assets” of a protected cell limited partnership means the assets of the limited partnership attributable to the limited partnership’s cells pursuant to section 6(4);

“cellular distribution” means a distribution made by a protected cell limited partnership in respect of cell interests pursuant to the provisions of section 9(3);

“GFSC” means the Gibraltar Financial Services Commission within the meaning of section 21(1) of the Financial Services Act 2019;

“licensed insolvency practitioner” has the meaning specified in the Insolvency Act 2011;

“liquidation”, in relation to a protected cell limited partnership, means liquidation under the Insolvency Act 2011;

“liquidator”, in relation to a protected cell limited partnership, means a liquidator or provisional liquidator appointed under the Insolvency Act 2011;

“Minister” means the Minister with responsibility for financial services;

“non-cellular assets” of a protected cell limited partnership comprise the assets of the limited partnership which are not cellular assets;

“prescribed” means prescribed by regulations;

“protected cell limited partnership” means a limited partnership registered as, or converted into, a protected cell limited partnership in accordance with the provisions of this Act;

“Registrar” means the Registrar of Limited Partnerships;

“transaction” means anything (including, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship) whereby any liability arises or is imposed; and cognate expressions shall be construed accordingly;

(2) Expressions used in this Act which are also used in the Limited Partnerships Act 2020 shall (unless the context requires otherwise) have the same meaning as in that Act.

Disapplication of and references to Insolvency Act 2011.

3.(1) Notwithstanding regulations 8 and 9 of the Insolvent Partnership Regulations 2014, Parts 2 and 3 of the Insolvency Act 2011 do not apply in relation to a protected cell limited partnership.

(2) In this Act, where the context requires, a reference to the Insolvency Act 2011 is to be construed as a reference to that Act as modified or excluded by the Insolvent Partnership Regulations 2014.

PART 1 FORMATION AND ATTRIBUTES

Protected cell limited partnerships.

4.(1) A limited partnership that, in accordance with section 10 or 11 of the Limited Partnerships 2020 has elected to have legal personality, may—

- (a) be registered as a protected cell limited partnership;
- (b) be converted into a protected cell limited partnership with the express or implied agreement of its partners.

(2) For the avoidance of doubt, and notwithstanding that a protected cell limited partnership may have created one or more cells under this Act—

- (a) a protected cell limited partnership is a single legal person; and
- (b) the creation by a protected cell limited partnership of a cell does not create, in respect of that cell, a legal person separate from the limited partnership.

(3) The provisions of the Limited Partnerships Act 2020 shall, subject to the provisions of this Act, and unless the context requires otherwise, apply in relation to a protected cell limited partnership.

Creation of cells.

5. A protected cell limited partnership may create one or more cells for the purpose of segregating and protecting cellular assets and liabilities in the manner provided by this Act.

Cellular and non-cellular assets.

6.(1) The assets of a protected cell limited partnership shall be either cellular assets or non-cellular assets.

(2) It shall be the duty of the general partners of a protected cell limited partnership—

- (a) to keep cellular assets separate and separately identifiable from non-cellular assets; and
- (b) to keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.

(3) The cellular assets of a protected cell limited partnership comprise the assets of the limited partnership attributable to the cells of the limited partnership.

(4) The assets attributable to a cell of a protected cell limited partnership comprise—

- (a) assets represented by the proceeds of cell capital and reserves attributable to the cell;
- (b) all other assets attributable to the cell.

(5) For the purposes of subsection (4), the expression “reserves” includes retained earnings and capital reserves.

(6) The non-cellular assets of a protected cell limited partnership comprise the assets of the limited partnership which are not cellular assets.

(7) Notwithstanding the provisions of subsection (2), the general partners of a protected cell limited partnership may cause or permit cellular assets and non-cellular assets to be held—

- (a) by or through a nominee; or
- (b) by a company the shares and capital interests of which may be cellular assets or non-cellular assets, or a combination of both.

(8) The duty imposed by subsection (2) is not breached by reason only that the general partners of a protected cell limited partnership 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 in accordance with subsection (2).

Position of creditors.

7.(1) The rights of creditors of a protected cell limited partnership shall correspond with the liabilities provided for in section 13.

(2) No such creditor shall have any rights other than the rights referred to in this section and in sections 8 and 13.

(3) There shall be implied (except in so far as the same is expressly excluded in writing) in every transaction entered into by a protected cell limited partnership the following terms—

- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to use any cellular assets attributable to any cell of the limited partnership to satisfy a liability not attributable to that cell;

- (b) that if any party succeeds by any means whatsoever or wheresoever in using any cellular assets attributable to any cell of the limited partnership to satisfy a liability not attributable to that cell, that party shall be liable to the limited partnership to pay a sum equal to the value of the benefit thereby obtained by him; and
- (c) that if any party succeeds in seizing or attaching by any means or otherwise levying execution against any cellular assets attributable to any cell of the limited partnership to satisfy a liability not attributable to that cell, that party shall hold those assets or their proceeds on trust for the limited partnership and shall keep those assets or proceeds separate and identifiable as such trust property.

(4) All sums recovered by a protected cell limited partnership as a result of any such trust as is described in subsection (3)(c) shall be credited against any concurrent liability imposed under the implied term set out in subsection (3)(b).

(5) Any asset or sum recovered by a protected cell limited partnership under the implied term set out in subsection (3)(b) or (3)(c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the limited partnership so as to compensate the cell affected.

(6) In the event of any cellular assets attributable to a cell of a protected cell limited partnership being 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 limited partnership shall—

- (a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost by 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.

(7) Where under subsection (6)(b) a protected cell limited partnership is obliged to make a transfer or payment from cellular assets attributable to a cell of the limited partnership, and those assets are insufficient, the limited partnership shall so far as possible make up the deficiency from its non-cellular assets.

(8) This section shall apply to cellular and non-cellular assets of a protected cell limited partnership wherever situated.

Recourse to cellular assets by creditors.

8. Without prejudice to the provisions of sections 7 and 13, cellular assets attributable to a cell of a protected cell limited partnership—

- (a) shall only be available to the creditors of the limited partnership who are creditors in respect of that cell and who are thereby entitled, in conformity with the

provisions of this Act, to have recourse to the cellular assets attributable to that cell;

- (b) shall be absolutely protected from the creditors of the limited partnership 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.

Cell interests and cell capital.

9.(1) A protected cell limited partnership may, in respect of any of its cells, issue and allocate interests (“cell interests”) the proceeds of which (“cell capital”) shall be comprised in the cellular assets attributable to the cell in respect of which the cell interests were allocated.

(2) The proceeds of the issue of cell interests other than cell interests allocated by a protected cell limited partnership shall be comprised in the limited partnership’s non-cellular assets.

(3) A protected cell limited partnership may make a distribution (a “cellular distribution”) in respect of cell interests.

(4) Cellular distributions may be made in respect of cell interests by reference only to the cellular assets and liabilities, or the profits, attributable to the cell in respect of which the cell interests were allocated; and accordingly, in determining whether or not profits are available for the purpose of making 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 limited partnership; or
- (b) non-cellular profits and losses, or assets and liabilities.

Issue of securities.

10.(1) A protected cell limited partnership may, in respect of any of its cells, issue shares, bonds, notes, loans or other debt securities or instruments, the proceeds of the issue of which, notwithstanding any statutory provision or rule of law to the contrary, shall be attributable as an asset of the cell and shall be comprised in the cellular assets attributable to the cell in respect of which they were issued.

(2) Securities issued in respect of a cell may be denominated in different currencies.

Name of protected cell limited partnership.

11.(1) The name of a protected cell limited partnership shall, include the expression “Protected Cell”, “PC” or any cognate expression approved in writing by the Registrar.

(2) Unless and until a protected cell limited partnership has complied with the provisions of this section, it shall be deemed not to be a protected cell limited partnership.

(3) Each cell of a protected cell limited partnership shall have its own distinct name or designation.

GFSC's consent required for protected cell limited partnership.

12.(1) Subject to subsection (2), a limited partnership may not be registered as a protected cell limited partnership, and an existing limited partnership may not be converted into a protected cell limited partnership, except in accordance with the terms and conditions of the written consent of the GFSC, which shall only be granted in the case of a limited partnership which is (or will be) a collective investment scheme authorised by the GFSC in accordance with the Financial Services (Experienced Investor Funds) Regulations 2020.

(2) The Minister may by regulations prescribe any other class or descriptions of limited partnership which may be incorporated as or converted into a protected cell limited partnership with the GFSC's consent.

(3) The GFSC may, from time to time, in such manner as it thinks fit—

- (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted; and
- (b) impose any new term or condition in relation to any such consent.

Liability of cellular assets.

13.(1) Subject to the provisions of subsection (2), and save to the extent that the limited partnership may have agreed that a liability shall be the liability solely of the limited partnership's non-cellular assets, or of the cellular assets attributable to a particular cell of the limited partnership, where any liability arises which is attributable to a particular cell of a protected cell limited partnership—

- (a) the cellular assets attributable to that cell shall be primarily used to satisfy the liability;
- (b) the limited partnership's non-cellular assets shall be secondarily used to satisfy the liability, provided that the cellular assets attributable to the relevant cell have been exhausted; and
- (c) any cellular assets not attributable to the relevant cell shall not be used to satisfy the liability.

(2) In the case of loss or damage which is attributable to a particular cell of a protected cell limited partnership and which is caused by fraud, the loss or damage shall be the liability solely of the limited partnership's non-cellular assets, without prejudice to any liability of any person other than the limited partnership.

(3) Any liability not attributable to a particular cell of a protected cell limited partnership shall be the liability solely of the limited partnership's non-cellular assets.

- (4) Notwithstanding the above provisions of this section—
- (a) the liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a protected cell limited partnership shall abate rateably until the value of the aggregate liabilities equals the value of those assets except that the provisions of this paragraph shall be disregarded in assessing the existence and extent of any secondary liability under subsection (1)(b);
 - (b) the liabilities of the limited partnership's non-cellular assets shall abate rateably until the value of the aggregate liabilities equals the value of those assets.
- (5) This section shall apply to the assets of the limited partnership wherever situated.

Disputes as to liability attributable to cells.

14.(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;
- (d) the amount to which any liability is limited;

the Court, on the application of the protected cell limited partnership, and without prejudice to any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

- (2) The Court, on hearing an application for a declaration under subsection (1)—
- (a) may direct that any person shall be heard on the application;
 - (b) may make an interim declaration, or adjourn the hearing, conditionally or unconditionally;
 - (c) may make the declaration subject to such terms and conditions as it thinks fit;
 - (d) may direct that the declaration shall be binding upon such persons as may be specified.

Limited partnership to inform persons they are dealing with protected cell limited partnership.

15. (1) A protected cell limited partnership shall—

- (a) inform any person with whom it transacts that it is a protected cell limited partnership; and
- (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.

(2) If, in contravention of subsection (1), a protected cell limited partnership—

- (a) fails to inform a person that he is transacting with a protected cell limited partnership, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a protected cell limited partnership; or
- (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;

then, in either such case—

- (i) the general partners shall (notwithstanding any provision to the contrary in any express or implied agreement between the partners of the limited partnership or in any contract with the limited partnership or otherwise) incur personal liability to that person in respect of the transaction; and
- (ii) the general partners shall have a right of indemnity against the non-cellular assets of the limited partnership, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(3) Notwithstanding the provisions of subsection (2)(i), the Court may relieve a general partner of all or part of his personal liability thereunder if he satisfies the Court that he ought to be so relieved because—

- (a) he was not aware of the circumstances giving rise to his liability and, in being not 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 a general partner, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

(4) Where, pursuant to the provisions of subsection (3), the Court relieves a general partner of all or part of his personal liability under subsection (2)(i), the Court may order that the liability in question shall instead be met first by any other general partner or general partners whose personal liability is not relieved and thereafter, if necessary, from such of the cellular or non-cellular assets of the protected cell limited partnership as may be specified in the order.

(5) Any provision in any express or implied agreement between the partners of the limited partnership, and any other contractual provision under which the protected cell limited partnership may be liable, which purports to indemnify general partners in respect of conduct which would otherwise disentitle them to an indemnity against non-cellular assets by virtue of subsection (2)(ii), shall be void.

Attribution of non-cellular assets and liabilities.

16.(1) Liabilities of a protected cell limited partnership not otherwise attributable to any of its cells shall be discharged from the limited partnership's non-cellular assets.

(2) Income, receipts and other property or rights of or acquired by a protected cell limited partnership not otherwise attributable to any cell shall be applied to and comprised in the limited partnership's non-cellular assets.

Provisions in relation to winding up of protected cell limited partnership.

17.(1) Notwithstanding the provisions of the Insolvency Act 2011 or any other statutory provision or rule of law to the contrary, in the liquidation of a protected cell limited partnership—

- (a) the assets forming part of the estate shall only be the non-cellular assets;
- (b) the liquidation shall not terminate any agency, or in any way whatsoever affect the authority or power, of any general partner, secretary, administrator, servant or agent of the protected cell limited partnership in respect of the cellular assets;
- (c) if and to the extent that any liquidator of the protected cell limited partnership has any dealing with, or has possession custody or control of, any of the cellular assets, he shall be subject to the duty set out in section 6(2) hereof as if he were a general partner.

(2) The Insolvency Act 2011 applies to the liquidation of a protected cell limited partnership subject to such modifications as are necessary to give effect to subsection (1) and, in the event of any conflict between the Insolvency Act 2011 and this Act, this Act prevails.

Transfer of cellular assets from protected cell limited partnership.

18.(1) Subject to the provisions of subsection (3), the cellular assets attributable to any cell of a protected cell limited partnership, but not the non-cellular assets of a protected cell limited partnership may be transferred to another person, wherever resident or incorporated, and whether or not a protected cell limited partnership.

(2) A transfer, under subsection (1), of cellular assets attributable to a cell of a protected cell limited partnership shall not of itself entitle creditors of that limited partnership to have recourse to the assets of the person to whom the cellular assets were transferred.

(3) No transfer of the cellular assets attributable to a cell of a protected cell limited partnership may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section (a “cell transfer order”).

(4) The Court shall not make a cell transfer order in relation to a cell of a protected cell limited partnership unless it is satisfied—

(a) that the creditors of the limited partnership entitled to have recourse to the cellular assets attributable to the cell consent to the transfer; or

(b) that those creditors would not be unfairly prejudiced by the transfer.

(5) The Court, on hearing an application for a cell transfer order—

(a) may make an interim order or adjourn the hearing, conditionally or unconditionally;

(b) may dispense with any of the requirements of subsection (4).

(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.

(7) The Court may make a cell transfer order in relation to a cell of a protected cell limited partnership notwithstanding that—

(a) a liquidator has been appointed in respect of the protected cell limited partnership;

(b) a cell liquidation order has been made in respect of the cell or any other cell of the limited partnership;

(c) an administration order has been made in respect of the cell, the limited partnership or any other cell thereof.

(8) Notice of an application to the Court for a cell transfer order shall be served upon—

(a) any liquidator of the limited partnership or any cell liquidator of the cell concerned;

(b) the GFSC; and

(c) such other persons (if any) as the Court may direct.

(9) The provisions of this section are without prejudice to any power of a protected cell limited partnership lawfully to make payments or transfers from the cellular assets attributable to any cell of the limited partnership to a person entitled, in conformity with the provisions of this Act, to have recourse to those cellular assets.

(10) For the avoidance of doubt, a protected cell limited partnership shall not require 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 limited partnership's business.

PART 2 CELL LIQUIDATION

Cell liquidation orders.

19.(1) Subject to the provisions of this section, if in relation to a protected cell limited partnership the Court is satisfied—

- (a) that the cellular assets attributable to a particular cell of the limited partnership (when account is taken of the limited partnership's non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the limited partnership's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell;
- (b) that the making of an administration order under section 25 in respect of that cell would not be appropriate; and
- (c) that the making of an order under this section would achieve the purposes set out in subsection (3);

the Court may make an order under this section (a "cell liquidation order") in respect of that cell.

(2) A cell liquidation order may be made in respect of one or more cells.

(3) A cell liquidation order is an order directing that the business and cellular assets of or attributable to a cell shall be managed by a person specified in the order (the cell liquidator) for the purposes of—

- (a) the orderly winding up of the business of or attributable to the cell; and
- (b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.

(4) The Court shall not appoint a person as cell liquidator under a cell liquidation order unless the person is a licensed insolvency practitioner.

(5) A cell liquidation order —

- (a) may not be made if a liquidator has been appointed to act in respect of the protected cell limited partnership;

- (b) may be made in respect of a cell subject to an administration order under section 25;
- (c) shall cease to be of effect upon the appointment of a liquidator to act in respect of the protected cell limited partnership, but without prejudice to prior acts.

Applications for cell liquidation orders.

20.(1) An application for a cell liquidation order in respect of a cell of a protected cell limited partnership may be made by—

- (a) the limited partnership;
- (b) the general partners of the limited partnership;
- (c) any creditor of the limited partnership in respect of that cell;
- (d) any holder of cell interests in respect of that cell;
- (e) the administrator of that cell; or
- (f) the GFSC.

(2) The Court, on hearing an application for a cell liquidation order may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for a cell liquidation order in respect of a cell of a protected cell limited partnership shall be served upon—

- (a) the limited partnership;
- (b) the administrator (if any) of the cell;
- (c) the GFSC; and
- (d) such other persons (if any) as the Court may direct;

who shall each be given an opportunity of making representations to the Court before the order is made.

Application of the Insolvency Act 2011 to cell liquidations.

21.(1) The Insolvency Act 2011 applies to a cell liquidation as if the cell was a limited partnership in liquidation under the Act and, for the purposes of the cell liquidation, the cell shall be treated as if it were a separate legal person.

(2) Notwithstanding subsection (1)—

- (a) the appointment of the cell liquidator and the powers and duties of the cell liquidator are confined to the cell in respect of which the cell liquidation order is made; and
- (b) in a cell liquidation, the provisions of the Insolvency Act 2011 are subject to such modifications as are necessary to give effect to this Act and in the event of any conflict between the Insolvency Act 2011 and this Act, this Act prevails.

Functions of cell liquidator and effect of cell liquidation order.

22.(1) The cell liquidator –

- (a) may do all such things as may be necessary for the purposes set out in section 19(3); and
- (b) shall have all the functions and powers of the general partners in respect of the business and cellular assets of or attributable to the cell.

(2) The cell liquidator may at any time apply to Court–

- (a) for directions as to the extent or exercise of any function or power;
- (b) for the cell liquidation order to be discharged or varied; or
- (c) for an order as to any matter arising in the course of the liquidation of the cell.

(3) In exercising his functions and powers the cell liquidator is deemed to act as the agent of the protected cell limited partnership, and shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

(4) Any person dealing with the cell liquidator in good faith is not concerned to enquire whether the cell liquidator is acting within his powers.

(5) When an application has been made for, and during the period of operation of, a cell liquidation order, no proceedings may be commenced or continued against the protected cell limited partnership in relation to the cell in respect of which the cell liquidation order was applied for or made except with the consent of the cell liquidator or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose.

(6) Subsection (5) applies in place of section 159 of the Insolvency Act 2011 in relation to an application for a cell liquidation order.

(7) During the period of operation of a cell liquidation order –

- (a) the functions and powers of the general partners shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made; and

- (b) the cell liquidator of the cell shall be deemed a general partner of the protected cell limited partnership in respect of the non-cellular assets of the limited partnership, unless there are no creditors in respect of that cell entitled to have recourse to the limited partnership's non-cellular assets.

Discharge and variation of cell liquidation orders.

23.(1) The Court shall not discharge a cell liquidation order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) The Court, on hearing an application for the discharge or variation of a cell liquidation order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a cell liquidation order in respect of a cell of a protected cell limited partnership on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the limited partnership in respect of that cell shall be deemed full satisfaction of the liabilities of the limited partnership to that creditor in respect of that cell; and the creditor's claims against the limited partnership in respect of that cell shall be thereby deemed extinguished.

(4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell limited partnership.

(5) Creditors of a cell that is subject to a cell liquidation order shall be regarded as preferential creditors of the cell to the extent that they would be preferential creditors under the Insolvency Act 2011 if—

- (a) the cell was a limited partnership; and
- (b) the cell liquidator was a liquidator appointed under the Insolvency Act 2011.

(6) Subject to the provisions of—

- (a) this Act and, in particular subsection (5); and
- (b) any agreement between the protected cell limited partnership and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the limited partnership's other creditors;

the limited partnership's cellular assets attributable to any cell of the limited partnership in relation to which a cell liquidation order has been made shall, in the winding up of the business of or attributable to that cell under the provisions of this Part of this Act, be realised and applied in satisfaction of the company's liabilities attributable to that cell *pari passu*.

(7) Any surplus shall thereafter be distributed (unless any express or implied agreement between the partners of the limited partnership provides otherwise)–

- (a) among the holder of the cell interests or the person otherwise entitled to the surplus; or
- (b) where there are no cell interests and no such persons, among the holders of the non-cellular interests;

in each case according to their respective rights and interests in or against the limited partnership.

(8) The Court may, upon discharging a cell liquidation order in respect of a cell of a protected cell limited partnership, direct that the cell shall be dissolved on such date as the Court may specify.

(9) Immediately upon the dissolution of a cell of a protected cell limited partnership, the limited partnership may not undertake business or incur liabilities in respect of that cell.

Remuneration of cell liquidator.

24. The remuneration of a cell liquidator shall be fixed by the Court applying the general principles set out in section 466 of the Insolvency Act 2011 and the remuneration, and any expenses properly incurred by him, shall be payable, in priority to all other claims, from–

- (a) the cellular assets attributable to the cell in respect of which the cell liquidator was appointed; and
- (b) to the extent that these may be insufficient, the non-cellular assets of the protected cell limited partnership.

PART 3 ADMINISTRATION ORDERS

Administration orders in relation to protected cell limited partnerships or cells.

25.(1) Subject to the provisions of this section, if in relation to a protected cell limited partnership the Court is satisfied–

- (a) that the cellular assets attributable to a particular cell of the limited partnership (when account is taken of the limited partnership's non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the limited partnership's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; or
- (b) that the limited partnership's cellular assets and non-cellular assets are or are likely to be insufficient to discharge the liabilities of the limited partnership;

and the Court considers that the making of an order under this section may achieve one of the purposes set out in subsection (5), the Court may make an order under this section (an “administration order”) in respect of that cell or (as the case may be) in respect of that limited partnership.

(2) An administration order may be made in respect of one or more cells.

(3) An administration order is an order directing that, during the period for which the order is in force, the business and assets of or attributable to the cell or, as the case may be, the business and assets of the limited partnership, shall be managed by a person (an “administrator”) appointed for the purpose by the Court.

(4) The Court shall not appoint a person as administrator under an administration order unless the person is a licensed insolvency practitioner.

(5) The purposes for which an administration order may be made are—

- (a) the survival as a going concern of the cell or (as the case may be) of the limited partnership;
- (b) the more advantageous realisation of the business and assets of or attributable to the cell or (as the case may be) the business and assets of the limited partnership than would be achieved by a cell liquidation or (as the case may be) by the liquidation of the limited partnership.

(6) An administration order, whether in respect of a protected cell limited partnership or a cell thereof—

- (a) may not be made if a liquidator has been appointed to act in respect of the protected cell limited partnership;
- (b) shall cease to be of effect upon the appointment of a liquidator to act in respect of the limited partnership, but without prejudice to prior acts.

Applications for administration orders.

26.(1) An application for an administration order may be made by—

- (a) the limited partnership;
- (b) the partners of the limited partnership;
- (c) any creditor of the limited partnership (or, where the order is sought in respect of a cell, any creditor of the limited partnership in respect of that cell); or
- (d) the GFSC.

(2) The Court, on hearing an application for an administration order may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for an administration order in respect of a protected cell limited partnership or a cell thereof shall be served upon—

- (a) the limited partnership;
- (b) the GFSC; and
- (c) such other persons (if any) as the Court may direct

who shall each be given an opportunity of making representations to the Court before the order is made.

Functions of administrator and effect of administration order.

27.(1) The administrator of a cell of a protected cell limited partnership—

- (a) may do all such things as may be necessary for the purpose set out in section 25(5) for which the administration order was made; and
- (b) shall have all the functions and powers of the general partners in respect of the business and cellular assets of or attributable to the cell.

(2) The administrator of a protected cell limited partnership—

- (a) may do all such things as may be necessary for the purpose set out in section 25(5) for which the administration order was made; and
- (b) shall have all the functions and powers of the general partners in respect of the business and assets of the limited partnership, including its cells.

(3) The administrator may at any time apply to the Court—

- (a) for directions as to the extent or exercise of any function or power;
- (b) for the administration order to be discharged or varied; or
- (c) for an order as to any matter arising in the course of his administration.

(4) In exercising his functions and powers the administrator is deemed to act as the agent of the protected cell limited partnership, and shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

(5) Any person dealing with the administrator in good faith need not enquire whether the administrator is acting within his powers.

(6) When an application has been made for, and during the period of operation of, an administration order, no proceedings may be commenced or continued against the protected cell limited partnership in relation to the cell in respect of which the administration order was applied for or made except with the consent of the administrator or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose.

(7) During the period of operation of an administration order—

(a) in respect of a cell of a protected cell limited partnership—

- (i) the functions and powers of the general partners shall cease in respect of the business and cellular assets of or attributable to the cell; and
- (ii) the administrator shall be deemed a general partner of the limited partnership in respect of the limited partnership's non-cellular assets, unless there are no creditors of the limited partnership in respect of that cell entitled to have recourse to the non-cellular assets;

(b) in respect of a protected cell limited partnership, the functions and powers of the general partners shall cease.

Discharge and variation of administration orders.

28.(1) The Court shall not discharge an administration order unless it appears to the Court that—

- (a) the purpose for which the order was made has been achieved or is incapable of achievement; or
- (b) it would otherwise be desirable or expedient to discharge the order.

(2) The Court, on hearing an application for the discharge or variation of an administration order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon discharging an administration order, the Court may direct—

- (a) where the administration order was made in respect of a protected cell limited partnership, that any payment made by the administrator to any creditor of the limited partnership shall be deemed full satisfaction of the liabilities of the limited partnership to that creditor; and the creditor's claims against the limited partnership shall be thereby deemed extinguished;
- (b) where the administration order was made in respect of a cell, that any payment made by the administrator to any creditor of the limited partnership in respect of that cell shall be deemed full satisfaction of the liabilities of the limited partnership to that creditor in respect of that cell; and the creditor's claims against the limited partnership in respect of that cell shall be thereby deemed extinguished.

(4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell limited partnership.

Remuneration of administrator.

29. The remuneration of an administrator shall be fixed by the Court applying the general principles set out in section 466 of the Insolvency Act 2011 and the remuneration, and any expenses properly incurred by him, shall be payable in priority to all other claims—

- (a) in the case of the administration of a cell, from—
 - (i) the cellular assets attributable to the cell; and
 - (ii) to the extent these may be insufficient, the non-cellular assets of the protected cell limited partnership; and
- (b) in the case of the administration of a protected cell limited partnership, from:
 - (i) the non-cellular assets of the limited partnership; and
 - (ii) to the extent these may be insufficient, the cellular assets, in such shares or proportions as the Court may direct.

PART 4 GENERAL PROVISIONS

Offences.

30. A person who, in connection with an application for the registration of a limited partnership as a protected cell limited partnership, or for the conversion of an existing limited partnership into a protected cell limited partnership—

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular;

shall be guilty of an offence and liable on summary conviction to a fine up to level 5 on the standard scale, to imprisonment for a term not exceeding three months, or to both.

EXPLANATORY MEMORANDUM

This Bill provides for the formation, regulation and dissolution of protected cell limited partnerships in Gibraltar.

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