



Commencement: 16/11/2009

**REPUBLIC OF VANUATU
INCORPORATED CELL COMPANIES
ACT NO. 25 OF 2009**

Arrangement of Sections

PART 1 - PRELIMINARY

1. Interpretation

PART 2 - FORMATION AND NATURE OF INCORPORATED CELL COMPANY

2. Incorporation of incorporated cell company
3. Consent of Commission required for incorporation of incorporated cell company
4. Application for consent of Commission
5. Filing of memorandum with copy of Commission's consent.
6. Name of incorporated cell company
7. Application of Companies Act

PART 3 - FORMATION AND NATURE OF INCORPORATED CELL

8. Incorporation of incorporated cell
9. Permit of Minister not required for registration of an incorporated cell
10. Constitution of incorporated cell
11. Name of incorporated cell
12. Status of incorporated cell

PART 4 - SEPARATE NATURE OF INCORPORATED CELL COMPANY AND ITS INCORPORATED CELLS

13. Separation of assets and liabilities 9
14. Transactions 10

PART 5 - APPLICATION OF COMPANIES ACT TO INCORPORATED CELLS

SCHEDULE

15. General application of Companies Act to incorporated cells
16. Annual return of incorporated cells
17. Minute books of incorporated cells
18. Register of directors and secretaries of incorporated cells
19. Register of members of incorporated cells
20. Index of members of incorporated cells
21. Inspection of registers, index and minute books of incorporated cells
22. Books of account of incorporated cells
23. Profit and loss account and balance sheet
24. Annual general meetings of incorporated cells
25. Directors' report where no annual general meeting held
26. Auditors where no annual general meeting held
27. Incorporated cell company responsibility for audit of its incorporated cells
28. Combining audit of incorporated cells with their incorporated cell company
29. Relief for members of incorporated cell unfairly prejudiced by incorporated cell company
30. Striking off incorporated cells when their incorporated cell company is struck off

PART 6 - WINDING UP

31. Winding up of incorporated cell company not to prejudice its incorporated cells
32. Directors of incorporated cell on winding up of its incorporated cell company
33. No dissolution of incorporated cell company until position of its incorporated cells resolved

PART 7 - ADMINISTRATION ORDERS

34. Court to make administration orders
35. Administration of incorporated cell company not to prejudice its incorporated cells
36. Application for administration order
37. Effect of application for administration order
38. Effect of administration order
39. Notification of administration order
40. General powers and functions of administrator
41. General duties of administrator
42. Co-operation with, and by, administrator
43. Discharge or variation of administration order
44. Remuneration and swearing in, of administrator
45. Vacation of office
46. Release of administrator
47. Information to be given by administrator
48. Statement of affairs to be submitted to administrator

SCHEDULE

49. Protection of interests of creditors and members

PART 8- ALTERATIONS

- 50. Amendment of articles of incorporated cells
- 51. Conversion of company into incorporated cell company
- 52. Conversion of protected cell company into incorporated cell company
- 53. Conversion of incorporated cell into independent company
- 54. Transfer of incorporated cells between incorporated cell companies
- 55. Conversion of company into incorporated cell and transfer to incorporated cell company
- 56. Expulsion of incorporated cell from its incorporated cell company
- 57. Directors' declarations
- 58. Conversions, transfers or expulsions not a default

PART 9 - GENERAL PROVISIONS

- 59. Offences
- 60. Criminal liability of officers, etc.
- 61. Applications for directions
- 62. Power of Court to grant relief in certain cases
- 63. Appeals against decisions of the Commission
- 64. Regulations
- 65. Commencement

REPUBLIC OF VANUATU

Assent: 19/10/2009

Commencement: 16/11/2009

**INCORPORATED CELL COMPANIES
ACT NO. 25 OF 2009**

An Act to provide for the formation, operation and regulation of incorporated cell companies and incorporated cells and for related matters

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1. Interpretation

(1). In this Act unless the contrary intention appears:

administration order means an administration order made by the Court in respect of an incorporated cell company or an incorporated cell under section 34;

administrator means a person appointed by the Court to manage the affairs, business and property of an incorporated cell company or an incorporated cell under an administration order;

cell resolution means a special resolution of an incorporated cell company that complies with the requirements of section 8 to create an incorporated cell;

certificate of conversion from protected cell company into incorporated cell

company means a certificate issued under section 52;

certificate of conversion into incorporated cell means a certificate issued under section 55;

certificate of conversion into incorporated cell company means a certificate issued under section 51;

certificate of conversion of incorporated cell into company means a certificate issued under section 53;

certificate of transfer of incorporated cells means a certificate issued under section 54;

Commission means the Vanuatu Financial Services Commission established under the Vanuatu Financial Services Commission Act [CAP 229];

Companies Act means the Companies Act [CAP191];

default fine has the same meaning as in the Companies Act [CAP 191];

incorporated cell means a cell of an incorporated cell company;

incorporated cell company means a company incorporated as, or converted into, an incorporated cell company under this Act;

non-cellular company means a company which is neither an incorporated cell company nor a protected cell company;

prescribed means prescribed by regulations made under this Act;

protected cell company has the same meaning as in the Protected Cell Companies Act No. 37 of 2005;

registrar of companies or **registrar** has the same meaning as in the Companies Act [CAP 191];

regulations means regulations made by the Minister under this Act;

security in relation to security interest means any mortgage, charge, hypothèque, lien or other security, and **secured interest** must be read accordingly;

special resolution has the same meaning as in the Companies Act [CAP191];

transfer agreement means an agreement between:

- (a) two incorporated cell companies setting out the terms of the transfer of an incorporated cell between them in accordance with section 54; or
- (b) an incorporated cell company and a non-cellular company setting out the terms of the transfer of the non-cellular company as an incorporated cell to the incorporated cell company, in accordance with section 55;

treasury shares means the shares of a company that were previously issued but were repurchased or otherwise acquired by the company and not cancelled.

(2) An expression used in this Act that is used in the Companies Act [CAP 191] has the same meaning as in the Companies Act [CAP 191].

PART 2 FORMATION AND NATURE OF INCORPORATED CELL COMPANY

2. Incorporation of incorporated cell company

- (1). A company may be incorporated as an incorporated cell company.
- (2). Subject to the provisions of this Act, the Companies Act applies to the incorporation of a company as an incorporated cell company.

3. Consent of Commission required for incorporation of incorporated cell company

- (1) Subject to subsection (2):
 - (a) a company may not be incorporated as an incorporated cell company; and

- (b) an existing company may not be converted into an incorporated cell company,

except under the authority of, and in accordance with, the terms and conditions of the written consent of the Commission.

(2) The Commission must not give its consent unless the company is or becomes:

- (a) a captive insurance company within the meaning of the Insurance Act No. 54 of 2005; or
- (b) a mutual fund within the meaning of the Mutual Funds Act No. 38 of 2005; or
- (c) a unit trust scheme within the meaning of the Unit Trust Act No. 36 of 2005; or
- (d) a company which is of any other prescribed class or description.

4. Application for consent of Commission

(1) An application for the consent of the Commission for the incorporation of a company as an incorporated cell company, or for the conversion of an existing company into an incorporated cell company must:

- (a) be made in writing to the Commission; and
- (b) be in the form approved by the Commission; and
- (c) be accompanied by:
 - (i) such documents and information as the Commission may require to determine the application; and
 - (ii) the prescribed fee.

(2) Before making a decision on an application, the Commission may request the applicant to give the Commission any additional information and documents to assist the Commission to make a decision on the application.

(3) If a request has been made under subsection (2), the applicant must provide the additional documents and information to the Commission within the time as may be specified by the Commission.

(4) The Commission must, on receipt of an application under subsection (1), and all other information and documents requested by the Commission under subsection (2):

- (a) grant the consent subject to any terms or conditions as it thinks fit; or;
- (b) refuse the application.

(5) If the Commission refuses the application, the Commission must:

- (a) inform the applicant that its application is refused; and
- (b) give the applicant reasons as to why the Commission has refused its application.

(6) The Commission may:

- (a) vary or revoke a term or condition of its consent; or
- (b) impose further conditions in relation to its consent.

5. Filing of memorandum with copy of Commission’s consent.

(1). The memorandum of an incorporated cell company must:

- (a). state that the company is an incorporated cell company; and
- (b). be submitted for filing with the registrar of companies, with a copy of the consent of the Commission granted under paragraph 4(4)(a).

(2). The registrar must not file the memorandum unless he or she is satisfied that the memorandum complies with the requirements of this Act.

6 Name of incorporated cell company

Subject to section 26 of the Companies Act, the name of an incorporated cell company must, include the expression “Incorporated Cell Company”, “ICC” or any cognate expression as may be approved by the Commission.

7 Application of Companies Act

Subject to the provisions of this Act, the provisions of the Companies Act apply to an incorporated cell company.

PART 3. FORMATION AND NATURE OF INCORPORATED CELL

8. Incorporation of incorporated cell

- (1). Subject to subsection (2), an incorporated cell company may, by cell resolution, create one or more incorporated cells.
- (2). The cell resolution must:
- (a). assign a name to the incorporated cell; and
 - (b). specify the terms of the memorandum and articles of the incorporated cell setting out the matters mentioned in sections 5 and 11 of the Companies Act.
- (3). The Directors of the incorporated cell company must submit to the registrar for filing, the memorandum and articles of the incorporated cell within 14 days after the date on which the cell resolution is passed.
- (4). The filing of a memorandum under subsection (3) is taken to be the filing of a memorandum under section 18 of the Companies Act.
- (5). The Registrar must not file the memorandum and articles of the incorporated cell unless he or she is satisfied that such documents comply with the requirements of this Act.
- (6). The Registrar must as soon as practicable after he or she files the memorandum:
- (a). register:
 - (i). the memorandum; and
 - (ii). the name of the incorporated cell; and
 - (iii). the articles, stating that the incorporated cell, is registered as a company; and
 - (b). issue to the Incorporated Cell, a certificate of incorporation, the date of registration, status and a copy of the memorandum and articles.

9. Permit of Minister not required for registration of an incorporated cell

To avoid doubt, the permit of the Minister is not a requirement for the registration of an incorporated cell under subsection 8(6).

10. Constitution of incorporated cell

- (1). The cell resolution must provide that the incorporated cell it creates may:
 - (a). be wound up and dissolved upon:
 - (i). the bankruptcy, death, dissolution, expulsion, insolvency, legal incapacity, resignation or retirement of any member of the incorporated cell; or
 - (ii). the expiration of a fixed period of time; or
 - (iii). the occurrence of any other event; and
 - (b). issue shares with or without par value; and
 - (c). be :
 - (i). a company limited by guarantee; or
 - (ii). a company limited by shares; or
 - (iii). a company limited both by shares and by guarantee; and
 - (d). purchase its own share; and
 - (e). provide financial assistance for the acquisition of its shares; and
 - (f). hold its shares as treasury shares.
- (2). The memorandum or articles of an incorporated cell must specify:
 - (a). that the incorporated cell may not own shares in its incorporated cell company; and
 - (b). subject to any provision to the contrary in the memorandum or articles, the incorporated cell may own shares in any other incorporated cell of its incorporated cell company.

11. Name of incorporated cell

The name of an incorporated cell must, subject to section 26 of the Companies Act, include the expression “Incorporated Cell”, “IC” or any cognate expression as may be approved by the Commission.

12. Status of incorporated cell

- (1). To avoid doubt, an incorporated cell is a company.
- (2). Despite the provisions of any other Act, an incorporated cell is not a subsidiary of its incorporated cell company solely by virtue of the fact of it being an incorporated cell of its incorporated cell company.
- (3). An incorporated cell may not in itself be an incorporated cell company or a protected cell company.
- (4). An incorporated cell must have:
 - (a). the same registered office; and
 - (b). subject to the provisions of this Act, same directors, as its incorporated cell company.

PART 4. SEPARATE NATURE OF INCORPORATED CELL COMPANY AND ITS INCORPORATED CELLS

13. Separation of assets and liabilities

- (1). The Directors of an incorporated cell company and its incorporated cells must:
 - (a). keep the assets and liabilities of the incorporated cell company separate and identifiable from the assets and liabilities of its incorporated cells; and
 - (b). keep the assets and liabilities of each incorporated cell separate and identifiable from the assets and liabilities of the other incorporated cells of the incorporated cell company.
- (2). For the purpose of this section, subsection (1) is not contravened by reason only that directors cause or permit assets of the incorporated cell company or any of its incorporated cells to be collectively invested, or collectively managed by an investment manager, as long as the assets in question remain separately identifiable under subsection (1).

14. Transactions

- (1). An incorporated cell company has no power, by virtue of its position as an incorporated cell company, to enter into transactions on behalf of any of its incorporated cells.
- (2). The incorporated cell has no power, by virtue of its position as an incorporated cell to enter into transactions on behalf of its incorporated cell company.

(3). The directors and officers of an incorporated cell company or an incorporated cell must in respect of every transaction that the incorporated cell company or the incorporated cell enters into, specify:

- (a). whether the transaction is being entered into by the incorporated cell company or by the incorporated cell; and
- (b). if it is by an incorporated cell- the incorporated cell that entered into the transaction.

(4). If an incorporated cell company or an incorporated cell fails to comply with subsection (3), its directors and officers are personally liable to the person with whom it transacts (despite any provision to the contrary in the articles of the incorporated cell company or as the case may be the incorporated cell or in any contract with the company or cell).

PART 5. APPLICATION OF COMPANIES ACT TO INCORPORATED CELLS

15. General application of Companies Act to incorporated cells

Subject to the provisions of this Act and any other Act, the provisions of the Companies Act apply to an incorporated cell as if a reference in the Companies Act:

- (a). to a company were a reference to an incorporated cell; and
- (b). to the directors of a company were a reference to the directors of the incorporated cell; and
- (c). to the memorandum or articles of a company were a reference to the memorandum or articles of the incorporated cell; and
- (d). to the members of a company were a reference to the members of the incorporated cell; and
- (e). to shares in a company were a reference to shares in the incorporated cell; and
- (f). to assets and liabilities of a company were a reference to the assets and liabilities of the incorporated cell; and
- (g). to the share capital of a company were a reference to the share capital of the incorporated cell.

16. Annual return of incorporated cells

- (1). Section 127 of the Companies Act does not apply to an incorporated cell.

- (2). Despite subsection (1) an incorporated cell company must include in its annual return the information required by subsection 127(2) of the Companies Act in respect of each of its incorporated cells.

- (3). An incorporated cell company that contravenes subsection (2), is liable:
 - (a). to a default fine; and
 - (b). together with its incorporated cells, to be struck off the register of Companies.

17. Minute books of incorporated cells

- (1). The duties imposed on a company under section 146 of the Companies Act must, in the case of an incorporated cell, be performed by its incorporated cell company.

- (2). An incorporated cell company that contravenes subsection (1) is liable to a default fine.

18. Register of directors and secretaries of incorporated cells

- (1). The duties imposed on a company by section 209 of the Companies Act must, in the case of an incorporated cell, be performed by its incorporated cell company.

SCHEDULE

(2). An incorporated cell company must, in addition to keeping a register of its directors and secretaries keep in accordance with section 209 of the Companies Act, separate registers of the Directors and Secretaries of each of its incorporated cells.

(3). An incorporated cell company that contravenes subsections (1) and (2) is liable to a default fine.

19. Register of members of incorporated cells

(1). The duties imposed on a company by section 114 of the Companies Act must, in the case of an incorporated cell, be performed by its incorporated cell company.

(2). An incorporated cell company must, in addition to keeping a register of its members, keep, in accordance with section 114, of the Companies Act separate registers of the members of each of its incorporated cells.

(3). An incorporated cell company that contravenes subsections (1) and (2) is liable to a default fine.

20. Index of members of incorporated cells

(1). The duties imposed on a company by section 115 of the Companies Act must, in the case of an incorporated cell, be performed by its incorporated cell company.

(2). An incorporated cell company that fails to comply with subsection (1) is liable to a default fine.

21. Inspection of registers, index and minute books of incorporated cells

SCHEDULE

(1). The duties imposed on a company by sections 117 and 147 of the Companies Act must, in the case of an incorporated cell, be performed by its incorporated cell company.

(2). An incorporated cell company that fails to comply with subsection (1) is liable to a default fine.

22. Books of account of incorporated cells

(1). Section 148 of the Companies Act does not apply to an incorporated cell.

(2). Despite subsection (1) an incorporated cell company must keep proper books of account in respect of each of its incorporated cells that comply with the requirements of section 148 of the Companies Act.

(3). The books of accounts of an incorporated cell company kept in respect of itself under section 148 of the Companies Act may contain matters in any accounting records in respect of its incorporated cells under subsection (2).

(4). An incorporated cell company that fails to comply with subsection (2) is liable to a default fine.

23. Profit and loss account and balance sheet

(1). Section 149C of the Companies Act does not apply to an incorporated cell in respect of the preparation for each financial year of a profit and loss account and balance sheet.

(2). Despite subsection (1) an incorporated cell company must prepare a separate profit and loss account and balance sheet in respect of each of its incorporated cells, in compliance with the requirements of section 149C of the Companies Act.

(3). The profit and loss account and balance sheet prepared under subsection (2) are taken to be the profit and loss account and balance sheet of the incorporated cell for the purposes of the Companies Act.

(4). The requirement in subsection (2) is taken to be complied with if an incorporated cell, with the agreement of the directors of its incorporated cell company elects:

(a). in its memorandum or articles; or

(b). by a special resolution,

that the preparation of its profit and loss account and balance sheet may be combined with the preparation of the profit and loss account and balance sheet of:

(i). its incorporated cell company; or

(ii). another incorporated cell of its incorporated cell company which also so elects.

(5). If no election has been made under subsection (4), the profit and loss account and balance sheet of an incorporated cell company prepared under section 149C of the Companies Act must not include matters that are included in the profit and loss account and balance sheet of an incorporated cell prepared under subsection (2).

(6). Subject to any provision in the memorandum or articles of an incorporated cell or its incorporated cell company to the contrary:

(a) a member of the incorporated cell company who is not a member of the incorporated cell is only entitled to be provided with the profit and loss account and balance sheet of the incorporated cell company as is prepared under section 149C of the Companies Act; and

(b) a member of an incorporated cell is only entitled to be provided with the profit and loss account and balance sheet as is mentioned in subsection (2) as relates to the incorporated cell of which he or she is a member.

24. Annual general meetings of incorporated cells

An incorporated cell must not hold an annual general meeting under section 132 of the Companies Act unless required by:

- (a) its memorandum or articles; or
- (b) a special resolution; or
- (c) the Court, under section 136 of the Companies Act.

25. Directors' report where no annual general meeting held

(1) If an incorporated cell under section 24 does not hold an annual general meeting, its directors must:

- (a) within 18 months beginning on the date on which the incorporated cell is entitled to commence business; and
- (b) thereafter, at least once in every calendar year,

send a copy of the directors report referred to in section 161 of the Companies Act to every member of the incorporated cell.

(2). Not more than 15 months must elapse between the sending of successive directors reports under paragraph 1(b).

(3). If an incorporated cell fails to comply with subsection (1) or (2), the incorporated cell is liable to a default fine.

26. Auditors where no annual general meeting held

If, under section 24, and subject to section 27, an incorporated cell does not hold an annual general meeting:

(a). the obligation of the members of the incorporated cell, at each annual general meeting to appoint auditors under section 163 of the Companies Act must be complied with by the directors of the incorporated cell:

(i). within a period of 18 months beginning on the date on which the incorporated cell is entitled to commence business; and

(ii). thereafter, at least once in every calendar year;

(b). Not more than 15 months must lapse between successive appointments of auditors under subparagraph (a) (ii);

(c). The directors of the incorporated cell must determine the remuneration of the auditors appointed under paragraph (a);

SCHEDULE

(d). The auditors' report referred to in section 167 of the Companies Act must be made by reference to the profit and loss account and balance sheet contained in the directors report;

(e). The auditor's report is not required to be laid before the company in a general meeting under section 167 of the Companies Act;

(f). Despite paragraph (e), the directors of the incorporated cell must include a copy of the auditor's report in each directors report sent out to members under section 25.

27. Incorporated cell company responsibility for audit of its incorporated cells

(1). The appointment and remuneration of auditors under section 163 of the Companies Act apply to an incorporated cell unless, with the agreement of the directors of its incorporated cell company, the incorporated cell has elected:

(a). in its memorandum or articles; or

(b). by a special resolution,

that the incorporated cell is not subject to the provisions of that section.

(2). If an incorporated cell makes an election under subsection (1), the directors of the incorporated cell company must comply with section 163 of the Companies Act in respect of that incorporated cell.

28. Combining audit of incorporated cells with their incorporated cell company

SCHEDULE

(1). The requirement under the Companies Act to have an audit is taken to be complied with if an incorporated cell, with the agreement of the directors of its incorporated cell company, elects:

- (a). in its memorandum or articles; or
- (b). by a special resolution, that its audit be combined with the audit of:
 - (i). its incorporated cell company; or
 - (ii). another incorporated cell of its incorporated cell company which has made a similar election, and those audits are combined as elected.

(2). Subject to any provisions to the contrary in the memorandum or articles of an incorporated cell or its incorporated cell company:

- (a). a member of the incorporated cell company who is not a member of the incorporated cell is only entitled to be provided with so much of the auditors' report of the incorporated cell company as relates to that company; and
- (b). a member of an incorporated cell is only entitled to be provided with so much of the auditors' report of the incorporated cell company as relates to that incorporated cell of which he or she is a member.

29. Relief for members of incorporated cell unfairly prejudiced by incorporated cell company

(1). A member of an incorporated cell may apply to the Court for an order under this section in respect of the incorporated cell company of the incorporated cell, of which he or she is a member, on the ground that:

- (a). the affairs of the incorporated cell company are or have been conducted in a manner which is unfairly prejudicial to the interest of some part of the members (including at least that member); or
- (b). any act or proposed act, or omission of the incorporated cell company (including an act or omission on its behalf) is or would be unfairly prejudicial to the interest of some part of the members (including that member).

(2). The Court must not hear an application made under subsection (1) unless it is satisfied that the incorporated cell company of the incorporated cell has been notified of the date, time, and place of the hearing.

(3). The Court may, if it is satisfied that the application under subsection (1) is well founded, make an order as it thinks fit for giving relief in respect of the matters complained of.

(4). Without limiting subsection (3), an order of the Court under this section may:

(a). regulate the conduct of the affairs of the incorporated cell company in the future; or

(b). require the incorporated cell company:

(i). to refrain from doing or continuing to do an act complained of by the applicant; or

(ii). to do any act which the applicant has complained it has omitted to do: or

(c). authorise civil proceedings to be brought in the name and on behalf of the incorporated cell company by the persons and on the terms as the Court may direct; or

(d). provide for the purchase of shares of any member of the incorporated cell company by other members or by the company it self.

(5). Without limiting subsection (3), an order of the Court under this section may make such consequential alterations to the incorporated cell company's memorandum and articles as the Court thinks fit.

(6). Despite any provision of the Companies Act, if an order under this section requires an incorporated cell company not to make any alteration, or any specified alteration, to its memorandum or articles, the incorporated cell company must not, without leave of the Court, make such alterations, in contravention of any provisions of the order.

(7). An alteration to the memorandum or articles of an incorporated cell company made by an order under this section has the same effect as if made by special resolution of that company, and the provisions of the Companies Act apply to the memorandum and articles, as altered.

(8). Nothing in this section affects or extinguishes any other right or remedy.

30. Striking off incorporated cells when their incorporated cell company is struck off

(1). If an incorporated cell company is struck off the register under the provisions of the Companies Act, the provisions in relation to striking a company off the register applies in respect of the incorporated cells of that company, and the incorporated cells also become liable to be struck off.

(2). The incorporated cell may only be restored in the register if its incorporated cell company has been restored in the register.

(3). An application to restore an incorporated cell company under subsection 335(4) of the Companies Act may also include an application to restore one or more of its incorporated cells.

PART 6. WINDING UP

31. Winding up of incorporated cell company not to prejudice its incorporated cells

SCHEDULE

(1). An incorporated cell company must wind up its business in such a way as not to prejudice the affairs, business and property of any of its incorporated cells.

(2). The incorporated cell company must continue to carry on business to the extent necessary for the continuance of business of its incorporated cells during the process of winding up.

32. Directors of incorporated cell on winding up of its incorporated cell company

(1). The appointment of a liquidator for an incorporated cell company must not affect the position of the directors of its incorporated cells, unless in the course of the winding up, a direction to the contrary has been given, by:

- (a). the liquidator; or
- (b). the incorporated cell in a general meeting; or
- (c). the Court.

(2). The Commission may make an application to the Court for a direction referred to in paragraph (1)(c).

33. No dissolution of incorporated cell company until position of its incorporated cells resolved

(1). An incorporated cell company that has wound up must not be dissolved until each of its incorporated cells are:

- (a). converted into a company independent of its incorporated cell company under section 53; or

(b). transferred to another incorporated cell company under section 54;
or

(c). expelled from its incorporated cell company under section 56; or

(d). continued as a body corporate under the law of another
jurisdiction; or

(e). wound up.

(2). The Court may stay the dissolution of an incorporated cell company
subject to any terms as it thinks fit.

PART 7. ADMINISTRATION ORDERS

34. Court to make administration orders

(1). The court may make an administration order for an incorporated cell company or an incorporated cell if it:

(a). is satisfied that:

(i). an incorporated cell company; or

(ii). an incorporated cell;

is unable to pay its debts; and

(b). considers that the making of an order under this section may achieve one or both purposes set out in subparagraphs (3)(a)(i) and (ii).

(2). For the purpose of this section, an administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the incorporated cell company or the incorporated cell be managed by an administrator who is appointed by the Court.

(3). An administration order:

(a). may be made for the purpose of:

- (i). the survival of the incorporated cell company or incorporated cell, and the whole or any part of its undertaking as a going concern; or
 - (ii). a more advantageous realization of the incorporated cell company or incorporated cell's assets than would be effected on a winding up; and
 - (b). must specify the purpose for which it is made.
- (4). An administration order may be made despite:
- (a). an order for the winding up of the incorporated cell company or incorporated cell made by the Court; or
 - (b). a resolution passed by the incorporated cell company or the incorporated cell for its voluntary winding up.
- (5). If an administration order is made under subsection (4):
- (i). the order for the winding up of the incorporated cell company or incorporated cell must be discharged or suspended; or
 - (ii). the resolution for voluntary winding up must cease to have effect or must be suspended,

subject to any terms and conditions as the Court thinks fit.

35. Administration of incorporated cell company not to prejudice its incorporated cells

(1). The administration of an incorporated cell company must not be carried out in a way as to prejudice the affairs, business and property of any of its incorporated cells.

(2). The incorporated cell company must during its administration, continue to carry on business to the extent necessary for the continuance of business of its incorporated cells.

36. Application for administration order

(1). An application for an administration order in respect of an incorporated cell company may be made together or separately by all or any of the following persons:

- (a). the incorporated cell company;
- (b). an incorporated cell of the incorporated cell company;
- (c). the directors of the incorporated cell company;
- (d). a shareholder of the incorporated cell company;
- (e). a creditor or a prospective creditor of the incorporated cell company;
- (f). the Commission;
- (g). the liquidator, if:
 - (i). the Court has made an order for the winding up of the incorporated cell company; or

(ii). the incorporated cell company has passed a resolution for its voluntary winding up.

(2). An application for an administration order in respect of an incorporated cell may be made together or separately by all or any of the following persons:

- (a). the incorporated cell;
- (b). the incorporated cell company of the incorporated cell;
- (c). the directors of the incorporated cell;
- (d). a shareholder of the incorporated cell;
- (e). a creditor or a prospective creditor of the incorporated cell;
- (f). the Commission;
- (g) the liquidator, if:

(i). the Court has made an order for the winding up of the incorporated cell; or

(ii). the incorporated cell has passed a resolution for voluntary winding up.

(3). The Court may, after hearing an application for an administration order, subject to any terms and conditions as it considers fit:

- (a). grant or dismiss the application; or
- (b). adjourn the hearing conditionally or unconditionally; or
- (c) make an interim order or any other order it considers fit.

SCHEDULE

(4). An interim order under paragraph (3)(c) may, without limitation restrict the performance of any functions of the directors or of the incorporated cell company or the incorporated cell.

(5). Notice of an application to the Court for an administration order for an incorporated cell company must, unless the Court orders otherwise, be served on:

(a). the incorporated cell company; and

(b). each incorporated cell of the incorporated cell company; and

(c). the Commission; and

(d). any other persons, as the Court may direct, including (without limitation) any creditor.

(6). A person who is served with a notice under subsection (5) may make representations to the Court before the order is made.

(7). Notice of an application to the Court for an administration order for an incorporated cell must, unless the Court orders otherwise, be served on:

(a). the incorporated cell; and

(b). its incorporated cell company; and

(c). the Commission; and

(d). any other persons, as the Court may direct, including (without limitation) any creditor.

(8). A person who is served with a notice under subsection (7) may make representation to the court before the order is made.

37. Effect of application for administration order

(1). During the period beginning from the making of an application for an administration order and ending on the making of the order or the dismissal of the application:

(a). no resolution may be passed or order made for the winding up of:

(i). the incorporated cell company; or

(ii). the incorporated cell,

to which the application relates;

(b). no proceedings may be commenced or continued against the incorporated cell company or incorporated cell except with the leave of the Court and subject to the terms and conditions as the Court may impose.

(2). To avoid doubt, paragraph (1)(b) does not affect the rights of set-off and secured interests, including security interests, and their rights of enforcement.

(3). Nothing in subsection (1) requires the leave of the Court for the presentation of an application for the winding up of the incorporated cell company or as the case may be the incorporated cell.

38. Effect of administration order

(1). If the Court grants an administration order under section 36, any application for the winding up of:

- (a). the incorporated cell company; or
- (b). the incorporated cell,

to which the order relates must be dismissed.

(2). If an administration order is in force:

- (a). no resolution may be passed or order made for the incorporated cell company or incorporated cell's winding up; and
- (b). no proceedings may be commenced or continued against the incorporated cell company or the incorporated cell unless by:
 - (i). prior consent of the administrator; or
 - (ii). the leave of the Court, subject to the terms and conditions as the Court may impose.

(3). To avoid doubt, paragraph (b) does not affect the rights of set-off and secured interests, including security interests, and their rights of enforcement.

39. Notification of administration order

(1). Every invoice, order for goods, business letter or other document in relation to an incorporated cell company or an incorporated cell, issued while an administration order is in force, by or on its behalf or by the administrator, must contain in addition to the name of the incorporated cell company or incorporated cell:

- (a) the name of the administrator; and
- (b) a statement that the affairs, business and property of the incorporated cell company or as the case may be the incorporated cell are being managed by the administrator.

(2). An incorporated cell company or incorporated cell that contravenes subsection (1) is liable to a default fine.

(3). The administrator or an officer of the incorporated cell company or incorporated cell who without reasonable excuse authorises or permits the contravention of subsection (1) is liable to a default fine.

40. General powers and functions of administrator

- (1). The administrator of:
- (a) an incorporated cell company, or
 - (b) an incorporated cell,

may do all things necessary or expedient for the management of the affairs, business and property of the incorporated cell company or as the case may be the incorporated cell.

(2). Without limiting subsection (1), and unless the Court orders otherwise, the administrator of an incorporated cell company or incorporated cell may exercise the powers and functions of the administrator as are specified in the Schedule.

(3). The administrator may apply to the Court for directions in relation to:

- (a) the extent or performance of his or her functions under this Act; or
- (b) any other matter arising in the performance of his or her functions under this Act.

(4). On hearing an application under subsection (3), the Court may make an order, subject to any terms and conditions, as it thinks fit.

(5). The administrator is in exercising his or her powers or functions under this Act, taken to act as the agent of the incorporated cell company or as the case may be the incorporated cell and is not personally liable for any omissions incurred in the performance of his or her functions except to the extent that he or she acts fraudulently, recklessly or negligently or in bad faith.

(6). The administrator may:

(a). remove any director of the incorporated cell company or as the case may be the incorporated cell and appoint another person to be a director, to fill a vacancy or otherwise; or

(b). call a meeting of members or creditors of the incorporated cell company or as the case may be the incorporated cell.

(7). An administrator appointed for an incorporated cell company may:

(a). remove any director of any of its incorporated cells and appoint any person to be a director to fill a vacancy or otherwise; or

(b). call any meeting of members or creditors of any of its incorporated cells.

(8). For the purposes of the Companies Act, an administrator of an incorporated cell company or an incorporated cell is taken to be an officer of the

incorporated cell company or as the case may be the incorporated cell.

41. General duties of administrator

(1). The administrator must, on his or her appointment, take custody or control of the properties of the incorporated cell company or as the case may be the incorporated cell.

(2). The administrator must manage the affairs, business and property of the incorporated cell company or as the case may be the incorporated cell in accordance with any specific directions given by the Court.

42. Co-operation with, and by, administrator

(1). Any function conferred on:

(a). the incorporated cell company; or

(b). the incorporated cell; or

(c). the directors and officers of the incorporated cell company or the incorporated cell,

under the Companies Act or by the memorandum or articles or otherwise, which could be performed during the administration of the incorporated cell company or the incorporated cell, in such a way as to interfere with the performance of functions of the administrator, must not be performed unless with the prior consent of the administrator, which may be given either generally or in relation to a particular matter.

(2) . The administrator of an incorporated cell company must co-operate in managing the affairs, business and property of the incorporated cells of the incorporated cell company, with:

- (a). the incorporated cells; and

- (b). the directors and officers of the incorporated cells,

to the extent that such co-operation must not interfere with the performance of his or her functions as the administrator.

(3). The administrator of an incorporated cell must co-operate, in managing the affairs, business and property of the incorporated cell company with:

- (a). the incorporated cell company; and

- (b). the directors and officers of the incorporated cell company,

to the extent that such co-operation must not interfere with the performance of his or her functions as the administrator.

43. Discharge or variation of administration order

(1). The administrator may apply to the Court at any time for a variation or discharge of an administration order if it appears to him or her that:

SCHEDULE

- (a). the purpose or each of the purposes specified in the order has been achieved or is unable to be achieved; or

 - (b). it would otherwise be desirable or expedient to discharge or vary the order.
- (2). The Court may on hearing an application under this section for the discharge or variation of an administration order, subject to any terms and conditions as it considers fit:
- (a). grant or dismiss the application; or

 - (b). adjourn the hearing, conditionally or unconditionally; or

 - (c). make an interim order or any other order as it thinks fit.
- (3). If an administration order is discharged or varied under this section:
- (a). the registrar must enter a copy of the order effecting the discharge or variation in the register of companies; and

 - (b). the administrator must within such time as the Court may direct, send a copy of the order to persons as the Court may direct.

44. Remuneration and swearing in, of administrator

- (1). The remuneration of an administrator and any costs, charges and expenses properly incurred in the administration of:

- (a). an incorporated cell company; or
- (b). an incorporated cell,

are payable from the incorporated cell company and incorporated cell assets in priority to all other claims.

- (2). The administrator's fees are to be determined by the Court.
- (3). The administrator must be sworn before the Court when the Court makes the administration order or at any other time as may be directed by the Court.

45. Vacation of office

- (1). The administrator must vacate office if:
 - (a). he or she is removed by order of the Court; or
 - (b). he or she resigns by giving 3 months notice of resignation to the Court; or
 - (c). the administration order is discharged by the Court.
- (2). The Court may, on the application of an interested party, appoint another person to be an administrator, if there is a vacancy in the office of the administrator.

46. Release of administrator

- (1). A person who has ceased to be the administrator of an incorporated cell company or an incorporated cell is released with effect from:
 - (a). in the case of death - the time at which notice is given to the Court that he or she has ceased to hold office; or
 - (b). in any other case- the time as the Court may determine.
- (2). A person who is released under this section , with effect from the time of release, is discharged from all liability in respect of his or her acts and omissions in the administration and otherwise in relation to his or her conduct as administrator, except to the extent that he or she has acted fraudulently, recklessly, negligently or in bad faith.

47. Information to be given by administrator

- (1). If an administration order has been made, the administrator must:

(a). as soon as practicable, send the notice of the order to:

- (i). the incorporated cell company; or
- (ii). the incorporated cell,

in respect of which the order is made and publish the notice in the Gazette;
and

(b). within 28 days after the date in which the order is made-send the notice of the order to the Commission and:

- (i). subject to any directions of the Court -to all creditors of the incorporated cell company or as the case may be the incorporated cell; or
- (ii). if the order is for an incorporated cell company- to its incorporated cells; or
- (iii). if the order is for an incorporated cell- to its incorporated cell company.

(2). If an administration order has been made, the registrar must enter a copy of the order in the register to be maintained by him or her under the Companies Act.

48. Statement of affairs to be submitted to administrator

(1). If an administration order has been made, the administrator may require all or any of the persons referred to in subsection (3) to submit to him or her a statement in the form as he or she may require, in relation to the affairs of:

- (a). the incorporated cell company; or
- (b). the incorporated cell,

in respect of which the order was made.

(2). The statement referred to in subsection (1) must be verified by affidavits of the persons required to submit it or in such other manner as the administrator may require and must set out:

- (a). particulars of the assets, debts and liabilities of the incorporated cell company or as the case may be the incorporated cell; and
- (b). the name and addresses of its creditors; and

SCHEDULE

- (c). any securities held by any of its creditors; and
 - (d). the dates on which those securities were given; and
 - (e). any other information as the administrator may require.
- (3). The persons referred to in subsection (1) are persons:
- (a). who are or have been officers of the incorporated cell company or as the case may be the incorporated cell; and
 - (b). who have taken part in the formation of the incorporated cell company or as the case may be the incorporated cell at any time within the period of one year before the date on which the administration order was made; and
 - (c). who are in the employment with the incorporated cell company or as the case may be the incorporated cell or have been in its employment within the period of one year before the date on which the administration order was made, and in the opinion of the administrator, capable of giving the information that is so required.
- (4). For the purpose of this section “employment” in paragraph (3) (c) includes employment under a contract for services.
- (5). Subject to paragraph (6)(b), a person must submit the statement of affairs to the administrator within 21 days from the date on which he or she receives a written notice from the administrator to submit such statement.
- (6). The administrator may:
- (a). at any time release a person from an obligation imposed on him or her under subsection (1) or (2); or
 - (b). at the time of giving notice under subsection (5) or subsequently, extend the period mentioned in that subsection.
- (7). The Court may exercise the powers under subsection (6) if the administrator has refused to exercise such powers without a reasonable excuse.
- (8). A person who without reasonable excuse fails to comply with any obligation imposed under this section, is liable to a default fine.
- (9). A requirement imposed by an administrator under this section has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by any Act, contract or otherwise.

(10). An obligation or restriction referred to in subsection (9) is not contravened by making of a disclosure pursuant to a requirement imposed by an administrator under this section.

49. Protection of interests of creditors and members

(1). At any time that an administration order is in force, the Commission, a creditor or member of the incorporated cell company or the incorporated cell to which the order relates, may apply to the Court for an order under this section on the ground that:

- (a). the affairs, business and property of the incorporated cell company or as the case may be the incorporated cell are managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including, except where the applicant is the Commission, at least the applicant himself or herself); or
- (b). any actual or proposed act or omission of the administrator is or would be so prejudicial; or
- (c). that it would otherwise be desirable or expedient for an order under this section to be made.

(2). In hearing an application for an order under subsection (1), the Court may subject to the terms and conditions as it thinks fit:

- (a). dismiss the application, or make an order for giving relief in respect of the matters complained of; or
- (b). adjourn the hearing, conditionally or unconditionally; or
- (c). make an interim order.

(3). An order under this section may:

- (a). regulate future management by the administrator of the affairs, business and property of the incorporated cell company or incorporated cell; or
- (b). require the administrator to refrain from doing or continuing an act complained of by the applicant, or to do an act which the administrator has omitted to do; or
- (c). require the summoning of a meeting of members for the purpose of considering any matters as the Court may direct; or

- (d). discharge the administration order and make any consequential provision as the Court thinks fit.
- (4). The registrar must enter a copy of the order that directs the discharge of the administration order in the register.
- (5). The administrator must send a copy of the order that directs the discharge of the administration order to any person as the court may direct.
- (6). An application for an order under this section may also be made with leave of the Court, by a person other than a person referred to in subsection (1).

PART 8. ALTERATIONS

50. Amendment of articles of incorporated cells

The articles of an incorporated cell may be amended:

- (a). in the manner set out in the articles; or
- (b). if the manner is not set out in the articles - by a special resolution of the incorporated cell and of its incorporated cell company.

51. Conversion of company into incorporated cell company

- (1). A company may be converted as an incorporated cell company.
- (2). The company must:
 - (a). subject to subsection 3(2), have the consent of the Commission for conversion; and
 - (b). pass a special resolution to authorise the conversion and to alter its memorandum to state that it is an incorporated cell company; and
 - (c). change its name, to comply with section 6.
- (3). Each of the directors who has authorised the conversion must sign a declaration that he or she believes, on reasonable grounds, that the conversion complies with the requirements of this section.

SCHEDULE

(4). The fees in respect of an application for consent of the Commission for the conversion of a company under this section may be prescribed.

(5) The company must submit to the registrar:

- (a). a copy of the approval of the Commission; and
- (b). a copy of the special resolution altering its memorandum; and
- (c). a copy of its amended memorandum; and
- (d). a copy of the special resolution authorising its change of name; and
- (e). the declaration of the directors under subsection (3); and
- (f). the prescribed fee.

(6). The registrar must issue a certificate of conversion into incorporated cell company to the company after receiving the documents and the fees prescribed in subsection (5).

(7). The certificate issued under subsection (6) must state the date on which it comes into effect.

52. Conversion of protected cell company into incorporated cell company

(1). A protected cell company may be converted into an incorporated cell company.

(2). The protected cell company must not be converted into an incorporated cell company unless it has:

- (a). the consent of the Commission for conversion; and
- (b). passed a special resolution authorising the conversion and alteration of its memorandum and articles; and
- (c). changed its name, in order to comply with section 6.

(3). Without limiting subsection (2), the holders of the cell shares of each cell of the protected cell company must pass a special resolution:

- (a). authorising its conversion into an incorporated cell of the incorporated cell company; and
- (b). specifying its new name which must comply with the requirements of section 11; and

- (c). specifying its memorandum and articles.
- (4). Each of the directors of the company who has authorised the conversion must sign a declaration in accordance with subsection (6).
- (5). The fees in respect of an application for consent of the Commission for the conversion may be prescribed.
- (6). The declaration must state that each director believes on reasonable grounds that:
- (a). the protected cell company is able to discharge its liabilities as they fall due: and
 - (b). that there are no creditors of the protected cell company whose interests will be unfairly prejudiced by the conversion; and
 - (c). that the requirements of this section have been complied with.
- (7). The protected cell company must submit to the registrar:
- (a). a copy of the approval of the Commission; and
 - (b). a copy of the special resolution of the protected cell company; and
 - (c). a copy of the special resolution passed by the holders of cell shares of each of its cells; and
 - (d). a copy of the amended memorandum and articles; and
 - (e). a copy of the memorandum and articles of its cells; and
 - (f). a copy of the special resolution authorising its change of name; and
 - (g). the declaration of the directors under subsection (6); and
 - (h). the prescribed fee.
- (8). The special resolution passed by the holders of cell shares of each cell of the protected cell company must be treated as a cell resolution under section 8 of this Act.
- (9). The registrar must on receiving the documents and the fees specified in subsection (7):

- (a). in respect of a protected cell company:
 - (i). issue to it a certificate of conversion from protected cell company into incorporated cell company; and
 - (ii). register its conversion into an incorporated cell company; and
 - (iii). register its amended memorandum and articles; and
- (b). in respect of each cell of the protected cell company:
 - (i). register the conversion of the cell into an incorporated cell of the incorporated cell company; and
 - (ii). register the memorandum and articles; and
 - (iii). issue a certificate of registration; and
 - (iv). allocate a registration number to the incorporated cell.

(10). The certificate of registration issued under this section is the conclusive evidence that an incorporated cell is registered under this Act.

(11). If a protected cell company is converted into a incorporated cell company under this section:

- (a). all property and rights to which the core of the protected cell company was entitled immediately before its conversion remain the property and rights of the incorporated cell company; and
- (b). the incorporated cell company remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations to which the core of the protected cell company was subject immediately before its conversion; and
- (c). all actions and other legal proceedings which, immediately before the conversion, were pending by or against the core of the protected cell company may be continued by or against the incorporated cell company; and
- (d). all property and rights attributable to a cell of the protected cell company immediately before its conversion become the property and rights of the incorporated cell which it has become; and
- (e). an incorporated cell becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, which

immediately before the conversion were attributable to the cell of the protected cell company which it was; and

(f). all actions and other legal proceedings which, immediately before the conversion, were pending by or against the protected cell company in respect of any of its cells, may be continued by or against the incorporated cell which that cell has become.

(12). In subsection (9) “core” has the same meaning as in the Protected Cell Companies Act No. 37 of 2005.

(13). A creditor or member of the protected cell company (including a creditor or member of its cells) may apply to the Court, within the period of 30 days from the date upon which the certificate issued under this section comes into effect, to set aside the conversion on the grounds that it, or its terms, will unfairly prejudice his or her interests.

(14). The Court may on hearing an application under subsection (13) make an order, subject to any terms and conditions that it thinks fit.

53. Conversion of incorporated cell into independent company

(1). An incorporated cell may be converted into a company independent of its incorporated cell company.

(2). The incorporated cell must:

(a). pass a special resolution authorising the conversion; and

(b). change its name in order to remove from its name the expression required by section 11 of this Act.

(3). Each of the directors of the incorporated cell who has authorised the conversion must sign a declaration that he or she believes, on reasonable grounds, that the requirements of this section have been complied with.

(4). The incorporated cell must submit to the registrar:

(a). a copy of the special resolution referred to in paragraph (2)(a); and

(b). a copy of the special resolution authorising its change of name; and

(c). a copy of its amended memorandum; and

(d). the declaration of the directors under subsection (3); and

- (e). the prescribed fee.

- (5). The registrar must issue a certificate of conversion of incorporated cell into company if he or she receives the documents listed in paragraphs (4) (a), (b), (c), and (d) and the prescribed fee.

- (6). The certificate issued under subsection (5) must state the date on which it comes into effect.

- (7). If an incorporated cell is converted into a company under this section :
 - (a). all property and rights to which it was entitled immediately before its conversion remain its property and rights; and

 - (b). it remains subject to all criminal and civil liabilities and all contracts, debts and other obligations to which it was subject immediately before its conversion; and

 - (c). all actions and other legal proceedings which, immediately before its conversion, were pending by or against it may be continued by or against it.

- (8). A member of the incorporated cell who objects to its conversion may apply to the Court for an order under section 29, to set aside the conversion on the grounds that the conversion or the terms of the conversion unfairly prejudice his or her interests.

- (9). An application under subsection (8) must not be made after 30 days from the date on which the certificate comes into effect.

54. Transfer of incorporated cells between incorporated cell companies

- (1). An incorporated cell of an incorporated cell company may be transferred to another incorporated cell company.

- (2). The incorporated cell company must enter into a written agreement with another incorporated cell company setting out the terms of the transfer.

- (3). A transfer of an incorporated cell is approved when:
 - (a). the directors of each incorporated cell company have approved the transfer agreement; and

 - (b). the transfer agreement is approved by a special resolution of:

SCHEDULE

- (i). the incorporated cell company to which the incorporated cell is being transferred; and
 - (ii). the incorporated cell which is being transferred.
- (4). Within 21 days of the approval of a transfer agreement, the incorporated cell company to which the incorporated cell is being transferred must submit to the registrar:
- (a). a copy of the special resolution of the incorporated cell company approving the transfer agreement; and
 - (b). a copy of the special resolution of the incorporated cell that is being transferred, approving the transfer agreement; and
 - (c). a copy of the transfer agreement; and
 - (d). a copy of any amended memorandum and articles of the incorporated cell that is being transferred; and
 - (e). a declaration made under subsection (5), signed by each director of the incorporated cell company transferring the incorporated cell, who authorised the transfer; and
 - (f). the prescribed fee.
- (5). The declaration referred to in paragraph (4)(e) must state that each director believes on reasonable grounds that:
- (a). the incorporated cell that is being transferred is able to discharge its liabilities as they fall due; and
 - (b). the transfer agreement has been approved under this section; and
 - (c). the requirements of this section have been complied with.
- (6). The registrar must, on receiving the documents listed in paragraphs (4)(a) to (e) and the prescribed fee:
- (a). issue to the incorporated cell a certificate of transfer of the incorporated cell; and
 - (b). register the transfer of the incorporated cell and any amended memorandum and articles of the incorporated cell; and
 - (c). record that the incorporated cell has ceased to be an incorporated cell of the incorporated cell company that transferred it.

- (7). The certificate issued under paragraph (6)(a) must state the date on which it comes into effect.
- (8). If an incorporated cell is transferred under this section:
- (a). the incorporated cell ceases to be an incorporated cell of the incorporated cell company that transferred it; and
 - (b). the incorporated cell becomes an incorporated cell of the incorporated cell company to which it has been transferred; and
 - (c). the memorandum and articles of the incorporated cell must be as provided for in the transfer agreement; and
 - (d). all property and rights to which the incorporated cell was entitled immediately before its transfer remain the property and rights of the incorporated cell; and
 - (e). all civil and criminal liabilities and all contracts, debts and other obligations to which the incorporated cell was subject immediately before its transfer remain the liabilities, contracts, debts and other obligations of the incorporated cell; and
 - (f). all actions and other legal proceedings which, immediately before its transfer were pending by or against the incorporated cell may be continued by or against the incorporated cell.

55. Conversion of company into incorporated cell and transfer to incorporated cell company

- (1). A company that is a non-cellular company may transfer into an incorporated cell of an incorporated cell company.
- (2). The non-cellular company and the incorporated cell company must enter into a written agreement that sets out the terms of the transfer.
- (3). The non-cellular company must change its name to comply with section 11 if it transfers into an incorporated cell of an incorporated cell company.
- (4). A transfer of a non-cellular company is approved if:
- (a). the directors of the non-cellular company and the incorporated cell company have approved the transfer agreement; and
 - (b). the transfer agreement is approved by a special resolution of the non-cellular company and the incorporated cell company.

(5). The incorporated cell company must submit to the registrar within 21 days of the approval of the transfer agreement:

- (a). a copy of the special resolution of the non-cellular company; and
- (b). a copy of the special resolution of the incorporated cell company; and
- (c). a copy of the transfer agreement; and
- (d). a copy of the amended memorandum and articles of the non-cellular company; and
- (e). a declaration made under subsection (6), signed by each director of the non-cellular company and the incorporated cell company who authorised the transfer: and
- (f). the prescribed fee.

(6). The declaration referred to in paragraph (5)(e) must state that each of the director believes on reasonable grounds that;

- (a). the non-cellular company is able to discharge its liabilities as they fall due; and
- (b). the transfer agreement has been approved under this section; and
- (c). the requirements of this section have been complied with.

(7). The incorporated cell company that fails to deliver the documents and prescribed fee under subsection (5) within the specified period is liable to a default fine.

(8). Upon receiving the documents specified in subsection (5), and the prescribed fee, the registrar may, if he or she is satisfied that the requirements of section 11 are complied with:

- (a). issue to the non-cellular company a certificate of conversion into incorporated cell; and
- (b). register the conversion of the non-cellular company and its transfer as an incorporated cell to the incorporated cell company: and
- (c). register any amended memorandum and articles of the non-cellular company.

- (9). The certificate issued under paragraph(8) (a) must state the date on which it comes into effect.
- (10). If a non-cellular company becomes an incorporated cell of an incorporated cell company under this section:
- (a). its memorandum and articles must be as provided for in the transfer agreement; and
 - (b). all property and rights to which it was entitled immediately before its conversion remain its property and rights; and
 - (c). all civil and criminal liabilities and all contracts, debts and other obligations to which it was subject immediately before its conversion remain its liabilities, contracts, debts and other obligations; and
 - (d). all actions and other legal proceedings which, immediately before its conversion, were pending by or against it may be continued by or against it.

56. Expulsion of incorporated cell from its incorporated cell company

- (1). A person referred to subsection (2) may apply to the Court to expel an incorporated cell from its incorporated cell company, on the grounds set out in subsection (3).
- (2). The persons are:
- (a). the Commission; or
 - (b). the incorporated cell company; or
 - (c). the administrator of the incorporated cell company; or
 - (d). the liquidator of the incorporated cell company.
- (3). The grounds for expulsion are:
- (a). that the affairs of the incorporated cell are being or have been conducted in a manner which is unfairly prejudicial to:
 - (i). its incorporated cell company; or
 - (ii). any incorporated cell of that company; or

- (iii). to the members of that company or its incorporated cells; and
 - (b). that the incorporated cell is or has been used for fraudulent purposes; and
 - (c). that to fail to do so would jeopardize the reputation of Vanuatu as a finance centre; and
 - (d). that it would be just and equitable to do so.
- (4). The Court after receiving an application under this section may make an order including an order requiring the incorporated cell to convert into a company, subject to the terms and conditions as it thinks fit.

57. Directors' declarations

(1). The registrar may in performing his or her functions under section 51, 52, 53, 54 or 55:

- (a). rely in all **respects** upon the documents given to him or her under these sections by the directors of the incorporated cell company or as the case may be an incorporated cell; and
 - (b). not be bound to enquire further as to whether or not the companies or cells have complied with the provisions of this Act.
- (2). A director who makes a declaration under section 51, 52, 53, 54 or 55 without satisfying the grounds for making the declarations under those sections is liable to a default fine.

58. Conversions, transfers or expulsions not a default

The operation of sections 51 to 55 must not be regarded as:

- (a). a breach of contract or confidence or otherwise as a civil wrong; or
- (b). a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
- (c). giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

PART 9. . GENERAL PROVISIONS

59. Offences

(1). A person commits an offence if the person in connection with any application, declaration, return, report, certificate or other document required by or for the purposes of this Act:

(a). makes a statement that he or she knows or has reasonable cause to believe is false, deceptive or misleading in a material particular; or

(b). recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular; or

(c). produces or furnishes or causes or permits to be produced or furnished any information or document that he or she knows or has reasonable cause to believe is 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.

(2). A person who commits an offence under subsection (1) is liable on conviction:

(a). in the case of an individual- to a fine not exceeding VT 500,000 or imprisonment for a term not exceeding 2 years or both;

(b). in the case of a company-to a fine not exceeding VT 1,000,000.

60. Criminal liability of officers, etc.

(1). If an offence under this Act committed by an incorporated cell company or an incorporated cell is:

(a). proved to have been committed with the consent or connivance of;
or

(b). to be attributable to any neglect on the part of;

any officer of the incorporated cell company or any person purporting to act in any such capacity, he or she as well as the incorporated cell company is guilty of the offence punishable on conviction:

(i). in the case of an individual- to a fine not exceeding VT 500,000 or imprisonment for a term not exceeding 2 years or both;

(ii). in the case of an incorporated cell company - to a fine not exceeding VT 1,000,000.

(2). If the affairs of an incorporated cell company are managed by its members, subsection (1) applies to a member in connection with his or her functions of management as if he or she were an officer.

(3) For the purposes of this section, a person in accordance with whose directions or instructions any officer of an incorporated cell company acts, is taken to be an officer of the incorporated cell company.

61. Applications for directions

(1). A director of an incorporated cell company or incorporated cell may apply to the Court for directions in managing any of the affairs of the incorporated cell company or incorporated cell.

(2). The Court may on hearing an application under subsection (1) make an order as it thinks fit.

(3). An application under subsection (1) may be made ex parte.

(4). The court hearing an application under this section may direct that the whole or any part of the application may be heard in camera.

62. Power of Court to grant relief in certain cases

(1). If in proceedings for negligence, default or breach of duty or trust against an officer of an incorporated cell company or an incorporated cell, and it appears to the Court hearing the case that the officer is or may be liable but that:

(a). he or she acted honestly and reasonably; and

(b). having regard to all the circumstances of the case (including those connected with the officer's appointment) he or she ought fairly to be excused,

the Court may relieve him or her, either wholly or in part, from his or her liability, subject to any terms as the court thinks fit.

(2). If an officer of a company has reasons to believe that a claim will or might be made against him or her in respect of negligence, default, breach of duty or breach of trust:

(a). the officer may apply to court for relief; and

(b). the Court has the same power to relieve him or her as it would have had if it had been a court before which proceedings against him or her for negligence, default, breach of duty or breach of trust had been brought.

(3). In this section “officer” includes “administrator”.

63. Appeals against decisions of the Commission

(1). A person aggrieved by a decision of the Commission may appeal to the Supreme Court.

(2). An appeal must be made within 28 days after the date of the notice of the Commission’s decision.

(3). The Supreme Court may:

(a). set aside the decision of the Commission and if the Supreme Court considers it appropriate to do so, refer the matter back to the Commission with any directions the Supreme Court thinks appropriate; or

(b). confirm the decision in whole or in part.

64. Regulations

(1). The Minister, may on the advice of the Commission make regulations, not inconsistent with this Act, prescribing matters:

(a). required or permitted by this Act to be prescribed; or

(b). necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2). Without limiting subsection (1), the regulations may make provisions in respect of all or any of the following matters:

(a). the conduct of the business of incorporated cell companies and incorporated cells;

(b). the manner in which incorporated cell companies and incorporated cells may carry on, or hold themselves out as carrying on business;

(c). the form and content of the accounts of incorporated cell companies and incorporated cells;

(d). the winding up or administration of incorporated cell companies and incorporated cells;

SCHEDULE

- (e). generally for the implementation of this Act.

65. Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

Subsection-40(2)

Powers and Functions of Administrator

1. To take possession of, collect and get in the property of an incorporated cell company or incorporated cell and, for that purpose, to take such proceedings as may seem expedient.
2. To sell or otherwise dispose of the property of an incorporated cell company by public auction or private contract.
3. To raise or borrow money; and grant security for that purpose over the property of the incorporated cell company or incorporated cell.
4. To appoint a lawyer or an accountant or other professionally qualified person to assist him or her in the performance of the functions under the Act.
5. To bring or defend any action or other legal proceedings in the name and on behalf of an incorporated cell company.
6. To refer to arbitration any question affecting an incorporated cell company.
7. To effect and maintain insurances in respect of the business and property of an incorporated cell company.
8. To use an incorporated cell company's seal.
9. To do all acts and execute in the name and on behalf of an incorporated cell company any receipt or other document.
10. To draw, accept, make and endorse any bill or exchange or promissory note in the name and on behalf of an incorporated cell company.
11. To appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. To do all such things (including the carrying out of works) as may be necessary for the realisation of the property of an incorporated cell company.

SCHEDULE

13. . To make any payment which is necessary or incidental to the performance of the function.
14. To carry on the business of an incorporated cell company.
15. To establish subsidiaries of an incorporated cell company.
16. To transfer to subsidiaries of an incorporated cell company, the whole or any part of the business and property of the incorporated cell company.
17. To grant or accept surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of an incorporated cell company.
18. To make any arrangement or compromise on behalf of an incorporated cell company.
19. To call up any uncalled capital of an incorporated cell company.
20. To rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to an incorporated cell company, and to receive dividends, and to accede to trust deeds for the creditors of any such person.
21. To present or defend an application for the winding up of an incorporated cell company.
22. To change the situation of an incorporated cell company's registered office.
23. To do all other things incidental to the exercise of the above powers and functions.