

Commonwealth of Puerto Rico
OFFICE OF THE INSURANCE COMMISSIONER

DEPARTAMENTO DE ESTADO

RULE NO. 81

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Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
San Juan, Puerto Rico

RULE NO. 81

**RULES GOVERNING THE OPERATIONS OF INTERNATIONAL
INSURERS AUTHORIZED TO OPERATE AS PROTECTED CELLS**

ARTICLE I. - GENERAL PROVISIONS

SECTION 1. - AUTHORITY

The Office of the Commissioner of Insurance of the Commonwealth of Puerto Rico adopts Rule No. 81 of the Regulations of the Puerto Rico Insurance Code pursuant to Article 2.040 and Chapter 61 of Public Law No. 77 of June 19, 1957, as amended, 26 P.R. Laws Annot. Sects., *et seq.*, commonly known as the Puerto Rico Insurance Code, and Public Law No. 170 of August 12, 1988, as amended, 3 P.R. Laws Annot. Sects. 2101, *et seq.*, commonly known as the "Uniform Administrative Procedures Act".

SECTION 2. - PURPOSE AND SCOPE

This Rule is adopted with the purpose of establishing rules governing the authorization, operation, and supervision of *Protected Cell companies* pursuant to Article 61.160 of the International Insurers and Reinsurers Law of Puerto Rico, as such entity is established and defined in Chapter 61 of the Puerto Rico Insurance Code.

This Rule shall apply to all International Insurers and Reinsurers that wish to form and operate a *Protected Cell company* to offer their services and products through the Puerto Rico International Insurance Center.

ARTICLE 2. - DEFINITIONS

The following terms and phrases shall have the meanings set forth as follows:

1. "Fully funded" means that, with respect to any exposure attributed to a *Protected Cell*, the market value of the *Protected Cell* assets, on the date

on which the insurance securitization is effected, equals or exceeds the exposure attributable to the *Protected Cell*.

2. "General account" means the assets and liabilities of a *Protected Cell company* other than *Protected Cell assets* and *Protected Cell liabilities*.
3. "Indemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered by its incurring a specified level of losses under its insurance or reinsurance contracts, other than *Participant contracts*.
4. "Market value" means:
 - a. as to cash, the amount of cash;
 - b. as to a security as of any date, the price for the security on that date obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized sources exist, the price for the security as determined in good faith by the parties to the transaction, plus accrued nonreceived income on the security to the extent not included in the price as of that date; and
 - c. as to letters of credit, the unpaid face value of the letter of credit.
5. "Nonindemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered solely by some event or condition other than the individual *Protected Cell company* incurring a specified level of losses under its insurance or reinsurance contracts, other than *Participant contracts*.
6. "Participant" means an entity, and any affiliates thereof, that are insured by a *Protected Cell company*, where the covered losses of the participant are limited through a *Participant contract* to the assets of one or more *Protected Cells* identified in such *Participant contract*.
7. "Participant contract" means a contract by which a *Protected Cell company* insures the risks of a Participant and limits the covered losses

of each such Participant to the assets of one or more *Protected Cells* identified in such participant contract.

8. "Protected Cell" means an identified pool of assets and liabilities of a *Protected Cell company* segregated and insulated as provided for in Chapter 61 of the Code from the remainder of the *Protected Cell company's* assets and liabilities.
9. "Protected Cell account" means a specifically identified bank or custodial account established by a Protected Cell company for the purpose of segregating the Protected Cell assets of one Protected Cell from the Protected Cell assets of other Protected Cells and from the assets of the Protected Cell company's general account.
10. "Protected Cell assets" means all assets, contract rights, and general intangibles, identified with and attributable to a specific Protected Cell of a Protected Cell company.
11. "Protected Cell company" means an International Insurer that has one or more Protected Cells.
12. "Protected Cell company insurance securitization" means the issuance of debt instruments, the proceeds from which support the exposures attributed to the Protected Cell, by a Protected Cell company where repayment of principal or interest, or both, to investors pursuant to the transaction terms is contingent upon the occurrence or nonoccurrence of an event with respect to which the Protected Cell company is exposed to loss under insurance or reinsurance contracts (including other risk transfer arrangements) it has issued, other than Participant contracts.
13. "Protected Cell liabilities" means all liabilities and other obligations identified with and attributable to a specific Protected Cell of a Protected Cell company.

In addition, for purposes of this Rule, all other terms already defined in Chapter 61 of the Code and in Rule No. 80 dealing with International Insurers and Reinsurers shall have the same meaning in this Rule.

ARTICLE 3. - ESTABLISHMENT OF PROTECTED CELLS

1. A Protected Cell company may establish one or more Protected Cells with the prior written approval of the Commissioner of a plan of operation or amendments submitted by the Protected Cell company with respect to each Protected Cell. Upon the written approval of the Commissioner of the plan of operation, which shall include, but is not limited to, the specific business objectives and investment guidelines of the Protected Cell, the Protected Cell company, in accordance with the approved plan of operation, may attribute to the Protected Cell insurance obligations and assets to fund the obligations with respect to insurance business and obligations relating to an insurance securitization or Participant contract.
2. A Protected Cell shall have its own distinct name or designation, which shall include the words "Protected Cell" or the equivalent in Spanish or English. The Protected Cell company shall transfer, or cause to be transferred, all assets attributable to a Protected Cell to one or more separately established and identified Protected Cell accounts bearing the name or designation of that Protected Cell. Protected Cell assets must be held in the Protected Cell accounts for the purpose of satisfying the obligations of that Protected Cell.
3. If the plan of operations of a Protected Cell company approved by the Commissioner so provides, one or more Protected Cell of such company may be managed by its own directors and officers or other managers, other than those of the company, in a manner consistent with the organizational documents of the company.

4. 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 Commissioner. No other attribution of assets or liabilities may be made by a Protected Cell company between the Protected Cell company's general account and its Protected Cells without the approval of the Commissioner, pursuant to the filing of an amended plan of operations. Any attribution of assets and liabilities between the general account and a Protected Cell, or from investors in the form of principal on a debt instrument issued by a Protected Cell company in connection with a Protected Cell company securitization, must be in cash, letters of credit, or readily marketable securities with established market values or in such other assets or contract or transaction that transfers or protects against risk as shall be allowed by the Commissioner.
5. A Protected Cell company may allow for a security interest to attach to Protected Cell assets or a Protected Cell account when in favor of a creditor of the Protected Cell and otherwise allowed under applicable law.
6. This Rule shall not be construed to prohibit the Protected Cell company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the Protected Cell assets of a Protected Cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the Protected Cell assets of that Protected Cell and not from the Protected Cell assets of other Protected Cells or the assets of the Protected Cell company's general account unless approved by the Commissioner.
7. A Protected Cell company shall establish administrative and accounting procedures necessary to properly identify the one or more

Protected Cells of the Protected Cell company and the Protected Cell assets and Protected Cell liabilities attributable to the Protected Cells. The directors of a Protected Cell company shall keep Protected Cell assets and Protected Cell liabilities:

- a. separate and separately identifiable from the assets and liabilities of the Protected Cell company's general account; and
 - b. attributable to one Protected Cell separate and separately identifiable from Protected Cell assets and Protected Cell liabilities attributable to other Protected Cells.
8. The provisions of Chapter 61 of the Code shall be interpreted so as to permit tracing of Protected Cell assets when such assets have been commingled with Protected Cell assets of other Protected Cells or the assets of the Protected Cell company's general account, without considering such remedy to be an exclusive remedy.
9. When establishing a Protected Cell, the Protected Cell company shall attribute to the Protected Cell assets with a value at least equal to the reserves and other insurance liabilities attributed to that Protected Cell, as calculated pursuant to methods and procedures permitted or required by the Commissioner, consistent with the provisions of Chapter 61.

ARTICLE 4. - ASSETS AND LIABILITIES

1. The Protected Cell assets of a Protected Cell may not be charged with liabilities arising out of any other business the Protected Cell company may conduct. All contracts or other documentation reflecting Protected Cell liabilities shall clearly indicate that only the Protected Cell assets are available for the satisfaction of those Protected Cell liabilities.
2. The income, gains and losses, realized or unrealized, from Protected Cell assets and Protected Cell liabilities must be credited to or charged against the Protected Cell without regard to other income, gains or

losses of the Protected Cell company, including income, gains or losses of other Protected Cells. Amounts attributed to any Protected Cell and accumulations on the attributed amounts may be invested and reinvested without regard to any requirements or limitations on investments applicable to the International Insurer and the investments in a Protected Cell or Cells may not be taken into account in applying the investment limitations otherwise applicable to the investments of the Protected Cell company.

3. Assets attributed to a Protected Cell must be valued at their market value on the date of valuation or if there is no readily available market, as provided in the contract or the rules or other written documentation applicable to the Protected Cell.
4. A Protected Cell shall not have any obligation to the policyholders or reinsureds of the Protected Cell company's general account.
5. At the cessation of business of a Protected Cell in accordance with the plan approved by the Commissioner, the Protected Cell company voluntarily shall close out the Protected Cell account.
6. A Protected Cell may account for its liabilities on a discounted basis with the approval of the Commissioner.

**ARTICLE 5. - PROTECTED CELL COMPANY INSURANCE
SECURITIZATION**

1. A Protected Cell company authorized as a Class 3 Authority or Class 4 Authority International Insurer, whether with additional authority as a Class 5 Authority International Insurer or not, with respect to any of its Protected Cells, may engage in fully funded indemnity triggered insurance securitization to support the Protected Cell exposures attributable to that Protected Cell pursuant to a plan of operation as approved by the Commissioner. A Protected Cell company insurance securitization that is no indemnity triggered shall qualify as an insurance securitization under the terms of this Rule only with the

approval of the Commissioner or after the Commissioner promulgates further regulations addressing the methods of funding of the portion of this risk that is not indemnity based and addressing accounting, disclosure, risk based capital treatment, and assessing risks associated with such securitizations. A Protected Cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited unless approved as such by the Commissioner. Protected Cell assets may be used to pay interest or other consideration on any outstanding debt or other obligation attributable to that Protected Cell, and nothing in this Rule may be construed or interpreted as a prohibition against a Protected Cell company entering into a swap agreement or other transaction for the account of the Protected Cell that has the effect of guaranteeing interest or other consideration.

2. In all Protected Cell company insurance securitizations, the contracts or other documentation effecting the transaction shall contain provisions identifying the Protected Cell to which the transaction will be attributed. In addition, the contracts or other documentation shall clearly disclose 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 Rule and subject to the provisions of Chapter 61 of the Code and any other applicable law or regulation, the failure to include such language in the contracts or other documentation may not be used as the sole basis by creditors, reinsures, or other claimants to circumvent the provisions of this Rule.
3. A Protected Cell company insurance securitization that is being offered to, or is issued to, a person or entity within Puerto Rico, may qualify as an Involuntary Investment Company, pursuant to the provisions of the Investment Company Act of Puerto Rico, and as a

result may have to be registered as such with the Office of the Commissioner of Financial Institutions of the Commonwealth of Puerto Rico. Accordingly, if said insurance securitization will be offered to investors located in Puerto Rico, the Protected Cell company must request a formal ruling or opinion from the Office of the Commissioner of Financial Institutions regarding its status as an investment company and whether it must meet the registration requirements set forth in the Investment Company Act of Puerto Rico and the Uniform Securities Law of Puerto Rico. Copy of said ruling or opinion must be submitted to the Commissioner, prior to proceeding with the insurance securitization in question.

ARTICLE 6. - PARTICIPANT CONTRACTS

1. A Protected Cell company may establish and maintain one or more Protected Cells to insure risks of one or more Participants pursuant to a Participant contract.
2. The business written by a Protected Cell in connection with a Participant contract shall be on the same basis as that permitted for the general account of the International Insurer, subject to any further limitations as may be imposed by the Commissioner.
3. Associations, corporations, limited liability companies, partnerships, trusts, and other business entities may be Participants in any Protected Cell company. A Participant need not be a shareholder of the Protected Cell company or any affiliate thereof. A Participant shall insure only its own risks and those of any affiliates thereof, through a Protected Cell company.

ARTICLE 7. - CREDITORS OBLIGATIONS

The provisions of Chapter 61 of the Code shall be interpreted to the effect that:

1. Protected Cell assets are only available to the creditors of a Protected Cell company that are creditors with respect to that Protected Cell and,

accordingly, are entitled to have recourse to the Protected Cell assets attributable to that Protected Cell and are absolutely protected from the creditors of the Protected Cell company 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. Creditors with respect to a Protected Cell are not entitled to have recourse against the Protected Cell assets of other Protected Cells or the assets or the Protected Cell company's general account. Protected Cell assets are only available to creditors of a Protected Cell company after all Protected Cell liabilities have been extinguished or otherwise provided for in accordance with the plan of operation relating to that Protected Cell.

2. When an obligation of a Protected Cell company to a person arises from a transaction, or is otherwise imposed, with respect to a Protected Cell:
 - a. that obligation of the Protected Cell company extends only to the Protected Cell assets attributable to that Protected Cell, and the person, with respect to that obligation, is entitled to have recourse only to the Protected Cell assets attributable to that Protected Cell; and
 - b. that obligation of the Protected Cell company does not extend to the Protected Cell assets of any other Protected Cell or the assets of the Protected Cell company's general account, and that person, with respect to that obligation, is not entitled to have recourse to the Protected Cell assets of any other Protected Cell or the assets of the Protected Cell company's general account.
3. When an obligation of a Protected Cell company relates solely to the general account, the obligation of the Protected Cell Company extends only to, and that creditor, with respect to that obligation, is entitled to

have recourse only to, the assets of the Protected Cell company's general account.

4. The activities, assets, and obligations relating to a Protected Cell are not subject to the provisions of Chapters 38 and 39 of the Code and neither a Protected Cell nor a Protected Cell company may be assessed by, or otherwise be required to contribute to, any guaranty fund or guaranty association in Puerto Rico with respect to the activities, assets, or obligations of a Protected Cell. Nothing in this subsection affects the activities or obligations of the general account of the Protected Cell company.
5. The establishment of one or more Protected Cells alone does not constitute, and may not be deemed to be, a fraudulent conveyance, an intent by the Protected Cell company to defraud creditors, or the carrying out of business by the Protected Cell company for any other fraudulent purpose.

ARTICLE 8. - INVESTMENTS

Notwithstanding other provisions of this Rule, the assets of two or more Protected Cells may be combined for purposes of investment, and such combination shall not be construed as defeating the segregation of such assets for accounting or other purposes.

ARTICLE 9. - REHABILITATION AND LIQUIDATION

1. Notwithstanding any other provision of law or regulation, upon an order of conservation, rehabilitation, or liquidation of a Protected Cell company, the receiver shall deal with the Protected Cell company's assets and liabilities, including Protected Cell assets and Protected Cell liabilities, in accordance with the requirements set forth in Chapter 40 of the Code, provided that:

- a. The assets of a Protected Cell may not be used to pay any expenses or claims other than those attributable to such Protected Cell; and
 - b. The Protected Cell company's capital and surplus shall at all times be available to pay any expenses or claims against the Protected Cell company.
2. With respect to amounts recoverable under a Protected Cell, the amount recoverable by the receiver may not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the Protected Cell company, notwithstanding any provisions to the contrary in the contracts or other documentation governing the Protected Cell.

ARTICLE 10. - TRANSACTION OF INSURANCE BUSINESS

A Protected Cell company insurance securitization, if deemed to be an insurance or reinsurance contract, shall not be deemed to be outside of the authority of an International Insurer. An investor in a Protected Cell company insurance securitization, by sole means of this investment, shall not be deemed to be conducting an insurance business in Puerto Rico. The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in a Protected Cell company insurance securitization shall not be deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business by virtue of their activities in connection with that business.

ARTICLE 11. - APPLICABILITY OF OTHER RULES AND REGULATIONS

To the extent not inconsistent with this Rule, Rule No. 80 and Rule No. 82 of the Regulations of the Office of the Commissioner of Insurance shall be applicable to a Protected Cell company.

ARTICLE 12. - POWERS OF THE COMMISSIONER

The Commissioner shall have the authority, as provided by Article 2.030 and Article 61.260 of the Code, to examine and investigate any person to whom this Rule applies in order to verify compliance with its provisions and the corresponding applicable provisions of the Code.

ARTICLE 13. - SEVERABILITY

Should any word, sentence, paragraph, clause, Article or part of this Rule be declared null or invalid by a court with competent jurisdiction, the order issued by the latter shall not affect nor invalidate the remaining provisions of this Rule, that is, its effect shall be limited to the word, sentence, paragraph, clause, Article or part which has been so declared.

ARTICLE 14. - EFFECTIVENESS

The provisions of this Rule shall take effect thirty (30) days from the date of its filing with the Department of State of the Commonwealth of Puerto Rico, pursuant to the provisions of Public Law No. 170 of August 12, 1988, as amended, commonly known as the "Uniform Administrative Procedure Act".

DORELISSE JUARBE JIMÉNEZ
COMMISSIONER OF INSURANCE

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