



## Ohio Revised Code Section 3964.18 Liquidation.

Effective: September 17, 2014

Legislation: House Bill 117 - 130th General Assembly

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(A) If a protected cell captive insurance company with one or more protected cells is being liquidated, the protected cell captive insurance company may be considered to have no assets and no liabilities only if the protected cell captive insurance company continues to have no protected cells.

(B) In the course of liquidating a protected cell captive insurance company, each protected cell shall be dealt with one of the following ways:

(1) Transfer to another protected cell captive insurance company;

(2) Liquidation;

(3) Continuation as a separate legal entity or protected cell under the law of another jurisdiction;

(4) Incorporation, independent of the protected cell captive insurance company;

(5) Merge with another insurance company.

(C) If a protected cell captive insurance company is being liquidated, the liquidation shall not apply with respect to any protected cell of the protected cell captive insurance company.

(D) If a protected cell of a protected cell captive insurance company is being liquidated, the liquidation shall not apply with respect to the protected cell captive insurance company or any other protected cell of the protected cell captive insurance company.

(E) A court, upon application of a protected cell captive insurance company that is being liquidated, may determine, in accordance with this chapter, if a liability of the protected cell captive insurance company shall be satisfied by its general assets, by the cell assets of a specific protected cell of the



protected cell captive insurance company, or by a combination of those assets.

(F) Notwithstanding any statutory provision or rule of law to the contrary, in the disposition of a protected cell captive insurance company, the liquidator shall do both of the following:

(1) Deal with the protected cell captive insurance company's assets only in accordance with the procedures set out in this section;

(2) Apply the protected cell captive insurance company's assets to those entitled to have recourse to them under this section, in the discharge of the claims of creditors of the protected cell captive insurance company.

(G)(1) A petition for a liquidation or rehabilitation order with respect to a protected cell of a protected cell captive insurance company may be made by any of the following:

(a) The protected cell captive insurance company;

(b) A majority of the directors of the protected cell captive insurance company;

(c) Any creditor of that protected cell;

(d) The superintendent.

(2) Notice of a petition to the court for a liquidation or rehabilitation order with respect to a protected cell of a protected cell captive insurance company shall be served upon all of the following:

(a) The protected cell captive insurance company;

(b) The superintendent;

(c) Such other persons as the court may direct.



(H)(1) Except as otherwise provided in this section, the court may make a liquidation or rehabilitation order with respect to a protected cell if, in relation to a protected cell captive insurance company, the court is satisfied that both of the following are met:

(a) The cell assets attributable to a particular protected cell of the protected cell captive insurance company and the general assets of the protected cell captive insurance company, in those cases where creditors of the protected cell are entitled to have recourse to the protected cell captive insurance company's general assets, are, or are likely to be, insufficient to discharge the claims of creditors with respect to that protected cell.

(b) An order would achieve the purposes set forth in division (H)(3) of this section.

(2) A liquidation or rehabilitation order may be made with respect to one or more protected cells.

(3) A liquidation or rehabilitation order shall direct that the business and cell assets of, or attributable to, a protected cell shall be managed by a liquidator or rehabilitator specified in the order for the purpose of accomplishing both of the following:

(a) The orderly closing or rehabilitation of the business of, or attributable to, the protected cell;

(b) The distribution of the cell assets, or assets attributable to the protected cell, to those having recourse thereto.

(I) All of the following apply to the liquidator or rehabilitator of a protected cell:

(1) The liquidator or rehabilitator shall have all the functions and powers of the directors responsible for the business and cell assets of, or attributable to, the protected cell.

(2) The liquidator or rehabilitator may at any time apply to the court for any of the following:

(a) Directions as to the extent or exercise of any function or power;

(b) The liquidation or rehabilitation order to be discharged or varied;



(c) Any other order as to any matter occurring during the course of the liquidation or rehabilitation.

(3) The liquidator or rehabilitator shall act as the agent of the protected cell and the protected cell captive insurance company and shall not incur personal liability except to the extent that the liquidator or rehabilitator acts fraudulently, recklessly, negligently, or in bad faith, except that where the superintendent is appointed liquidator or rehabilitator of a protected cell. If the superintendent is appointed liquidator, section 3903.07 of the Revised Code shall apply to the superintendent, any deputy liquidator, any employee of the department of insurance, any employee appointed by the superintendent as liquidator, and any employee who serves under the liquidator.

(4) The liquidator or rehabilitator shall administer the assets pursuant to the provisions of this section and sections 3903.01 to 3903.59 of the Revised Code.

(J) Upon the filing of a petition for a liquidation or rehabilitation order, and during the period of operation of liquidation or rehabilitation, both of the following shall apply:

(1) No proceedings shall be instituted or continued by or against the protected cell captive insurance company or protected cell in respect of which the liquidation or rehabilitation order was made.

(2) No action shall be taken to enforce any security, and no action shall be taken in the execution of a legal process with respect to the business or cell assets of, or attributable to, the protected cell with respect to which the liquidation or rehabilitation order was made, except by leave of the court.

(K) During the period of operation of a liquidation or rehabilitation both of the following shall apply:

(1) The functions and powers of the directors shall cease with respect to the business of, or attributable to, any protected cell or cell assets for which the order was made.

(2)(a) The liquidator or rehabilitator of the protected cell shall be entitled to be present at all meetings of the protected cell captive insurance company and protected cell in question and to vote at such meetings as if the liquidator or rehabilitator were a director of the protected cell captive



insurance company.

(b) The liquidator's or rehabilitator's voting authority shall include matters concerning the protected cell captive insurance company's general assets, unless there are no creditors that are entitled to have recourse to the protected cell captive insurance company's general assets.

(L)(1) A court shall not discharge a liquidation or rehabilitation order issued pursuant to this section unless it appears to the court that the purpose for which the order was made has been achieved, substantially achieved, or is incapable of being achieved.

(2) The court, on hearing a petition for the discharge or variation of a liquidation or rehabilitation order, may make any interim order, discharge the order, or continue the liquidation or rehabilitation unchanged.

(3) Upon the court issuing an order discharging a liquidation or rehabilitation order for a protected cell on the ground that the purpose for which the order was made had been achieved or substantially achieved, the court may direct that any payment made by the liquidator or rehabilitator to any creditor of the protected cell captive insurance company, with respect to that protected cell, shall be considered full satisfaction of the liabilities of the protected cell captive insurance company to the creditor with respect to the protected cell. However, such an order or discharge shall not be considered a bar to a creditor's claims against the protected cell captive insurance company arising out of the protected cell captive insurance company's administrative, regulatory, or marketing activities on behalf of the protected cell in question.