

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

500.4715 Protected cell; consideration as separate person; purposes; distinct name or designation; subject to orders of court; service of process; contract with third party advisor or manager; recourse by creditors; availability of assets; attachment of security interest to protected cell; identification of protected cell assets and liabilities; provisions in contracts or other documentation; income; crediting to or charging against protected cell; investment or reinvestment of amounts; annual report; notification of insolvency.

Sec. 4715.

(1) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the SPFC.

(2) Notwithstanding subsection (1), if an order of conservation, rehabilitation, or liquidation is entered for a counterparty, the SPFC and each protected cell of the SPFC shall be considered separate persons for purposes of any offset undertaken as part of the conservation, rehabilitation, or liquidation, such that any offset of mutual debts and credits between the counterparty and either the SPFC or any protected cell shall not involve the debts and credits of any other protected cell or, if the offset involves a protected cell, the SPFC.

(3) Notwithstanding subsection (1), a protected cell shall have its own distinct name or designation that includes the words "protected cell". The SPFC shall transfer all assets attributable to the protected cell to 1 or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

(4) Although the protected cell is not a separate legal person, the property of an SPFC in a protected cell is subject to orders of a court by name as it would have been if the protected cell were a separate legal person.

(5) The property of an SPFC in a protected cell shall be served in its own name with process in all civil actions or proceedings involving or relating to the activities of that protected cell or a breach by the SPFC of a duty to the protected cell or to a counterparty to a transaction linked or attributed to it by serving the SPFC in the manner described in section 1920 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1920.

(6) A protected cell exists only at the pleasure of the SPFC. At the cessation of business of a protected cell in accordance with the plan of operation submitted to the commissioner, the SPFC voluntarily shall close out the protected cell account.

(7) Nothing in this section shall be construed to prohibit an SPFC from contracting with, or arranging for, an investment advisor, commodity trading advisor, or other third party to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the assets of that protected cell and not from the assets of other protected cells or the assets of the SPFC's general account.

(8) Creditors to a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the SPFC's general account. If an obligation of an SPFC relates only to the general account, the obligation of the SPFC extends only to that creditor for that obligation and that creditor is entitled to have recourse only to the assets of the SPFC's general account.

(9) The assets of the protected cell shall not be used to pay expenses or claims other than those attributable to the protected cell. Protected cell assets are available only to the SPFC counterparty and other creditors of the SPFC that are creditors only to that protected cell and, accordingly, are entitled, in conformity with this chapter, to have recourse to the protected cell assets attributable to that protected cell. Protected cell assets are absolutely protected from the creditors of the SPFC that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. If an obligation of an SPFC to a person or counterparty arises from an SPFC contract or related insurance securitization transaction or is otherwise incurred for a protected cell, both of the following apply:

(a) That obligation of the SPFC extends only to the protected cell assets attributable to that protected cell, and the person or counterparty, for that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell.

(b) That obligation of the SPFC does not extend to the protected cell assets of another protected cell or the assets of the SPFC's general account, and that person, for that obligation, is not entitled to have recourse to the protected cell assets of another protected cell or the assets of the SPFC's general account. The SPFC's capitalization of its protected cell or cells as required by section 4713(4) shall be available at all times to pay expenses of or claims against the SPFC and shall not be used to pay expenses or claims attributable to any protected cell.

(10) Notwithstanding any other provision of law, an SPFC may allow for a security interest in accordance with applicable law to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell or to facilitate the insurance securitization, including, without limitation, the issuance of the SPFC contract, to the extent those protected cell assets are not required at all times to support the risk, but without otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the

commissioner.

(11) An SPFC shall establish administrative and accounting procedures necessary to properly identify the 1 or more protected cells of the SPFC and the assets and liabilities of each protected cell. The directors of an SPFC shall keep protected cell assets and liabilities separate and separately identifiable from the assets and liabilities of the SPFC's general account. The assets and liabilities attributable to 1 protected cell shall be kept separate and separately identifiable from the assets and liabilities attributable to other protected cells.

(12) All contracts or other documentation reflecting protected cell liabilities shall indicate clearly that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all SPFC insurance securitizations involving a protected cell, including the issuance of preferred securities, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation shall disclose clearly that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding the provisions of this subsection and subject to the provisions of this chapter and any other applicable law or regulation, the failure to include this language in the contracts or other documentation shall not be used as the sole basis by creditors, insureds or reinsureds, insurers or reinsurers, or other claimants to circumvent this section.

(13) The income, and gains and losses, whether realized or unrealized, from protected cell assets and protected cell liabilities shall be credited to or charged against the protected cell without regard to other income and gains or losses of the SPFC, including income and gains or losses of other protected cells. Amounts attributed to any protected cell and accumulations on the attributed amounts may be invested and reinvested. The investments in a protected cell or cells shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the SPFC.

(14) An SPFC with protected cells shall file annually with the office accounting statements and financial reports required by this chapter that, among other things, shall do all of the following:

- (a) Detail the financial experience of each protected cell and the SPFC separately.
- (b) Provide the combined financial experience of the SPFC and all protected cells.
- (c) Account for the financial experience of each protected cell and the SPFC, both separately and on a combined basis, in satisfaction of section 4731(4).

(15) An SPFC with protected cells shall notify the commissioner in writing within 10 business days of a protected cell becoming insolvent.

History: Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008

Popular Name: Act 218