

§784-A. Protected cells

1. Establishment of protected cells. A special purpose reinsurance vehicle may establish and maintain one or more protected cells with the prior written approval of the superintendent, subject to compliance with the provisions of this section.

A. A protected cell may be established only for the purpose of insuring or reinsuring risks of one or more special purpose reinsurance vehicle contracts with the intent of facilitating an insurance securitization. The establishment of a protected cell in compliance with this section in connection with a lawful insurance securitization does not constitute a fraudulent conveyance, a scheme to defraud creditors or a transaction of business for a fraudulent purpose. [PL 2007, c. 386, §14 (NEW).]

B. Each protected cell must be accounted for separately on the books and records of the special purpose reinsurance vehicle to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions for the special purpose reinsurance vehicle contract with each cell and other factors as may be provided in the special purpose reinsurance vehicle contract, insurance securitization transaction documents, plan of operation or business plan, or as required by the superintendent. The special purpose reinsurance vehicle must establish administrative and accounting procedures necessary for the proper attribution of protected cell assets and protected cell liabilities to each protected cell. The directors of a special purpose reinsurance vehicle shall keep the protected cell assets and liabilities attributable to each protected cell separate and separately identifiable from the assets and liabilities of the special purpose reinsurance vehicle's general account and from the protected cell assets and liabilities attributable to any other protected cell. [PL 2007, c. 386, §14 (NEW).]

C. Amounts attributed to a protected cell under this section, including assets transferred to a protected cell account, are owned by the special purpose reinsurance vehicle, and the special purpose reinsurance vehicle is not and may not hold itself out to be a trustee with respect to those protected cell assets of that protected cell account. [PL 2007, c. 386, §14 (NEW).]

D. All attributions of assets and liabilities between a protected cell and the general account must be in accordance with the plan of operation approved by the superintendent. No other attribution of assets or liabilities may be made by a special purpose reinsurance vehicle between the special purpose reinsurance vehicle's general account and its protected cell or cells. The special purpose reinsurance vehicle must attribute all insurance obligations, assets and liabilities relating to a special purpose reinsurance vehicle contract and the related insurance securitization transaction, including any securities issued by the special purpose reinsurance vehicle as part of the insurance securitization and any taxes or other obligations arising by operation of law, to the associated protected cell. [PL 2007, c. 386, §14 (NEW).]

E. The assets of a protected cell are not chargeable with liabilities arising out of a special purpose reinsurance vehicle contract related to or associated with another protected cell. More than one special purpose reinsurance vehicle contract may not be attributed to the same protected cell unless those special purpose reinsurance vehicle contracts are intended to be, and ultimately are, part of a single securitization transaction. [PL 2007, c. 386, §14 (NEW).]

F. A sale, exchange or other transfer of assets may not be made by the special purpose reinsurance vehicle between or among any of its protected cells without the consent of the superintendent, the ceding insurer or insurers and the holders of the securities issued by each protected cell. [PL 2007, c. 386, §14 (NEW).]

G. A sale, exchange, transfer of assets, dividend or distribution may not be made from a protected cell without the superintendent's approval except as authorized in advance under the special purpose reinsurance vehicle contract or related insurance securitization transaction documents and may not

be approved if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell. [PL 2007, c. 386, §14 (NEW).]

H. A special purpose reinsurance vehicle may pay interest or repay principal, or both, and make distributions or repayments in respect of any securities attributed to a particular protected cell from assets or cash flows relating to or emerging from the special purpose reinsurance vehicle contract and the insurance securitization transactions that are attributable to that particular protected cell in accordance with the provisions of this subchapter or as otherwise approved by the superintendent. [PL 2007, c. 386, §14 (NEW).]

[PL 2007, c. 386, §14 (NEW).]

2. Approval of protected cells. A special purpose reinsurance vehicle contract with or attributable to a protected cell does not take effect without the superintendent's prior written approval, and the addition of each new protected cell constitutes a change in the business plan requiring the superintendent's prior written approval and the amendment of the special purpose reinsurance vehicle's limited certificate of authority. The superintendent may retain legal, financial and examination services from outside the bureau to examine and investigate the application for a protected cell, the reasonable cost of which may be charged against the applicant, or the superintendent may use internal resources to examine and investigate the application, the reasonable cost of which may be charged against the applicant up to a maximum of \$12,000, or both. The application for approval of a protected cell must include a plan of operation for the protected cell consistent with the requirements of section 782, subsection 2, paragraph H.

[PL 2007, c. 386, §14 (NEW).]

3. Minimum capital requirements. A special purpose reinsurance vehicle with protected cells shall possess and maintain capitalization in each protected cell in the amount and manner required for a special purpose reinsurance vehicle in section 787 and, in addition, shall possess and maintain minimum capitalization separate and apart from the capitalization of its protected cell or cells in an amount determined by the superintendent after giving due consideration of the special purpose reinsurance vehicle's business plan, feasibility study and proforma financial statements, including the nature of the risks to be insured or reinsured.

[PL 2007, c. 386, §14 (NEW).]

4. Status of protected cells. A protected cell is not a legal person separate from the special purpose reinsurance vehicle. However, a protected cell must have its own distinct name or designation that includes the words "protected cell" and all protected cells must be identified by name in the special purpose reinsurance vehicle's limited certificate of authority. The special purpose reinsurance vehicle shall hold all assets attributable to the protected cell in one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

A. The assets of a protected cell are available only to the ceding insurer and other creditors of that protected cell and may not be used to pay expenses or claims other than those attributable to the protected cell. Creditors with respect to a protected cell are not entitled to any recourse against the protected cell assets of other protected cells or the assets of the special purpose reinsurance vehicle's general account. If an obligation of a special purpose reinsurance vehicle relates only to the general account, the creditor is entitled to have recourse with respect to that obligation only to the assets of the general account. [PL 2007, c. 386, §14 (NEW).]

B. Protected cell assets may not be pledged or otherwise encumbered except for the benefit of creditors of that protected cell in furtherance of the securitization in accordance with the approved plan of operation. [PL 2007, c. 386, §14 (NEW).]

C. All contracts or other documentation reflecting protected cell liabilities must clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all special purpose reinsurance vehicle insurance securitizations involving a protected cell, the

contracts or other documentation effecting the transaction must contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation must clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. However, failure to include express language attributing obligations under a contract to a protected cell does not give a party the right to void or reform the contract if the party had notice that the contract related to a protected cell. [PL 2007, c. 386, §14 (NEW).]

D. If the special purpose reinsurance vehicle enters into a contract involving more than one protected cell, the rights and obligations relating to each protected cell must be several rather than joint and the contract must make clear provisions for their apportionment between protected cells. [PL 2007, c. 386, §14 (NEW).]

E. In any action or proceeding involving the potential for monetary recovery by or against a special purpose reinsurance vehicle with protected cells, or for nonmonetary relief relating to a particular protected cell or cells, any process, pleading or order must name the specific cell or cells affected, including if applicable the general account. [PL 2007, c. 386, §14 (NEW).]
[PL 2007, c. 386, §14 (NEW).]

5. Separate administrative services. A special purpose reinsurance vehicle may contract with or arrange for an investment advisor, commodity trading advisor or other 3rd party to manage the assets or administer the obligations of a protected cell, if all remuneration, expenses and other compensation arising out of services performed with respect to that protected cell are payable only from the assets of that protected cell or, with the approval of the superintendent, from the assets of the special purpose reinsurance vehicle's general account.
[PL 2007, c. 386, §14 (NEW).]

6. Notice of impairment or insolvency. A special purpose reinsurance vehicle with protected cells shall notify the superintendent in writing within 10 business days after the special purpose reinsurance vehicle or any protected cell becomes impaired or insolvent.
[PL 2007, c. 386, §14 (NEW).]

7. Conversion to protected cell framework. A special purpose reinsurance vehicle without protected cells may apply to the superintendent in accordance with subsection 2 to revise its plan of operation to establish one or more protected cells. If there is an existing insurance securitization in force at the time of the application, the revised plan of operation must provide for the establishment of a protected cell for that securitization and the transfer to the protected cell of all assets and liabilities relating to the securitization.
[PL 2007, c. 386, §14 (NEW).]

8. Termination of protected cell. At the cessation of business of a protected cell in accordance with the plan approved by the superintendent, the special purpose reinsurance vehicle shall close out the protected cell account and the superintendent shall modify the limited certificate of authority to reflect the termination.
[PL 2007, c. 386, §14 (NEW).]

SECTION HISTORY

PL 2007, c. 386, §14 (NEW).

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