

INCORPORATED CELL COMPANIES ACT 2010

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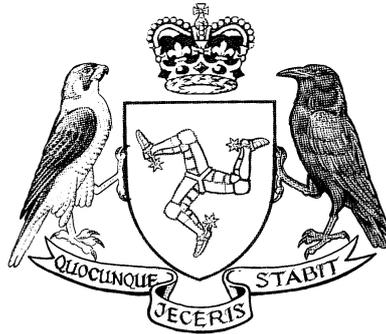
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Isle of Man } Signed in Tynwald: 14th December 2010
 to Wit } Received Royal Assent: 14th December 2010
 Announced to Tynwald: 14th December 2010

AN ACT

to provide for the incorporation of companies as incorporated cell companies and incorporated cells; for the conversion of companies into incorporated cell companies and incorporated cells; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1

OPENING PROVISIONS

1. The short title of this Act is the Incorporated Cell Companies Act 2010. Short title

2. (1) This Act (other than this section and section 1) comes into operation on such day as the Treasury by order appoints and different days may be appointed for different provisions and for different purposes. Commencement

(2) An order under subsection (1) may make such transitional and saving provisions as the Treasury considers necessary or expedient.

3. (1) In this Act — Interpretation

“the 1931 Act” means the Companies Act 1931;

[XIII p.235]

“the 1931 legislation” means the Companies Acts 1931 to 2004;

[XX p.413]

“the 1968 Act” means the Companies Act 1968;

[c.2]

“the 1982 Act” means the Companies Act 1982;

[c.4]

“the 1992 Act” means the Companies Act 1992;

[c.1]

“the 2004 Act” means the Protected Cell Companies Act 2004;

[c.13]

“the 2006 Act” and “the 2006 legislation” means the Companies Act 2006;

“cell resolution” means —

- (a) a special resolution of an ICC incorporated under the 1931 legislation; or
- (b) a members’ resolution of an ICC incorporated under the 2006 legislation,

complying with the requirements of section 9, creating an incorporated cell;

“certificate of conversion from PCC into ICC” means a certificate issued by the Commission under section 22(11);

“certificate of conversion into IC” means a certificate issued by the Commission under section 25(10);

“certificate of conversion into ICC” means a certificate issued by the Commission under section 21(9);

“certificate of conversion of IC into company” means a certificate issued by the Commission under section 23(7);

“certificate of transfer of IC” means a certificate issued by the Commission under section 24(8);

“Commission” means the Financial Supervision Commission;

“Court” means the High Court;

“creditors” includes present, future and contingent creditors;

“IC” and “incorporated cell” means a cell of an ICC;

“ICC” and “incorporated cell company” means a company incorporated as, or converted into, an incorporated cell company in accordance with this Act;

“liability” includes any debt or obligation;

“members’ resolution” has the same meaning as in section 65 of the 2006 Act;

“non-cellular company” means a company which is neither an ICC nor a PCC;

“prescribed” means prescribed by order or regulations of the Treasury under section 32;

“PCC” and “protected cell company” have the same meaning as in —

- (a) the 2004 Act, in the case of a company incorporated under the 1931 legislation; or
- (b) the 2006 Act, in the case of a company incorporated under the 2006 legislation;

“published” means published by the Commission in a manner likely to bring it to the attention of those affected;

“special resolution” has the same meaning as in section 116 of the 1931 Act;

“transaction” means anything (including, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship) where any liability arises or is imposed;

“transfer agreement” means an agreement either between —

- (a) two ICCs setting out the terms of the transfer of an IC between them, in accordance with section 24; or
- (b) an ICC and a non-cellular company setting out the terms of the transfer of the non-cellular company as an IC to the ICC, in accordance with section 25;

“transfer of domicile” means —

- (a) the continuation of foreign companies as companies incorporated under the 1931 legislation or the 2006 legislation (as the context requires);

- (b) the discontinuation of companies incorporated under the 1931 legislation or the 2006 legislation (as the context requires) and the continuation of such companies in countries or territories outside the Island.

(2) Expressions used in this Act have the same meanings as in —

- (a) the 1931 legislation, in the case of a company incorporated under the 1931 legislation; and
- (b) the 2006 legislation, in the case of a company incorporated under the 2006 legislation,

unless the context requires otherwise.

PART 2

FORMATION AND NATURE OF ICC

Formation
of ICC

4. (1) A company may be incorporated as an incorporated cell company (an “ICC”) under the 1931 legislation or the 2006 legislation.

(2) A company may be incorporated as an ICC only if it is a company limited by shares.

(3) The 1931 legislation applies in respect of an ICC incorporated under the 1931 legislation as it applies in respect of any other company incorporated under the 1931 legislation.

(4) The 2006 legislation applies in respect of an ICC incorporated under the 2006 legislation as it applies in respect of any other company incorporated under the 2006 legislation.

(5) This section is subject to this Act.

Name of ICC

5. (1) The name of an ICC must include the expression “Incorporated Cell Company” or “ICC”.

(2) A company that does not comply with this section is not an ICC.

(3) This section does not limit —

- (a) in the case of a company incorporated under the 1931 legislation, section 2(1)(a) of the 1931 Act (use of the

word “Limited”) and sections 29 and 30 of the 1992 Act (names of public companies); and

- (b) in the case of a company incorporated under the 2006 legislation, section 11 of the 2006 Act (required part of company name).

6. (1) The memorandum of association of an ICC must state that it is an ICC. Memorandum of ICC

(2) In order to comply with subsection (1), an ICC may alter its memorandum by —

- (a) special resolution, in the case of a company incorporated under the 1931 legislation; or
- (b) members’ resolution, in the case of a company incorporated under the 2006 legislation.

(3) A company that does not comply with subsection (1) is not an ICC.

7. (1) To incorporate a company as an ICC there must be delivered to the Commission — Incorporation of ICC

- (a) a statement in the published form signed by or on behalf of the subscribers of the memorandum;
- (b) all other documents, consents and information as are required for the registration of the memorandum of a company under the 1931 legislation or the 2006 legislation (as the context requires); and
- (c) the published fee.

(2) A company cannot be incorporated as an ICC unless —

- (a) it is authorised to carry on or will, when incorporated, be authorised to carry on, insurance business within the meaning of the Insurance Act 2008; or [c.16]
- (b) it is (or will be) of such class or description, or carries on (or will carry on) such business or class of business as is prescribed.

(3) Subsection (2) is subject to section 4(2).

8. An ICC is a legal person. Nature of ICC

PART 3

FORMATION AND NATURE OF IC

Formation
of IC

9. (1) Subject to subsections (2) and (3), a company may be incorporated as an incorporated cell (an “IC”) under the 1931 legislation or the 2006 legislation.

(2) Where an ICC is incorporated under the 1931 legislation, an IC of that ICC may only be incorporated under the 1931 legislation.

(3) Where an ICC is incorporated under the 2006 legislation, an IC of that ICC may only be incorporated under the 2006 legislation.

(4) A company may be incorporated as an IC only if it is a company limited by shares.

(5) The 1931 legislation applies in respect of an IC incorporated under the 1931 legislation in accordance with Schedule 1.

(6) The 2006 legislation applies in respect of an IC incorporated under the 2006 legislation in accordance with Schedule 2.

(7) The Treasury may by order amend Schedules 1 and 2 so as to modify the application of the 1931 legislation and the 2006 legislation to ICs.

(8) This section is subject to this Act.

(9) An IC may not be incorporated unless a cell resolution which complies with the requirements of this section has been passed by an ICC resolving to incorporate one or more ICs of that ICC.

(10) The cell resolution must —

(a) state the name of the IC; and

(b) specify the terms of its memorandum and articles.

Name of IC

10. (1) The name of an IC must include the expression “Incorporated Cell” or “IC”.

(2) A company that does not comply with this section is not an IC.

(3) This section does not limit —

- (a) in the case of a company incorporated under the 1931 legislation, section 2(1)(a) of the 1931 Act (use of the word “Limited”) and sections 29 and 30 of the 1992 Act (names of public companies); and
- (b) in the case of a company incorporated under the 2006 legislation, section 11 of the 2006 Act (required part of company name).

11. (1) The memorandum of association of an IC must state that it is an IC. Memorandum of IC

(2) In order to comply with subsection (1), an IC may alter its memorandum by —

- (a) special resolution, in the case of a company incorporated under the 1931 legislation; or
- (b) members’ resolution, in the case of a company incorporated under the 2006 legislation.

(3) A company that does not comply with subsection (1) is not an IC.

12. To incorporate a company as an IC there must be delivered to the Commission — Incorporation of IC

- (a) a statement in the published form signed by or on behalf of the subscribers of the memorandum;
- (b) all other documents, consents and information as are required for the registration of the memorandum of a company under the 1931 legislation or the 2006 legislation (as the context requires); and
- (c) the published fee.

13. (1) An IC is a legal person. Nature of IC

(2) Despite the provisions of any other enactment, an IC is not a subsidiary of its ICC by virtue only of the fact that it is an incorporated cell of its incorporated cell company.

(3) An IC may not itself be an ICC or a protected cell company (“PCC”).

(4) An IC must have the same registered office as its ICC.

(5) The directors of an ICC must also be directors of each of its ICs.

(6) Subject to its memorandum and articles, an IC may appoint additional directors to those required by subsection (5).

(7) But the number of directors appointed as required by subsection (5) must at all times exceed the number of directors appointed under subsection (6).

(8) The memorandum and articles of an IC are to be taken to include a provision that the IC may not own shares in its ICC.

(9) Unless the contrary intention appears, the articles of an IC incorporated under the 1931 legislation are to be taken to include a provision that the IC may own shares in any other incorporated cell of its ICC.

(10) Unless the contrary intention appears, the memorandum and articles of an IC incorporated under the 2006 legislation are to be taken to include a provision that the IC may own shares in any other incorporated cell of its ICC.

PART 4

SEPARATE NATURE OF ICC AND ITS ICs

Separation
of assets and
liabilities

- 14.** (1) The directors of an ICC and its ICs must —
- (a) keep the assets and liabilities of the ICC separate and separately identifiable from the assets and liabilities of its ICs; and
 - (b) keep the assets and liabilities of each IC separate and separately identifiable from the assets and liabilities of the other ICs of the ICC.

(2) The duty imposed by subsection (1) is not breached by reason only that the directors cause or permit assets of the ICC or any of its ICs to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable in accordance with subsection (1).

Transactions

15. (1) An ICC does not have power, by virtue only of its position as an incorporated cell company, to enter into transactions on behalf of any of its ICs.

(2) An IC does not have power, by virtue of its position as an incorporated cell, to enter into transactions on behalf of —

- (a) its ICC; or

(b) another IC of its ICC.

(3) The directors of an ICC and its ICs must ensure that, in respect of every transaction that the ICC or IC enters into, it is stated whether the transaction is being entered into by the ICC or by an IC and, if it is by an IC, which IC.

PART 5

WINDING UP

16. (1) The winding up of an ICC must be carried out in such a way as not to prejudice the affairs, business and property of any of its ICs. Winding up of ICC not to prejudice its ICs

(2) Accordingly, during the winding up, the ICC may continue to carry on business to the extent necessary for the continuance of business of its ICs.

17. (1) In the course of a winding up, the appointment of a liquidator in respect of an ICC does not affect the position of the directors of its ICs, subject to any contrary direction by — Directors of IC during winding up of its ICC

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

(2) The Commission may make an application to the Court for the Court to give a direction under subsection (1).

18. An ICC that is being wound up must not be dissolved unless each of its ICs is either — No dissolution of ICC until position of its ICs resolved

- (a) converted into a company independent of its ICC under section 23;
- (b) transferred to another ICC under section 24;
- (c) expelled from its ICC under section 26;
- (d) continued as a body corporate under the law of another jurisdiction; or
- (e) wound up,

and the Court may stay the dissolution on such terms as it thinks fit.

Alternative
dissolution
procedure

19. (1) An ICC may not apply for a declaration of dissolution unless each of its ICs —

- (a) is —
 - (i) converted into a company independent of its ICC under section 23;
 - (ii) transferred to another ICC under section 24;
 - (iii) expelled from its ICC under section 26;
 - (iv) continued as a body corporate under the law of another jurisdiction; or
 - (v) wound up; or
- (b) makes an application for a declaration of dissolution at the same time as the ICC.

(2) In subsection (1), “declaration of dissolution” means a declaration of dissolution under —

- (a) section 273A(1) of the 1931 Act, in the case of a company incorporated under the 1931 legislation; or
- (b) section 190(1) of the 2006 Act, in the case of a company incorporated under the 2006 legislation.

PART 6

MODIFICATIONS

Amendment
of constitution
of ICs

20. The articles of an IC may be amended —

- (a) in the manner set out in its memorandum or articles of association; or
- (b) in the absence of a provision in the memorandum or articles, by —
 - (i) special resolution of both the IC and of its ICC, in the case of a company incorporated under the 1931 legislation; or
 - (ii) members’ resolution of both the IC and of its ICC, in the case of a company incorporated under the 2006 legislation.

Conversion
of company
into ICC

21. (1) A company that is not an ICC may be converted into an ICC in accordance with this section.

(2) A company which is incorporated under the 1931 legislation may only be converted into an ICC incorporated under the 1931 legislation.

(3) A company which is incorporated under the 2006 legislation may only be converted into an ICC incorporated under the 2006 legislation.

(4) A company must not be converted into an ICC unless —

- (a) it is authorised to carry on or will, when converted, be authorised to carry on, insurance business within the meaning of the Insurance Act 2008; or [c.16]
- (b) it is (or will be) of such class or description, or carries on (or will carry on) such business or class of business as is prescribed.

(5) A company must not be converted into an ICC unless the conversion is authorised by —

- (a) its articles of association, in the case of a company incorporated under the 1931 legislation; or
- (b) its memorandum or articles of association, in the case of a company incorporated under the 2006 legislation.

(6) The company must —

- (a) pass —
 - (i) a special resolution, in the case of a company incorporated under the 1931 legislation; or
 - (ii) a members' resolution, in the case of a company incorporated under the 2006 legislation,

to authorise the conversion and to alter its memorandum and articles to state that it is an ICC; and

- (b) change its name, to comply with section 5, in accordance with —
 - (i) section 19(1) of the 1931 Act, in the case of a company incorporated under the 1931 legislation; or
 - (ii) section 14 of the 2006 Act, in the case of a company incorporated under the 2006 legislation.

(7) Each director must sign a declaration that the director believes, on reasonable grounds, that the requirements of this section have been fulfilled.

(8) The company must deliver to the Commission —

- (a) a statement of conversion in the published form signed by a director of the company;
- (b) a copy of the special resolution or members' resolution referred to in subsection (6)(a);
- (c) a copy of its amended memorandum and articles;
- (d) a copy of the special resolution or members' resolution authorising its change of name;
- (e) the declaration referred to in subsection (7); and
- (f) the published fee.

(9) Upon receipt of the documents and fee specified in subsection (8) the Commission must issue a certificate of conversion into ICC, and the certificate must state the date upon which the conversion has effect.

Conversion of
PCC into ICC

22. (1) A PCC may be converted into an ICC in accordance with this section.

(2) A PCC which is incorporated under the 1931 legislation may only be converted into an ICC incorporated under the 1931 legislation.

(3) A PCC which is incorporated under the 2006 legislation may only be converted into an ICC incorporated under the 2006 legislation.

(4) A PCC must not be converted into an ICC unless —

- (a) it is authorised to carry on or will, when converted, be authorised to carry on, insurance business within the meaning of the Insurance Act 2008; or
- (b) it is (or will be) of such class or description, or carries on (or will carry on) such business or class of business as is prescribed.

(5) A PCC must not be converted into an ICC unless the conversion is authorised by —

- (a) its articles of association, in the case of a company incorporated under the 1931 legislation; or
 - (b) its memorandum or articles of association, in the case of a company incorporated under the 2006 legislation.
- (6) The PCC must —
- (a) pass —
 - (i) a special resolution in the case of a PCC incorporated under the 1931 legislation; or
 - (ii) a members' resolution, in the case of a PCC incorporated under the 2006 legislation,to authorise the conversion and to alter its memorandum and articles to state that it is an ICC; and
 - (b) change its name, to comply with section 5, in accordance with —
 - (i) section 19(1) of the 1931 Act, in the case of a PCC incorporated under the 1931 legislation; or
 - (ii) section 14 of the 2006 Act, in the case of a PCC incorporated under the 2006 legislation.
- (7) The holders of cell shares of each cell of the PCC must pass —
- (a) a special resolution in the case of a PCC incorporated under the 1931 legislation; or
 - (b) a members' resolution, in the case of a PCC incorporated under the 2006 legislation,
- authorising the conversion of the cell into an IC of the ICC and specifying its new name (which must comply with the requirements of section 10).
- (8) The special resolution or members' resolution referred to in subsection (6) is to be treated as a cell resolution for the purposes of section 9(9) and accordingly section 9(10) applies in relation to it.
- (9) Each director must sign a declaration that the director believes, on reasonable grounds, that —
- (a) the PCC is able to discharge its liabilities as they fall due;

- (b) there are no creditors of the PCC whose interests will be unfairly prejudiced by the conversion; and
 - (c) the requirements of this section have been fulfilled.
- (10) The PCC must deliver to the Commission —
- (a) a statement of conversion in the published form signed by a director of the PCC;
 - (b) a copy of the special resolutions or members' resolutions referred to in subsection (6)(a) and (7);
 - (c) a copy of its amended memorandum and articles;
 - (d) a copy of the special resolution or members' resolution authorising its change of name;
 - (e) the declaration referred to in subsection (9); and
 - (f) the published fee.
- (11) Upon receipt of the documents and fee specified in subsection (10) the Commission must —
- (a) in respect of the PCC, issue a certificate of conversion from PCC into ICC, and the certificate must state the date upon which the conversion has effect; and
 - (b) in respect of each cell of the PCC, issue a certificate of incorporation (which is conclusive evidence of due incorporation).
- (12) Where a PCC is converted into an ICC under this section —
- (a) all property and rights of the PCC which were non-cellular assets of the PCC within the meaning of the 2004 Act or Part VII of the 2006 Act (as the context requires) immediately before its conversion remain the property and rights of the ICC;
 - (b) the ICC remains subject to all criminal and civil liabilities to which the PCC was subject immediately before its conversion;
 - (c) the ICC remains liable for all contracts, debts and other obligations, which would have fallen to be discharged from the PCC's non-cellular assets immediately before the conversion;

- (d) all actions and other legal proceedings which, immediately before the conversion, were pending by or against the core of the PCC may be continued by or against the ICC;
- (e) all property and rights attributable to a cell of the PCC immediately before its conversion become the property and rights of the IC which it has become;
- (f) an IC 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 PCC which it used to be;
- (g) all actions and other legal proceedings which, immediately before the conversion, were pending by or against the PCC in respect of a cell of the PCC may be continued by or against the IC which that cell has become.

(13) A creditor or member of the PCC (including a creditor or member in respect of any of its cells) may apply to the Court, within 30 days following the date upon which the conversion has effect, for an order to set aside the conversion on the grounds that it is, or its terms are, oppressive or unfairly prejudicial to that person's interests.

(14) The Court on hearing an application under subsection (13) may make an order on such terms as it thinks fit.

23. (1) An IC may be converted into a company independent of its ICC in accordance with this section.

Conversion
of IC
into company

(2) An IC which is incorporated under the 1931 legislation may only be converted into a company incorporated under the 1931 legislation.

(3) An IC which is incorporated under the 2006 legislation may only be converted into a company incorporated under the 2006 legislation.

(4) The IC must —

(a) pass —

(i) a special resolution in the case of an IC incorporated under the 1931 legislation; or

(ii) a members' resolution, in the case of an IC incorporated under the 2006 legislation,

to authorise the conversion and to alter its memorandum and articles so that they no longer state that it is an IC; and

- (b) change its name, to remove the expression required by section 10, in accordance with —
 - (i) section 19(1) of the 1931 Act, in the case of an IC incorporated under the 1931 legislation; or
 - (ii) section 14 of the 2006 Act, in the case of an IC incorporated under the 2006 legislation.

(5) Each director must sign a declaration that the director believes, on reasonable grounds, that the requirements of this section have been fulfilled.

(6) The IC must deliver to the Commission —

- (a) a statement of conversion in the published form signed by a director of the IC;
- (b) a copy of the special resolution or members' resolution referred to in subsection (4)(a);
- (c) a copy of the special resolution or members' resolution authorising its change of name;
- (d) a copy of its amended memorandum and articles;
- (e) the declaration referred to in subsection (5), and
- (f) the published fee.

(7) Upon receipt of the documents and fee specified in subsection (6), the Commission must issue a certificate of conversion of IC into company, and the certificate must state the date upon which the conversion has effect.

(8) Where an IC 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;
- (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.

(9) A member of the IC may apply to the Court, within 30 days following the date upon which the certificate comes into effect, for an order to set aside the conversion on the grounds that it is, or its terms are, oppressive or unfairly prejudicial to the member's interests.

(10) The Court on hearing an application under subsection (9) may make an order on such terms as it thinks fit.

24. (1) An IC of an ICC may be transferred to another ICC in accordance with this section.

Transfer of
ICs between
ICCs

(2) An IC which is incorporated under the 1931 legislation may only be transferred to another ICC incorporated under the 1931 legislation.

(3) An IC which is incorporated under the 2006 legislation may only be transferred to another ICC incorporated under the 2006 legislation.

(4) The ICCs must enter into a written agreement that sets out the terms of the transfer (the "transfer agreement").

(5) A transfer of an IC is approved when —

(a) the directors of each ICC have approved the transfer agreement; and

(b) the transfer agreement is approved by —

(i) a special resolution, in the case of an ICC or IC incorporated under the 1931 legislation; or

(ii) a members' resolution, in the case of an ICC or IC incorporated under the 2006 legislation,

of the ICC to which the IC is being transferred and the IC which is being transferred.

(6) Within one month of the transfer agreement being approved, the ICC to which the IC is being transferred must deliver to the Commission —

(a) a copy of the special resolution or members' resolution of the ICC approving the transfer agreement;

(b) a copy of the special resolution or members' resolution of the IC being transferred approving the transfer agreement;

(c) a copy of the transfer agreement;

- (d) a copy of any amended memorandum and articles of the IC being transferred;
- (e) a declaration made in accordance with subsection (7), signed by each director of the ICC transferring the IC; and
- (f) the published fee.

(7) The declaration referred to in subsection (6)(e) must state that each director believes on reasonable grounds that —

- (a) the IC being transferred is able to discharge its liabilities as they fall due;
- (b) the transfer agreement has been approved in accordance with this section; and
- (c) the requirements of this section have been fulfilled.

(8) Upon receipt of the documents and fee specified in subsection (6) the Commission must issue to the IC a certificate of transfer of IC, and the certificate must state the date upon which the transfer has effect.

(9) Where an IC is transferred under this section —

- (a) it ceases to be an IC of the ICC which transferred it;
- (b) it becomes an IC of the ICC to which it has been transferred;
- (c) its memorandum and articles are those provided for in the transfer agreement;
- (d) all property and rights to which it was entitled immediately before its transfer remain its property and rights;
- (e) it remains subject to all civil and criminal liabilities and all contracts, debts and other obligations to which it was subject immediately before its transfer; and
- (f) all actions and other legal proceedings which, immediately before its transfer were pending by or against it may be continued by or against the it.

25. (1) A company that is neither an ICC nor a PCC (the “non-cellular company”) may become an IC of an ICC in accordance with this section.

(2) A company which is incorporated under the 1931 legislation may only become an IC of an ICC incorporated under the 1931 legislation.

(3) A company which is incorporated under the 2006 legislation may only become an IC of an ICC incorporated under the 2006 legislation.

(4) The non-cellular company and the ICC must enter into a written agreement that sets out the terms of the transfer (“the transfer agreement”).

(5) The non-cellular company must change its name, to comply with section 5, in accordance with —

- (a) section 19(1) of the 1931 Act, in the case of a company incorporated under the 1931 legislation; or
- (b) section 14 of the 2006 Act, in the case of a company incorporated under the 2006 legislation.

(6) A transfer of a non-cellular company is approved when —

- (a) the directors of the non-cellular company and the ICC have approved the transfer agreement; and
- (b) the transfer agreement is approved by the non-cellular company and the ICC by way of —
 - (i) special resolution, in the case of a company incorporated under the 1931 legislation; or
 - (ii) members’ resolution, in the case of a company incorporated under the 2006 legislation.

(7) Within one month of the transfer agreement being approved, the ICC must deliver to the Commission —

- (a) a copy of the special resolution or members’ resolution of the non-cellular company approving the transfer agreement;
- (b) a copy of the special resolution or members’ resolution of the ICC approving the transfer agreement;
- (c) a copy of the transfer agreement;
- (d) a copy of the amended memorandum and articles of the non-cellular company;

(e) a declaration made in accordance with subsection (9), signed by each director of the non-cellular company and the ICC; and

(f) the published fee.

(8) The special resolution or members' resolution referred to in subsection (7)(a) is to be treated as a cell resolution for the purposes of section 9(9) and accordingly section 9(10) applies in relation to it.

(9) The declaration referred to in subsection (7)(e) must state that each director believes on reasonable grounds that —

(a) the non-cellular company is able to discharge its liabilities as they fall due;

(b) the transfer agreement has been approved in accordance with this section; and

(c) the requirements of this section have been fulfilled.

(10) Upon receipt of the documents and fee specified in subsection (7), the Commission must issue to the non-cellular company a certificate of conversion into IC, and the certificate must state the date upon which the conversion has effect.

(11) Where a non-cellular company becomes an IC of an ICC under this section —

(a) its memorandum and articles are those provided for in the transfer agreement;

(b) all property and rights to which it was entitled immediately before its conversion remain its property and rights;

(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.

Expulsion of
IC from ICC

26. (1) An application to the Court to expel an IC from its ICC, on a ground set out in subsection (2), may be made by —

(a) the Commission;

(b) the ICC; or

(c) the liquidator of the ICC.

(2) The grounds referred to in subsection (1) are —

(a) that the affairs of the IC are being or have been conducted in a manner which is oppressive or unfairly prejudicial to its ICC or any IC of that ICC, or to the members of that ICC or its ICs;

(b) that the IC is being or has been used for fraudulent purposes; or

(c) that it would be just and equitable to do so.

(3) Upon an application under this section, the Court may make such order as it thinks fit and upon such terms and conditions as it thinks fit, including an order requiring the IC to convert into a company independent of its ICC.

27. (1) The Commission, when performing functions under this Part, may rely upon the documents provided to it under this Part in all respects.

Documents
provided to
Commission

(2) Accordingly, the Commission is not bound to enquire further as to whether this Act has been complied with.

28. The operation of sections 21 to 26 is not to be regarded —

Conversions,
transfers or
expulsions
not a default

(a) as a breach of contract or confidence or otherwise as a civil wrong;

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or

(c) as —

(i) giving rise to any remedy in favour of a party to a contract or other instrument;

(ii) an event of default under any contract or other instrument; or

(iii) causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

PART 7

GENERAL PROVISIONS

Application
for directions

29. A director of an ICC or IC may apply to the Court for directions as to how the director should or might act in any of the affairs of the ICC or IC, and upon such an application the Court may make such order as it thinks fit.

False and
misleading
statements

- 30.** (1) A person commits an offence if that person —
- (a) furnishes or sends to the Commission for any purpose under this Act a document which the person knows to be false or misleading in a material particular; or
 - (b) recklessly furnishes or sends to the Commission for the purposes of this Act a document which is false or misleading in a material particular; or
 - (c) in furnishing information to the Commission for the purposes of this Act —
 - (i) makes a statement which the person knows to be false or misleading in a material particular; or
 - (ii) recklessly makes a statement which is false or misleading in a material particular.
- (2) A person guilty of an offence under subsection (1) is liable —
- (a) on conviction on information, to a fine or to custody for a term not exceeding 2 years, or to both;
 - (b) on summary conviction, to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both.

Offences
by bodies
corporate

31. (1) Subsection (2) applies where an offence under this Act is committed by a body corporate and it is proved that an officer of the body authorised, permitted, participated in, or failed to take all reasonable steps to prevent the commission of, the offence.

(2) The officer, as well as the body, commits the offence and is liable to the penalty provided for the offence.

(3) In this section “officer” includes —

- (a) a director, secretary or other similar officer;

- (b) a person purporting to act as a director, secretary or other similar officer;
- (c) if the affairs of the body are managed by its members, a member; and
- (d) if the body has a registered agent, the registered agent.

32. (1) The Treasury may make orders and regulations concerning ICCs and ICs — Subordinate legislation

- (a) in accordance with this Act; or
- (b) as are necessary to give effect to this Act.

(2) Without limiting subsection (1), orders and regulations under subsection (1) may make provision in respect of any of the following matters —

- (a) restricting the business that ICCs and ICs may carry out;
- (b) the conduct of the business of ICCs and ICs;
- (c) the manner in which ICCs and ICs may carry on, or hold themselves out as carrying on, business;
- (d) the form and content of the accounts or financial statements of ICCs and ICs;
- (e) the taxation of ICCs and ICs;
- (f) the winding up of ICCs and ICs;
- (g) the transfer of domicile of companies which are, or are equivalent to, ICCs or ICs.

(3) Orders and regulations under subsection (1) may modify provisions of the 1931 legislation and the 2006 legislation in their application to ICCs and ICs.

- (4) Orders and regulations under subsection (1) may —
 - (a) provide for their contravention to be an offence and prescribe a penalty for the offence;
 - (b) exempt a person from any of the provisions of this Act;
 - (c) permit a person to exercise a discretion in respect of any prescribed matter;

- (d) permit a person to publish fees that may be imposed under the order or regulations;
- (e) permit a person to publish forms and other material in respect of any prescribed matter;
- (f) contain such consequential, incidental, supplemental and transitional provisions as the Treasury considers necessary or expedient.

(5) Before making an order or regulations under this Act, the Treasury must consult —

- (a) the Commission;
- (b) the Insurance and Pensions Authority; and
- (c) such persons or bodies as appear to be representative of interests likely to be affected.

Tynwald
procedure

33. Orders (other than Court orders and orders under section 2(1)) and regulations made under this Act must be laid before Tynwald as soon as practicable after they are made and if Tynwald, at the sitting at which they are laid or at the next following sitting, fails to approve them they cease to have effect.

Fees and
forms

34. The Commission may —

- (a) set the level of any fees payable under this Act;
- (b) specify the form of any statement, document or form required under this Act;
- (c) publish such fees and forms.

Financial
provisions

35. (1) Expenses incurred under this Act by the Treasury or the Commission are to be defrayed out of money provided by Tynwald.

(2) Fees received under this Act form part of the general revenue of the Island.

Amendment
of the
Financial
Services Act
2008

36. (1) The Financial Services Act 2008 is amended as follows.

(2) In the definition of “specified enactment” in section 33(4), at the end insert —

“(i) the Incorporated Cell Companies Act 2010.”.

(3) In Schedule 1, in paragraph 2(2), at the end insert —

“(zb) the Incorporated Cell Companies Act 2010.”.

Section 9(5)

SCHEDULE 1

APPLICATION OF THE 1931 LEGISLATION TO ICs

General application

1. Subject to this Act and any other enactment, the 1931 legislation applies to an IC incorporated under the 1931 legislation as if a reference in the 1931 legislation —

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

Accounting records

2. (1) Section 1 of the 1982 Act does not apply to an IC.

(2) However, an ICC must keep accounting records, in respect of each of its ICs, that comply with the requirements of that section.

(3) The accounting records kept by an ICC in respect of itself under that section may include matters included by it in any accounting records kept by the company in respect of its ICs under sub-paragraph (2).

(4) An ICC which fails to comply with this paragraph commits an offence and is liable on summary conviction to a fine not exceeding £5,000.

Profit and loss account and balance sheet

3. (1) The requirements of section 2 of the 1982 Act do not apply to an IC in respect of the preparation of a profit and loss account (or income and expenditure account) and balance sheet (“the annual accounts”).

(2) However, an ICC must prepare separate annual accounts in respect of each of its ICs that comply with the requirements of section 2 and those accounts are to be treated as the annual accounts of the IC for the purposes of the 1931 legislation.

(3) The requirement in sub-paragraph (2) is satisfied if an IC, with the agreement of the directors of its ICC, elects —

(a) in its articles; or

SCH. 1

(b) by way of a special resolution,

that the preparation of its annual accounts may be combined with the preparation of the annual accounts of its ICC or another IC of its ICC which also so elects, and that preparation is so combined.

(4) Where no election is made under sub-paragraph (3), the annual accounts of an ICC prepared by it under section 2 of the 1982 Act need not include matters already included by it in the annual accounts of an IC prepared by it in accordance with sub-paragraph (2).

(5) Subject to contrary provision in the articles of an IC or its ICC —

(a) a member of the ICC who is not a member of the IC is only entitled to be provided with the annual accounts of the ICC that relate to the ICC which are prepared under section 2 of the 1982 Act;

(b) a member of an IC is only entitled to be provided with so much of the annual accounts as is mentioned in sub-paragraph (2) as relate to the IC of which that person is a member.

(6) An ICC which fails to comply with this paragraph commits an offence and is liable on summary conviction to a fine not exceeding £5,000.

Annual general meetings

4. An IC is not required to hold an annual general meeting under section 111 of the 1931 Act unless it is so required by —

(a) its articles;

(b) a special resolution; or

(c) on the application of any member of the company, the Court.

Report and accounts where no annual general meeting held

5. (1) If, in accordance with paragraph 4, an IC does not hold an annual general meeting, its directors must —

(a) firstly, within a period of 18 months beginning on the date on which the IC is entitled to commence business; and

(b) thereafter, at least once in every calendar year,

send every member of the IC a copy of the annual accounts of the IC referred to in paragraph 3(2) with a copy of the directors' report referred to in section 10 of the 1982 Act attached to the balance sheet.

(2) No more than 15 months may elapse between the sending of successive reports and accounts under subsection (1).

SCH. 1

(3) If default is made in sending reports or accounts in accordance with subsection (1) or (2), the IC commits an offence and is liable on summary conviction to a fine not exceeding £5,000.

Auditors where no annual general meeting held

6. If paragraph 4 does not require an IC to hold an annual general meeting, then, subject to paragraph 7 —

- (a) the duty of the members at each annual general meeting to appoint auditors under section 12 of the 1982 Act must be carried out by the directors of the IC —
 - (i) firstly, within a period of 18 months beginning on the date on which the IC is entitled to commence business; and
 - (ii) thereafter, at least once in every calendar year,and no more than 15 months may elapse between successive appointments of auditors;
- (b) the directors of the IC must fix the remuneration of those auditors;
- (c) the auditors' report referred to in section 15(1) of the 1982 Act must be made by reference to the annual accounts referred to in paragraph 3(2);
- (d) subject to paragraph 8, the auditors' report is not to be read before the company in general meeting in accordance with section 15(2) of the 1982 Act but the directors must annex a copy of it to the balance sheet sent out to members in accordance with paragraph 5.

ICC responsibility for audit of its ICs

7. (1) The requirements of section 12 of the 1982 Act in respect of the appointment and remuneration of auditors apply to an IC of an ICC unless, with the agreement of the directors of the ICC, that IC has elected —

- (a) in its articles; or
- (b) by way of a special resolution,

that those requirements do not apply.

(2) Where an IC has made an election under sub-paragraph (1), those requirements apply to the directors of the ICC in respect of that IC.

Combining audit of ICs with their ICC

8. (1) The requirement in section 15 of the 1982 Act for auditors to prepare a report is satisfied if an IC, with the agreement of the directors of its ICC, elects —

- (a) in its articles; or

(b) by way of a special resolution,

SCH. 1

that its audit may be combined with the audit of its ICC, or another IC of its ICC which also so elects, and those audits are so combined.

(2) Subject to contrary provision in the articles of an IC or its ICC —

(a) a member of the ICC who is not a member of the IC is only entitled to be provided with so much of the auditors' report of the ICC as relates to the ICC;

(b) a member of an IC is only entitled to be provided with so much of the auditors' report of the ICC as relates to that IC of which that person is a member.

Remedy in cases of oppression

9. A member of an IC may apply to the Court under section 7 of the 1968 Act in respect of the ICC of the IC, and section 7 applies to the application as if the applicant were a member of the ICC.

Striking off ICs when their ICC is struck off

10. (1) Where section 273(1) of the 1931 Act applies to an ICC, the other provisions of that section also apply to its ICs, and accordingly the ICs are to be struck off the register if their ICC is struck off the register.

(2) An IC may only be restored to the register under section 273(6) or 273B of the 1931 Act if its ICC has been so restored, and an application for restoration of an ICC under either section may also include an application for restoration of one or more of its ICs.

Section 9(6)

SCHEDULE 2

APPLICATION OF THE 2006 LEGISLATION TO ICs

General application

1. Subject to this Act and any other enactment, the 2006 legislation applies to an IC incorporated under the 2006 legislation as if a reference in the 2006 legislation —

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

Accounting records

- 2.** (1) Section 80 of the 2006 Act does not apply to an IC.
- (2) However, an ICC must keep accounting records, in respect of each of its ICs, that comply with the requirements of that section.
- (3) The accounting records kept by an ICC in respect of itself under that section may include matters included by it in any accounting records kept by the company in respect of its ICs under sub-paragraph (2).
- (4) An ICC which fails to comply with this paragraph commits an offence and is liable on summary conviction to a fine not exceeding £5,000.

Prejudiced members

3. A member of an IC may apply to the Court under section 180 of the 2006 Act in respect of the ICC of the IC, and section 180 applies to the application as if the applicant were a member of the ICC.

Striking off ICs when their ICC is struck off

4. (1) Where section 183(1) of the 2006 Act applies to an ICC, the other provisions of that section also apply to its ICs, and accordingly the ICs are to be struck off the register if their ICC is struck off the register.

(2) An IC may only be restored to the register under section 187, 188, 191 or 192 of the 2006 Act if its ICC has been so restored, and an application for restoration of an ICC under any of those sections may also include an application for restoration of one or more of its ICs. SCH. 2

