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Mauritius**Date:** 11 July 2023**Your ref:****Our ref:** INT-260-00028**Email:** yannickfok@eversheds-sutherland.mu
chetanandaudit@eversheds-sutherland.mu**By email**

Dear Sir,

1 Definitions and Interpretations

1.1 The following definitions apply in this opinion:

Constitution	The constitution of IAL
Court	Bankruptcy Division of the Supreme Court
FSC	Financial Services Commission
IA	Insurance Act 2005
IAL	International Assurance Limited PCC
PCC	Protected Cell Company
PCC Act	Protected Cell Companies Act 1999
ROC	Registrar of Companies of Mauritius
Shares	A share of any class in the share capital of IAL

1.2 The headings in this opinion do not affect its interpretation.

1.3 The relevant extracts of the applicable laws and of the Constitution are set out in Schedule 1 of this opinion.

2 Background

2.1 We understand that:

2.1.1 IAL is a global business company and holder of a global business licence with effect from 1 July 2009 ("**GBL**"); and2.1.2 IAL also holds a long-term insurance business licence from the FSC with effect from 1 July 2009 ("**Insurance Licence**").**3 Instructions**

3.1 We have been requested to provide a legal opinion, by virtue of an email dated 30 June 2023, in relation to the security of the assets of a policyholder held in a policy, in the event of insolvency of IAL.

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4 Documents Examined

4.1 To issue this opinion, our examination and reliance was based on the following documents:

- 4.1.1 the Constitution;
- 4.1.2 the GBL; and
- 4.1.3 the Insurance Licence.

5 Opinion

Cellular and non-cellular assets

- 5.1 The assets of IAL may comprise of cellular assets or non-cellular assets or a combination of both cellular and non-cellular assets.¹
- 5.2 The cellular assets of IAL shall comprise the assets of the IAL attributable to the cells of IAL.²
- 5.3 The assets attributable to a cell of IAL shall comprise:³
 - 5.3.1 assets represented by the proceeds of cell share capital and reserves (include retained earnings, capital reserves and share premiums)⁴ attributable to the cell; and
 - 5.3.2 all other assets attributable to the cell.
- 5.4 The non-cellular assets of IAL shall comprise the assets of IAL which are not cellular assets.⁵
- 5.5 The directors of IAL must:
 - 5.5.1 keep cellular assets separate and separately identifiable from non-cellular assets; and
 - 5.5.2 keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.⁶

Liability of IAL

- 5.6 Where a liability of IAL arises from a transaction in respect of a particular cell:
 - 5.6.1 that liability will extend only to:
 - (a) the cellular assets attributable to that particular cell which will be primarily liable; and
 - (b) to the extent that the cellular assets attributable to that cell are insufficient, IAL's non-cellular assets will be secondarily liable.⁷
- 5.7 It is to be noted that the liability of a particular cell of IAL will not extend to the cellular assets attributable to any other cell.⁸

¹ Section 8(1) PCC Act

² Section 8(4) PCC Act

³ Section 8(5) PCC Act

⁴ Section 8(6) PCC Act

⁵ Section 8(7) PCC Act

⁶ Section 8(2) PCC Act

⁷ Section 11(1) PCC Act

⁸ Section 11(1)(b) PCC Act

- 5.8 On the other hand, where the liability of IAL arises otherwise than from a transaction in respect of a particular cell, such liability will extend only to the non-cellular assets of IAL in the event that the assets of the cell is not sufficient to meet the liabilities of the said cell.⁹
- 5.9 Additionally, liabilities of IAL not otherwise attributable to any of its cells shall be discharged from IAL's non-cellular assets. Similarly, income, receipts and other property or rights of or acquired by IAL not otherwise attributable to any cell shall be applied to and comprised in IAL's non-cellular assets.¹⁰

Administration order in respect of IAL

- 5.10 In the event of insolvency of IAL or its cells, an administration order may be made.
- 5.11 In the event IAL is insolvent, an application for an administration order in respect of IAL may be made to the Court.
- 5.12 An administration order is an order directing that, during the period for which the order is in force, the business and assets of or attributable to the cell or, as the case may be, the business and assets of IAL, shall be managed by an "administrator" appointed by the Court for that purpose.¹¹
- 5.13 In so far as the liabilities of IAL itself are concerned, the Court may make an administration order in respect of IAL when:¹²
- 5.13.1 IAL's cellular assets and non-cellular assets are or are likely to be insufficient to discharge the liabilities of IAL; and
- 5.13.2 the Court considers that the making of an administration order may achieve one of the purposes set out in section 20(4) of the PCC Act.

Liquidation of IAL

- 5.14 In the event of liquidation of IAL, the liquidator will be bound to deal with IAL's assets as set out in paragraph 5.5.
- 5.15 According to the Constitution, upon the winding up of IAL, the assets, if any, remaining after payment of the debts and liabilities of IAL and the costs of winding up (the surplus assets), shall be distributed among its shareholders in proportion to their shareholding.
- 5.16 However, the holders of Shares not fully paid up will only receive a proportionate share of their entitlement being an amount paid to IAL in satisfaction of the liability of the shareholder to IAL in respect of the Shares pursuant to the terms of issue of the Shares.
- 5.17 Pursuant to clause 36.4 of the Constitution, where IAL is wound up, the liquidator may, by way of a special resolution, divide in kind amongst its shareholders, the assets of the IAL, whether they consist of property of the same kind or not, and may for that purpose set such value as he deems fair upon any property to be divided and may determine how the division is to be carried out as between the shareholders or different class of shareholders.

Liability of cells of IAL

- 5.18 In so far as the liability attributable to a particular cell of IAL arises:

⁹ Section 11(2) PCC Act

¹⁰ Section 16 PCC Act

¹¹ Section 20(3) PCC Act

¹² Section 20(1)(b) PCC Act

- 5.18.1 the cellular assets attributable to that cell will be primarily liable;
- 5.18.2 IAL's non-cellular assets will be secondarily liable provided that cellular assets of the particular cell have been exhausted; and
- 5.18.3 the liability of that particular cell shall not extend to any cellular assets not attributable to that particular cell.¹³
- 5.19 In this respect, cellular assets attributable to a cell of IAL:¹⁴
 - 5.19.1 will only be available to the creditors of IAL who are creditors in respect of that particular cell and who are entitled to have recourse to the cellular assets of that cell; and
 - 5.19.2 will be protected from other creditors who are not creditors in respect of that cell and who accordingly are not entitled to have recourse to the cellular assets attributable to that cell.
- 5.20 It is noteworthy that in so far as a liability is not attributable to a particular cell of IAL, it will solely be the liability of the non-cellular assets of IAL.¹⁵

Administration order in respect of a cell of IAL

- 5.21 In the event a cell of IAL is insolvent, an application for an administration order in respect of that particular cell may be made to the Court.
- 5.22 In so far as the liabilities of a cell of IAL are concerned, the Court may make an administration order in respect of that particular cell, where:¹⁶
 - 5.22.1 it is satisfied that the cellular assets attributed to a particular cell are or are likely to be insufficient to discharge the claims of creditors in respect of that particular cell; and
 - 5.22.2 the Court considers that the making of an administration order may achieve one of the purposes set out in section 20(4) of the PCC Act.

Receivership order in respect of a cell of IAL

- 5.23 Where it is considered that an administration order is inappropriate with respect to a particular cell of IAL, the applicant may instead apply for a receivership order.
- 5.24 A receivership order is an order which can only be made in respect of a cell, directing that the business and cellular assets of or attributable to a cell shall be managed by a "receiver", specified in the order for the purposes of:¹⁷
 - 5.24.1 the orderly winding up of the business of or attributable to the cell; and
 - 5.24.2 the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.

Application of funds on winding up of a long-term insurer

- 5.25 Section 63(4) of the IA provides that where the insurer is a long-term insurer:

¹³ Section 12(1) PCC Act

¹⁴ Section 14 PCC Act

¹⁵ Section 12(3) PCC Act

¹⁶ Section 20(1)(a) PCC Act

¹⁷ Section 25(3) PCC Act

- 5.25.1 the assets representing the designated funds maintained by it shall be available only for meeting the liabilities of the insurer attributable to that fund;
- 5.25.2 the other assets of the insurer shall be available only for meeting the liabilities of the insurer attributable to its other insurance business; and
- 5.25.3 any surplus asset remaining after application of paragraphs 5.25.1 and 5.25.2 shall be available for meeting any liabilities not attributable to any insurance policies.
- 5.26 Section 63(2) of the IA provides that any debt or other liabilities arising out of contracts of insurance issued or underwritten by an insurer shall rank in priority before any other claim against the assets of the insurer.
- 5.27 It is to be noted that, under Section 18 of the IA, a long-term insurer must keep within its corresponding insurance fund, an appropriately designated fund in respect of each class of long-term insurance business carried on, into which shall be paid:¹⁸
 - 5.27.1 all money received by the insurer in respect of policies of that class which are issued by it or under which it has undertaken liability;
 - 5.27.2 all income and gains arising from the investment of the assets of that designated fund.
- 5.28 Having regard that IAL is a long-term insurer, upon the winding up of IAL, the assets representing the designated funds maintained by it shall be available only for meeting the liabilities of the insurer attributable to that fund and hence the policyholder funds in respect of the insurance policy cannot be used to settle creditors of IAL or any cell thereof.

6 Assumptions

- 6.1 The following assumptions have been made in providing this legal opinion:
 - 6.1.1 There is no contractual agreement or arrangement entered into by IAL with any of its creditors or prospective creditors to the effect that a liability of IAL shall be:
 - (a) either the liability solely of the IAL's non-cellular assets; or
 - (b) of the cellular assets attributed to a particular cell of IAL;¹⁹
 - 6.1.2 IAL has not, in any transaction entered into by it, expressly excluded in writing any of the terms set out in section 13(3) of the PCC Act;²⁰
 - 6.1.3 IAL has at all material times:
 - (a) informed any person with whom it transacts that it is a PCC; and
 - (b) for the purpose of relevant transactions, identified or specified the cell in respect of which that person is transacting with, unless that transaction is not a transaction in respect of a particular cell.²¹
 - 6.1.4 No material documents have been deliberately or inadvertently withheld from us.

¹⁸ Section 18 IA

¹⁹ Section 12(1) PCC Act

²⁰ Section 13(3) PCC Act

²¹ Section 17(1) PCC Act

7 Scope of Legal Opinion

- 7.1 This legal opinion relates only to the laws of Mauritius as applied and interpreted by the courts of Mauritius at the date of this legal opinion.
- 7.2 By giving this legal opinion, we do not assume any obligation to notify you of future changes in law which may affect the opinions expressed herein, or otherwise to update this legal opinion in any respect.
- 7.3 We express no views or opinions on the laws of any other jurisdiction other than those of Mauritius which are in effect at the date of this legal opinion.
- 7.4 This legal opinion (and any non-contractual obligations arising out of it) is governed by the laws of Mauritius at the date of this legal opinion, and Mauritian courts have exclusive jurisdiction to adjudicate any dispute in relation to it.

8 Reliance on Legal Opinion

- 8.1 Subject to paragraph 8.2, this legal opinion is given solely for your benefit.
- 8.2 This legal opinion is confidential and is not to be used or relied on by any other person or for any other purpose without our written consent, except:
 - 8.2.1 where required by law or judicial process; and
 - 8.2.2 on a non-reliance basis to your professional advisers, auditors, insurers, and regulations, and (in each case) their professional advisers.

9 Responsibility

- 9.1 This opinion is given by Eversheds (Mauritius) Ltd (doing business as Eversheds Sutherland (Mauritius)), and no member, director or employee assumes any responsibility for it, nor owes any duty of care in respect of it.

Please let us know if you have any questions or if you want us to elaborate on any of the matters in this opinion.

Yours faithfully,

Eversheds Sutherland (Mauritius)

Eversheds Sutherland (Mauritius)

Schedule 1

Extract of Relevant Sections of the Law

Protected Cell Companies Act

8. Cellular and non-cellular assets

- (1) The assets of a protected cell company may comprise of cellular assets or non-cellular assets or a combination of both cellular and non-cellular assets.
- (2) The directors of a protected cell company shall -
- (a) keep cellular assets separate and separately identifiable from non cellular assets; and
 - (b) keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.
- (4) The cellular assets of a protected cell company shall comprise the assets of the company attributable to the cells of the company.
- (5) The assets attributable to a cell of a protected cell company shall comprise -
- (a) assets represented by the proceeds of cell share capital and reserves attributable to the cell; and
 - (b) all other assets attributable to the cell.
- (6) For the purposes of subsection (5) "reserves" includes retained earnings, capital reserves and share premiums.
- (7) The non-cellular assets of a protected cell company shall comprise the assets of the company which are not cellular assets.

11. Liability of a protected cell company

- (1) Where a liability of a protected cell company to a persona rises from a transaction, or is otherwise imposed, in respect of a particular cell -
- (a) that liability of the company shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to -
 - (i) the cellular assets attributable to that cell which shall be primarily liable; and
 - (ii) to the extent that the cellular assets attributable to that cell may be insufficient, the company's non-cellular assets, which shall be secondarily liable; but
 - (b) that liability of the company shall not extend to, and that, person shall not, in respect of that liability, be entitled to have recourse to, the cellular assets attributable to any other cell.
- (2) Where liability of a protected cell company to a person -
- (a) arises otherwise than from a transaction in respect of a particular cell; or
 - (b) is imposed otherwise than in respect of a particular cell, that liability of the company shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's non-cellular assets.

12. Liability of cellular assets

- (1) Subject to the provisions of subsection (2), and save to the extent that the company may have agreed that a liability shall be the liability solely of the company's non-cellular assets or of the cellular assets attributed to a particular cell of the company, where any liability which is attributable to a particular cell of a protected cell company arises -
- (a) the cellular assets attributable to that cell shall be primarily liable;
 - (b) the company's non-cellular assets shall be secondarily liable, provided that the cellular assets attributable to the relevant cell have been exhausted; and
 - (c) the liability shall not be a liability of any cellular assets not attributable to the relevant cell.
- (3) Any liability not attributable to a particular cell of a protected cell company shall be the liability solely of the company's non-cellular assets.

13. Creditors of a protected cell company

- (3) There shall be implied (except in so far as the same is expressly excluded in writing) in every transaction entered into by a protected cell company the following terms -
- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wherever, to make or attempt to make liable any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell;
 - (b) that if any party shall succeed by any means whatsoever or wherever in making liable any cellular assets attributable to any cell of the company in respect of a liability not attributable to

that cell, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby, obtained by him; and

(c) that if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.

14. Recourse to cellular assets by creditors

Without prejudice to the provisions of sections 12 and 13, cellular assets attributable to a cell of a protected cell company –

(a) shall only be available to the creditors of the company who are creditors, in respect of that cell and who shall thereby be entitled, in conformity with the provisions of this Act, to have recourse to the cellular assets attributable to that cell; and

(b) shall be absolutely protected from the creditors of the company who are not creditors in respect of that cell and who accordingly shall not be entitled to have recourse to the cellular assets attributable to that cell.

16. Attribution of non-cellular assets and liabilities

(1) Liabilities of a protected cell company not otherwise attributable to any of its cells shall be discharged from the company's non-cellular assets.

(2) Income, receipts and other property or rights of or acquired by a protected cell company not otherwise attributable to any cell shall be applied to and comprised in the company's non-cellular assets.

17. Protection of creditors

(1) A protected cell company shall –

(a) inform any person with whom it transacts that it is a protected cell company; and

(b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular cell.

20. Administration order in relation to protected cell companies or cells

(1) Subject to the other provisions of this section, where, in relation to a protected cell company, the Court is satisfied –

(a) that the cellular assets attributed to a particular cell of the company (when account is taken of the company's non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; or

(b) that the company's cellular assets and non-cellular assets are or are likely to be insufficient to discharge the liabilities of the company,

and the Court considers that the making of an order under this section may achieve one of the purposes set out in subsection (4), the Court may make an order, hereinafter referred to as "administration order", under this section in respect of that company.

(2) An administration order may be made in respect of one or more cells.

(3) An administration order is an order directing that, during the period for which the order is in force, the business and assets of or attributable to the cell or, as the case may be, the business and assets of the company, shall be managed by a person, hereinafter referred to as "administrator" appointed by the Court for that purpose.

(4) The purposes for which an administration order may be made are –

(a) the survival as a going concern of the cell or of the company, as the case may be;

(b) the more advantageous realisation of the business and assets of or attributable to the cell or (as the case may be) the business and assets of the company than would be achieved by a receivership of the cell or (as the case may be) by the liquidation of the company.

(5) An administration order, whether in respect of a protected cell company or a cell thereof –

(a) may not be made if –

(i) a liquidator has been appointed to act in respect of the company; or

(ii) the company has passed a resolution for voluntary winding up;

(b) shall cease to be of effect upon the appointment of a liquidator to act in respect of the company, but without prejudice to prior acts.

25. Receivership order in relation to cells

(1) Subject to the provisions of this section, if in relation to a protected cell company the Court is satisfied –

(a) that the cellular assets attributable to a particular cell of the company (when account is taken of the company's non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell;

(b) that the making of an administration order under section 18 in respect of that cell would not be appropriate; and

(c) that the making of an order under this section would achieve the purposes set out in subsection (3), the Court may make an order, hereinafter referred to as "receivership order in respect of that cell.

(2) A receivership order may be made in respect of one or more cells.

(3) A receivership order is an order directing that the business and cellular assets of or attributable to a cell shall be managed by a person, hereinafter referred to as "receiver", specified in the order for the purposes of –

(a) the orderly winding up of the business of or attributable to the cell; and

(b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.

(4) A receivership order –

(a) may not be made if –

(i) a liquidator has been appointed to act in respect of the protected cell company; or

(ii) the protected cell company has passed a resolution for voluntary winding up;

(b) may be made in respect of a cell subject to an administration order under section 20;

(c) shall cease to be of effect upon the appointment of a liquidator to act in respect of the protected cell company, but without prejudice to prior acts.

(5) No resolution for the voluntary winding up of a protected cell company which, or any cell of which, is subject to a receivership order shall be effective without leave of the Court.

29. Liquidation of a protected cell company

(1) Notwithstanding any statutory provision to the contrary, in the liquidation of a protected cell company, the liquidator –

(a) shall be bound to deal with the company's assets in accordance with the requirements of section 8(2);

(b) in discharge of the claims of creditors of the protected cell company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Act.

(2) The provisions of section 260 of the Companies Act 1984 relating to the distribution of property on winding up shall apply to a protected cell company subject to such modifications as may be necessary to bring them in conformity with this Act.

Insurance Act

18. Designated fund

(1) A long term insurer shall keep within its corresponding insurance fund set up under section 17, an appropriately designated fund in respect of each class of long term insurance business carried on, into which shall be paid –

(a) all money received by the insurer in respect of policies of that class which are issued by it or under which it has undertaken liability;

(b) all income and gains arising from the investment of the assets of that designated fund.

63. Application of funds on winding up

(1) Notwithstanding any other enactment, this section shall have effect with respect to the application of funds on the winding up of an insurer, and where any provision of this section is inconsistent with the provision of any other enactment, the provision of this section shall, to the extent of the inconsistency, prevail over the other provision.

(4) Where the insurer is a long term insurer –

(a) the assets representing the designated funds maintained by it under section 18 shall be available only for meeting the liabilities of the insurer attributable to that fund;

- (b) the other assets of the insurer shall be available only for meeting the liabilities of the insurer attributable to its other insurance business; and
- (c) any surplus asset remaining after application of paragraphs (a) and (b) shall be available for meeting any liabilities not attributable to any insurance policies.

Extract of the Constitution

Clause 36 of the Constitution in relation to winding up of IAL provides the following:

“36.1 The PCC may commence to wind up and dissolve by a Special Resolution of the Management Shareholders.

36.2 Subject to Article 36.3 and 36.4 and to the terms of issue of any Shares in the PCC, upon the winding up of the PCC, the assets, if any, remaining after payment of the debts and liabilities of the PCC and the costs of winding up (the surplus assets), shall be distributed among the Shareholders in proportion to their shareholding.

36.3 The holders of Shares not fully paid up shall only receive a proportionate share of their entitlement being an amount paid to the PCC in satisfaction of the liability of the shareholder to the PCC in respect of the Shares pursuant to the terms of issue of the Shares.

36.4 Where the PCC is wound up, the liquidator may, with the sanction of a Special Resolution of the PCC, divide in kind amongst the Shareholders the assets of the PCC, whether they consist of property of the same kind or not, and may for that purpose set such value as he deems fair upon any property to be divided and may determine how the division is to be carried out as between the Shareholders or different Class of Shareholders.”