PROTECTED CELL COMPANIES pdf

1: Protected Cell Companies

A protected cell company (PCC) is a corporate structure in which a single legal entity is comprised of a core and several cells that have separate assets and liabilities. A PCC has a similar.

In more recent years a segregated company regime has been implemented in many states of the United States, in the United Kingdom, Dublin and Luxembourg. Segregated business transactions therefore now take place across many jurisdictions around the world. Protected Cell Company legislation was enacted primarily to encourage growth of the captive insurance industry, by bringing captive promoters together under a single corporate entity but enabling the segregation of assets between them for satisfying third party claims and limiting their liability accordingly. The limitation serves a similar purpose to the maritime laws that have existed for well over one hundred years in many nations around the world that limited the liability of ship-owners both in contract and in tort and also to the corporate fiction that limits the liability of shareholders in a not dissimilar way. The question "would a foreign court respect PCC legislation" spurred the writing of the book "Protected Cell Companies: This short article will examine that question, albeit it can hardly do justice to the detailed analysis presented in the book itself. There are possibly three ways in which a PCC could be called into question in foreign court proceedings. First, if local legislation required local courts to ignore PCC legislation on the issue of liability. Second, if PCC legislation was deemed contrary to local public policy. Third, if PCC legislation was classified as procedural, rather than substantive. Let us take each in turn for the sake of argument. The first is the easiest to dismiss. I am not aware of any statute anywhere in the world that purports to declare that a local court should not give effect to foreign PCC legislation. This is hardly surprising since such outright rejection of a foreign law would hardly sit well with the principle of comity of nations. The second can also be given short shrift. Far from offending any notion of public policy or principle of justice , PCC legislation underpins the fundamental principle of modern commerce that owners of capital should be able to deploy that capital in commercial enterprise and limit their liability to such capital and no more. All legal systems around the world recognise this as part of their substantive law in one way or another. Indeed, many countries have other laws which are almost indistinguishable from the Protected Cell Company regime in what they are intended to achieve. It is therefore difficult to imagine how PCC legislation could be considered contrary to public policy or justice by a foreign court if its own local laws contained or recognised something similar. This is the case even in insolvency and it is an analysis developed in detail in the PCC book. To do otherwise would not only be an affront to principles of comity but also undermine international commerce. Most countries around the world establish under their conflict-of-laws rules the distinction between the application of foreign substantive law where the rule is that foreign laws containing substantive rights should be applied and procedural law where local rules of procedure are applied. Since all PCC legislation is undoubtedly intended to be substantive in nature, it is difficult to see why a foreign court should not recognise PCC legislation as such. An examination of jurisprudence in this area suggests that when courts have classified foreign laws that were arguably substantive in nature as procedural instead, they appear to have done so more on the basis of an overriding principle of policy than on the application of cogent legal argument. That said, courts have generally tended to view foreign limitation of liability laws as a matter of substance not procedure , and therefore on this basis alone should treat PCC legislation in the same way. Ultimately, however, the argument that I think would prevail is this: Viewed in this way, PCC legislation is, in effect, a capital and creditor protection rule like any other. For a foreign court to hold otherwise would be to undermine the very principles on which international trade has developed since at least the eighteenth century, namely, the dual principle of limited liability for those that put capital at risk and also acceptance that in a global economy countries must recognise each others commercial laws. MT, May 13, For years the industry has been concerned that a court might view the cellular structure as a complex Gordian knot and use its judicial sword to cut through it without proper legal consideration of the situation presented. Whilst the Montana case did not concern a cross border situation in the manner I have highlighted in this article, it is still gratifying to see that the judge unlike Alexander the Great patiently and intelligently untangled the knot by hand, in accord with long-standing insurance industry practice whilst leaving the cellular structure intact. This augurs well for the future of the Protected Cell Company. Arch Bay Holdings, L. The Fifth Circuit opinion states that " Therefore instead of grasping the opportunity to provide a much needed judicial precedent in the area of segregated business forms generally, it dodged a question which on the face of it was relatively straight-forward. I would welcome any comments from readers on this article or any matter raised in it. For further information, please contact Nigel Feetham at nigel. Nigel is also the author and co-author of a number of books. The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

2: What is protected cell company (PCC)? definition and meaning - www.enganchecubano.com

The Protected Cell Company in a Nutshell These entities originated in Guernsey, specifically by means of The Protected Cell Companies Ordinance (as amended by "The Protected Cell Companies (Amendment) Ordinance, ") viii.

A protected cell company is a special type of corporate body which consists of several cells within the same legal vehicle. A cell is a sub-set within the corporation, which has its own assets, its liabilities, its own cellular capital, its own dividends, accounts, and all. Each cell functions as an independent unit within the umbrella of the corporation, and the debtors and creditors of each cell have no claims against the assets or liabilities of other cells. In other words, it substitutes for several corporations, and thus leads to substantial savings in incorporation and administration expenses. Obviously enough, a protected cell body can be incorporated only if the law of the land allows for formation of such bodies. As the need for protected cell companies is strongly felt, several countries, primarily the tax haven countries, have enacted laws to facilitate the formation of cellular companies. Gibralter passes protected cell company law A law to allow formation of protected cell companies PCCs was passed by Gibralter in early July A protected cell company is a new concept in corporate legislation which allows the setting up of a multi-part company containing different cells, with each cell having its own assets, liabilities, debtors and creditors with mutual independence from other cells as also from the core capital of the company. Each cell may have its own cellular capital, cellular shares and distribute cellular dividends. Cellular companies are expected to be particularly useful for captive insurance companies, securitisation SPVs and collective investment conduits. The advantage of a PCC is that a single cellular company may act as an SPV for several transactions while still maintaining protected assets of the cell. This is a huge saving on incorporation and administration costs. Bermuda protected cell legislation on track Protected cell legislation, which will make it easy to float a single SPV for multiple securitization transactions, is on track in Bermuda. The law is expected to be introduced later this year. The law, titled The Segregated Accounts Act has been submitted to the minister of finance for approval after more than a dozen drafts. A protected cell company is a special corporate structure which allows a company to have several protected cells within the company, so that a single company can act have several subsets of assets and liabilities within itself, each protected from the claims of creditors of other cells. The Bermuda is currently allowing formation of protected cell companies, but under specific acts of parliament. This is a costly and time taking process, but a number of market participants are prepared to go this route rather than wait for the specific law to be enacted. Insurance securitization optimistic on use of protected cell companies Insurance securitization community is optimistic that protected cell companies, a new concept that avoids setting up of an SPV for securitization of insurance risk, will make things easier, faster and cheaper. The current approach in securitizations is to set up special purpose vehicles in tax haven jurisdictions that provide reinsurance cover to the insurance company and in turn transform the insurance risk into a capital market product. On the other hand, if protected cell companies are used, there will be no need to set up SPVs for each transaction, as one cell company can have several cells in it and each cell can do a securitization transaction. The basic idea is not to proliferate legal entities. Protected cell companies, it may be noted, can be used in asset securitization applications Guernsey has already enacted a protected cell legislation. In fact, the National Association of Insurance Commissioners has also passed a model protected cell companies law. The concept has not been put to use as such but insurance market practitioners expect it would be lapped up by securitisers in due course.

3: Protected Cell Companies - SWAN Mauritius - For Life

Protected Cell Companies Malta is the only EU member state with Protected Cell Company (PCC) legislation, which provides numerous advantages compared to stand-alone insurance companies or captives. A unique element of a PCC is that an insurer can write business through the ownership of a protected cell, using the core's capital.

Introduction Among the different factors that contribute to economic growth are the roles played by "offshore" jurisdictions i , which in many ways assist or ease different business activities of commercial, financial or patrimonial nature around the globe, an aspect often forgotten by many. The spectrum of instruments may include -inter alia- the well-known International Business Corporations ii , the traditional common law trusts and captive insurance companies iii. One of the relatively recent tools available for corporate, tax planning and financial services law practitioners in the comparative legal context is the Protected Cell Company hereinafter "PCC" , an innovative corporate instrument whose concept, characteristics and uses in the international financial arena are briefly explained in the following paragraphs. These regulatory schemes constitute a response to claims and heavy lobby from the captive insurance industry and come to resolve structural inefficiencies of the "rent-a-captive" concept. Before describing the intricacies of the PCC it is necessary to briefly express the background which gave rise to this new corporate structure. A captive is a corporate entity created and controlled by a parent company or a group of corporate entities whose main purpose is to provide insurance for determined risks of such parent company or of the corporate group , as an alternative to the traditional insurance coverage provided by the insurance industry xi. In short terms, it is an in-house self-insurance vehicle. Captives represent commercial, economic and tax advantages to their sponsors due to the reductions on costs they help create, the ease for insurance risk management and the flexibility for cash flows they generate. Additionally, they may provide coverage of risks which are neither available nor offered in the traditional insurance market at reasonable prices. In cases in which a company is not financially capable to self-insure itself it may still obtain self-coverage through the use of a "rent-a-captive" scheme. In this case, such company would share the services of a captive with other companies of relatively similar size, by "renting" part of the capital of the rented captive. Unrelated companies would use then the same captive to insure their risks. The patrimony of the captive would thus cover the underwritten risks of the sponsoring entities in the case a triggering event occurs, as described in the respective policy. Although the rent-a-captive structure represents advantages for the insurance industry, because -among others- it provides for economies of scale is a costs-savings instrument , it has a major flaw: There is no guarantee nor assurance that the funds provided by one participant-enterprise to the rented captive would not be used to cover any unjustified claims unrelated to the risks such participant wanted to insure through the rented captive. No asset protection is provided for the participants of a rent-a-captive program on an individual basis. In order to circumvent such patrimonial risk-fencing deficiency the insurance industry developed the concept of the PCC. How does it work? In simple terms, the PCC is a corporation structured with different patrimonies, all segregated through "cells", which are independent and separate from each other and from a "core" patrimony of the entity. Based on the aforementioned, a PCC may be defined thus as: A corporation whose patrimony is composed of assets contained in structurally separate parts named "cells" [cellular assets], which are legally and functionally separate, distinct and independent among each other, and of assets not constituting "cells" [non-cellular assets], also structurally and legally independent, that has as main legal characteristic the fact that the portion of capital designated to a specific cell is neither liable for the general obligations, commitments or liabilities of the corporation nor for the specific liabilities of the other cells. It is possible to extract the main characteristics of these entities from the above, as follows: The "cells", although being separate individual patrimonies, do not constitute separate entities themselves; b "Cellular" Patrimonies: The liabilities unrelated to a specific cell are covered by the non-cellular assets or the core cell. The core assets respond -on subsidiary grounds- once the specific cellular assets are depleted. In summary, a PCC -structurally speaking- involves a core capital, cellular capital, cellular assets and liabilities, and core assets and liabilities. The ring-fencing rules are also applicable to any liquidator or receiver of the entity. Thus the insolvency of a cell should not affect the business of the whole entity or the performance of the other cells. For each business, activity or agreement contracted, the PCC must disclose which cell is contracting or if the entity is committing its core assets or both, core and specific cell assets. The PCC must have a name and each and every cell must also be clearly identified in the formation documents of the entity. Once formed, these entities may issue shares "cellular" or "non-cellular" shares, depending on whether they represent an equity interest in a specific cell or in the core assets or other types of securities. The entity must keep accounting books showing the corresponding patrimonial divisions among the segregated cells and the core cell within the entity.

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4: Protected Cell Companies (â€˜PCCâ€™) | MATCO

Protected cell companies are clearly a very useful legal form for the investment management sector, whether for open ended or closed ended investment funds, whether the cells or the core are listed or not and for a cost effective holding company structure where a series of investments is intended.

Protected cell companies - going beyond funds and captive insurance 28 February Written by Alex Wickens Collas Crill Protected Cell Companies PCCs have existed in Guernsey for more than ten years and have been widely replicated in other jurisdictions. Most people are familiar with their traditional uses for captive insurance and collective investment schemes - but how are they being used beyond this? At Collas Crill we have seen an increase in the use of the PCC as an effective tool for clients looking to effectively manage a portfolio of diverse assets. Joe Bloggs is the beneficial owner of a Guernsey limited liability company that he uses to hold the following assets: A collection of rare artwork A 16th century French chateaux A New York penthouse apartment A Rolls Royce Silver Phantom A portfolio of stocks and shares A Scottish goldmine that has been in the Bloggs family for over hundred years Joe uses the company to employ his driver, personal chef and butler. The French chateaux is the subject of a lease between the company and Mr Pierre Henry. A recent accident at the goldmine has left a miner badly injured. Limited liability As the name suggests, a limited liability company allows its beneficial owners to limit liability, in most instances, to the assets it holds. Joe currently holds all of his assets in a single company. This could be a risk as his company holds a diverse range of assets and liabilities. Of particular concern to Joe is the goldmine. The recent accident is threatening to turn into a legal action by the injured miner against the company and Joe is concerned that this may leave his other assets in the company exposed. The incident has focused his mind to consider the other potential liabilities that could arise in the future, including from his three employees and his tenant Pierre. A liability attaching to one e. Joe appreciates the benefits of a limited liability company, but he is not comfortable with the idea of a sprawling group structure of individual companies. The PCC appeals to him because it remains as a single legal entity while allowing him to still separate and individually protect his assets by placing them in separate protected cells. If required, a new cell can be created by a simple board resolution. Accounts can be prepared as consolidated accounts for all cells or completed on a cell by cell basis. Recent changes in Guernsey law also allow for an individual cell of a PCC to be spun out of the structure and converted into a standalone limited liability company. He intended to leave it to her anyway, so he wants to gift her the penthouse now so that she has somewhere to live in the city. The penthouse is held within a single cell of the PCC which will be converted into a new Guernsey company and the shares of which will be issued to his daughter. Pierre White currently leases the French chateaux, but he has made no secret of his desire to purchase the property permanently. If a deal can be reached, the same conversion process will be used so that the property can be sold by means of a share sale of the entire issued share capital of the converted standalone company. Reduced management burden and costs Most of the benefits that Joe enjoys through the use of a PCC structure could have been achieved by using a group of companies. However, there are cost savings to be had with a PCC over a group of companies. Unlike with a group structure, that corporate services provider only charges Joe for the provision of one registered office address, the provision of a single board and it pays the Company Registry for just one annual validation a year. When a new cell is required the board can complete a simple board resolution to create it. PCCs are flexible corporate entities and portfolio management is just one of the alternate ways in which they can be used.

5: GBC 1 - Protected Cell Companies

Protected Cell Companies (PCC) A single legal entity that operates segregated accounts, or cells, each of which is legally protected from the liabilities of the company's other accounts.

Premium payments and captives: Since the enactment of the first captive legislation in , a lot has happened on the protected cell company PCC front. First, there is an ever-increasing number of jurisdictions that have implemented similar regulation. Although the names of such entities might differ such as segregated portfolio companies or segregated account companies depending on the jurisdiction, the basic legal principle remains the same: If a cell becomes insolvent, the remaining cells of the structure are not affected and continue to operate as normal. Whereas traditional insurance, through the common fund mechanism, ie, pooling, demands that the premiums of the many fund the losses of the few, PCCs ensure that the premiums of the few are protected against the losses of the many. There are now more than 50 jurisdictions around the globe that have adopted cell company legislation, and this number is expected to grow further, while established domiciles such as Gibraltar continue to adapt their regulations to the ever-changing environment. This clearly demonstrates that the PCC concept has gained international recognition and that it is becoming an increasing attractive alternative in insurance placements. Since its formation in , White Rock has established more than 50 cells and currently has 22 open cells, which makes it by far the largest PCC in the EU. Other PCCs, both life and non-life, have set-up in Gibraltar to avail themselves of its favourable legal framework and ability to passport across Europe. Various factors explain this success but one key element remains the unparalleled speed at least in the EU at which the Gibraltar Financial Services Commission is able to license PCCs and authorise individual cells. This, combined with the pragmatic and proportionate approach taken by the Gibraltar regulators, gives the visibility and clear framework necessary for the conduct and development of business. Cell companies can be used in various ways. Cell captives Cell captives can be used to assist clients who wish to retain their own risk, as they would do with a standalone captive. Typically this solution may suit companies that do not wish to meet the minimum capitalisation requirements imposed in the EU because the programme they want to write is too small to leverage the minimum capital required efficiently. There can also be cost efficiencies for companies using a cell captive as opposed to a standalone entity. A PCC may also suit clients with specific needs or who require a shorter-term solution than the commitment of owning a captive, as they incur lower formation and operating costs and have much faster entry and exit strategies than the captive alternative. Thanks to the legal segregation of assets and certain contractual arrangements, the need for collateral is not as important for PCCs. For example, Aon-owned White Rock generally does not require collateral for pure fronting arrangements to captives or the reinsurance market. The objective for White Rock in this arrangement is to provide access to licensed paper. However, it is important to note that where the cells operate as a pure front, the insured has generally no formal ownership or control over the activities of the cell. Other uses Thanks to the flexibility offered by these vehicles, PCCs lend themselves not just to traditional captive purposes but to much more. For example, cells have been used successfully to facilitate and accelerate the run-off of all or part of some captive insurance companies. Cells are also increasingly being used in insurance-linked securities ILS to facilitate securitisations and to transform capital market products such as derivatives and catastrophe bonds into insurance products. In the same wayâ€”and overwhelminglyâ€”it is insurance risk that is transformed into financial risk or risk that the capital markets can accept. For their part, life insurance PCCs tend to be used by high net worth individuals who desire control, transparency and security over the management of their assets. Growth opportunities Solvency II The increasing number of new cell company jurisdictions will undoubtedly intensify competition and potentially dilute the revenue streams of established domiciles. Practitioners and legislators in the competing domiciles will persist in attempting to differentiate their cell company product in the hope of creating a competitive advantage, or just publicity. No doubt the Gibraltar insurance industry and its legislators will continue to work hand-in-hand to bring innovation and improvements to cell companies, instead of resting on their laurels. However, although the directive might often appear a challenge, it will also bring opportunities, particularly for existing and new

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Gibraltar PCCs, which will benefit from the expertise, know-how and resources available locally within the industry and at the regulator. Indeed, the directive may lead to increased costs that will particularly affect EU-based smaller captives and open market insurers. We have outlined the existing benefit of pooling the running costs of a PCC between its promoter and cell clients. ILS The government of Gibraltar, in partnership with the local industry, is keen to develop complementary areas of insurance and ILS offer one such opportunity. Cells provide an opportunity for a flexible structure, are easy and quick to set up and represent a cost-effective solution to put in place and maintain. For further information visit:

6: Segregated portfolio company - Wikipedia

THE PRESENT AND FUTURE PROTECTED CELL COMPANIES May Willis Interruption INTRODUCTION The use of the Protected Cell Company (PCC) concept is one of the.

The Act enables a company holding a Category 1 Global Business Licence, from the Financial Services Commission, to create cells within its capital for the purposes of segregating the assets within that cell from claims related to other assets. The cellular assets attributed to a cell will only be affected by the liability of the company arising from transaction attributable to that cell. Further, a PCC may pay dividend, cellular dividend, in respect of which the cell shares by reference only to the cellular assets and liabilities attributable to the cell in respect of which the cell shares were issued. The creation of a PCC does not create in respect of that cell, a legal personality separate from the company. Until recently, under the PCC Act which is in force in Mauritius since 1 January , the incorporation of a company as a PCC has been limited to the business of global insurance and investment funds. However, new regulations amending the PCC Act to permit wider use of protected cell companies for global business activities have recently been adopted such that the qualified global business activities that qualify for a PCC is henceforth: The requirements and documents to be submitted to FSC in case of incorporation as a global investment fund is more onerous than an ordinary GBC1. Other salient features of the PCC Act are as follows: Cell share capital may be reduced with the authorisation of the Registrar of Companies provided a solvency test is satisfied. Transfer of cellular assets from one cell to another is also permissible once the proper resolution is passed. A PCC offers flexibility in the allocation of capital between the core and individual cells. Legal segregation and protection of assets and liabilities for each cell. No minimum capital requirement is imposed for the PCC or the cell s except in the case of insurance business. Creation of cellular and non-cellular assets. Unlimited number of cells may be provided with, each cell having its own name or designation. Incorporation may be continued or converted from an existing company. A formal procedure is provided for the liquidation, receivership or administration order for any individual cell. An important feature of the PCC Act is the provisions for the protection of creditors. A person dealing with a PCC must be informed of the PCC status and the cell with which the relevant transactions are taking place must be identified, as stipulated in sections 11 and 13 2 respectively. Additionally, the Directors of a PCC are bound by law to keep the cellular assets separate and separately identifiable from cellular assets attributable to other cells. If a Director fails to inform a person that he is dealing with a PCC, and that person is otherwise unaware of, and has no reasonable basis for knowing, which cell he is dealing with, the Directors incur personal liability to that person in respect of the transaction. Nevertheless, the Directors have a right of indemnity against the non-cellular assets of the PCC in respect of their personal liability unless they acted in a fraudulent, reckless or negligent manner or in bad faith. So once we receive all requisite details and documents from a prospective client, we prepare the application and lodge same with FSC. Cellular assets must be both separately identifiable from non-cellular assets and separately identifiable from the cellular assets attributable to other cells. Hence, each cell must have its own distinct name or designation. However, on a case to case basis and depending on the nature of the business, FSC may prescribe certain capital requirements. Assets allocated in this way become cellular assets. They comprise the proceeds of any cell share capital and any other assets attributable to the cell. All other assets held by the PCC not allocated to individual cells are regarded as non cellular assets. Transfer of cellular assets from one cell to another or to another person wherever resident or incorporated is authorised under the PCC Act. Dividends are paid from the profits attributable to the respective cell. The creditors of any one cell of a PCC are not entitled or cannot have recourse to the assets of any other cell. However, the management may be transferred or shared through a management contract to an Investment Manager in the case of collective investment schemes. Each cell may be managed independently by its own Board of Directors or by the Directors of the PCC acting as nominee. Life assurance companies can legally separate the assets of life, pension and individual policyholders. Composite insurers - where the assets of life insurance business need to be legally separated from those of non-life business. Conglomerates - where several cells are established, each holding a particular insurance exposure of the parent and segregated, for example, in relation to the various geographical locations, corporate division or types of risk of those exposures. Insurance and re-insurance - where insurers or reinsurers can accommodate the differing needs of clients. Reinsurance - where finite reinsurance contracts and securitisation issues can be placed within separate cells. Multi-nationals - where companies can operate their captive insurance, treasury and other functions globally in a single entity using the same core capital. Rent-a-captive - where the owners of the PCC offers capital financing to clients, who, because of their own size, would find it impractical to set up their own individual captive insurance arrangements. This type of structure is particularly attractive for global business funds collective investment schemes with various classes of shares, umbrella or multi-class funds, affording each individual share class the same limited liability that would be obtained if separate corporate structures were used for each different category of investor. Alternatively, the PCC can claim, against the nominal tax payable, credits for actual taxes suffered. These are generally of three types, namely: Withholding taxes which have been retained in the source country. Where the income consists of dividends received from a foreign investment, credit can also be claimed for underlying taxes which have been paid in the source country on the corporate profits out of which the dividends have been declared. Tax sparing - although tax may not have been paid in the source country, credit can be claimed in Mauritius if the tax has been spared in the source country i. It should be noted that the tax sparing clause is embodied in the local tax legislation and this is granted on income flows into Mauritius regardless of the ambit of a specific treaty. In such a situation, the PCC may even have surplus tax credits which can go to waste. However, the entity is allowed to claim the credits against any nominal taxes payable on any type of income interest, royalties, business profits, etc , from any source country. This makes full use of all available credits. This can be particularly attractive for holding entities which derive income from many source countries, and of different nature. There is no withholding tax on dividends, capital gains and interests. If it is deemed necessary FSC may request each cell to report independently. Regulations pertaining to conversion have already been made by the Authorities and are fully in force. Application for conversion shall be made to the FSC. Licensed and regulated by the Mauritius Financial Services Commission.

7: Protected Cell Companies (PCC) - Mauri Experta Management Company - Mauritius

A Protected Cell Company (PCC) is a single legal entity made of a Core and several Cells with separate assets and liabilities. A single legal entity that operates segregated accounts, or Cells, each of which is legally protected from the liabilities of the company's other accounts.

Connections at Firm Guernsey was the first jurisdiction to introduce a Protected Cell Company "PCC" in and has been regularly using cell companies and refining the concept since then. What is a PCC? A PCC is a limited liability company and has a board of directors. A PCC may create one or more cells, the assets and liabilities of which are segregated from the assets of the PCC itself the "core" and from the assets and liabilities of other cells. A cell is established by a board resolution. Usually cell shareholders will have voting and other rights which are restricted to matters relating to the cell. For example, cell shareholders are unlikely to be able to vote on resolutions in respect of the PCC which do not affect cell shareholders or in respect of matters relating to other cells. In normal companies, the assets of the company are available to all creditors to satisfy debts. The key advantage of a PCC is that a distinction is made between the core assets and the assets attributed to each cell called "cellular assets". As such, when a cell incurs liabilities in respect of the business it carries out, those liabilities will only be attributed to the assets of that cell. Creditors of a cell are not able to have recourse against the assets attributable to other cells or to the core assets and thus the assets of another cell or the core are referred to as "protected assets". This enables a number of portfolios to be established in the same company but with fewer risks attaching to contagion of claims between asset classes or lines of business. In fact, a recent case upheld the integrity of a PCC structure and the segregation of assets and liabilities. A cell, or the core, is also able to enter into a recourse arrangement with another cell which enables, for example, one cell to secure borrowings against the assets of another cell. Importantly, with a recourse agreement, the creditors of one cell can have recourse to the assets of another cell or to the assets of the core, depending on whom the recourse agreement is with. It should be noted that the cells are not separate legal entities and cannot transact as such. In all cases it will be the PCC acting for and on behalf of the cell that enters into a transaction. Importantly, if it is not clear in respect of which cell a certain transaction is being entered into, the officer entering into the transaction on behalf of the PCC could be personally liable. Criminal Penalties Where a PCC is liable to any criminal penalty due to the act or default of a cell or an officer acting in relation to a cell, then the penalty may only be met from the cellular assets attributable to that cell. It is not clear what an "act" or "default" of a cell means in this context since a cell has no separate legal personality. Similarly, where a PCC is liable to any criminal penalty due to an act or default of the core or any officer of the core, then the penalty may only be met from core assets. Disputes If there is a dispute as to whether any right is in respect of a particular cell, whether any creditor is a creditor in respect of a particular cell or whether any liability is attributable to a particular cell or the amount to which any liability is limited, the PCC may refer the matter in dispute to the court which will make a declaration on the matter. Firstly, there are a number of sections of the Law designed to ensure that third parties dealing with a PCC are put on notice of that fact. These include requiring references be made to the PCC structure in the name, memorandum of incorporation, cell name and also notification to any party it transacts with. Thus the board must ensure that it identifies to a counterparty that it is acting on behalf of a PCC and it must identify the cell in respect of which the PCC is transacting. Secondly, the directors of a PCC have an obligation to: Keep separate and separately identifiable the assets of the core from the assets of each of the cells; and keep separate and separately identifiable the assets of each cell from the assets of each other cell. In practice, this means maintaining separate accounts for each cell in which the assets attributable to each cell are clearly identifiable. Consolidated accounts of a PCC are often of little relevance to cell shareholders as investors in different cells have no financial interest in the assets or performance of other cells. In order to ensure that the integrity of the structure is maintained, the two steps mentioned above are vital. For example, if a party transacts with a PCC but not in respect of any particular cell, then in pursuing the company in respect of the liabilities arising, there is no clear attribution of either the asset or the liability. By way of contrast, if it is clear in all cases in respect of which cell the PCC is transacting and if the accounts show the asset being attributed to that cell, there can be no question that any creditor should have recourse other than to the assets of the relevant cell. Implied Terms and Conditions To reinforce the cellular nature of liabilities, there is implied unless expressly excluded in writing in every transaction entered into by a PCC the following terms: That no party shall seek to make liable any protected assets; that if any party succeeds in making liable any protected assets, that party must pay to the company a sum equal to the value of the benefit obtained; and that if any party succeeds in seizing, attaching or levying execution against any protected assets, that party must hold those assets or their proceeds on trust for the company and must keep those assets or proceeds separate and identifiable as such trust property. However, the implied terms are subject to any recourse agreement. Express Terms To reinforce the implied terms, ordinarily express non-recourse wording is included into any contractual arrangement. Recovery of Assets for Breach of Implied Terms If any asset or sum is recovered by the PCC it must, after deducting or paying any costs of recovery, be applied so as to compensate the cell affected or the core, as the case may be. All sums recovered on account of property held on trust as a result of an implied term, will be credited against any concurrent liability against any protected assets. If the protected assets have been improperly taken in execution of a liability and cannot be restored to the cell affected or the core, as the case may be, the PCC must appoint an independent expert to certify the value of the assets lost. The PCC must then transfer or pay from the cellular assets or core assets to which the liability was attributable, assets or sums sufficient to restore to the cell affected or the core, the value of the assets lost. This obviously depends on there being sufficient assets available to do this. Extra-Territorial Effect In respect of the liability of cellular and core assets, the key aspects of the segregation of assets and liabilities are expressed to have extra-territorial application. In insolvency proceedings in two jurisdictions, this raises issues of conflicts of law and whether another jurisdiction would accept the extra-territorial effect. The usual approach in the case of double insolvency is to treat the insolvency proceedings in the place of incorporation as the principal insolvency and to treat the additional insolvency proceedings as being ancillary. This would suggest that in any double insolvency affecting a PCC, the protected cell structure would be respected i. However, where either significant assets of a cell are held in a jurisdiction other than Guernsey or liabilities are incurred under foreign laws, a foreign legal opinion should be obtained on whether a foreign court would accept the cellular integrity of the PCC in that jurisdiction. A single board, a single company secretary and a single administrator are required. Naturally the accounting is slightly more complicated in that assets and liabilities need to be separate and separately identifiable and attributed to the appropriate cell although no more complicated than for a multi-class structure ; however, the costs savings should be measurable. As the cells of a PCC do not require registration with the Guernsey Registrar of Companies, they can be formed quickly by Board resolution. A PCC is also treated as a single legal entity for taxation purposes which can have tax benefits. If a particular cell were to find itself in financial difficulty, a receiver could be appointed to that cell without affecting the other cells or the core. This should be contrasted with a multi-class company where, if losses were suffered in respect of one class of shares such that the assets in respect of those shares were less than the liabilities, the creditors might have access to the assets of the whole company. If a PCC enters into liquidation, the liquidator is required to recognize the rights of each individual cell and to protect the assets of each cell from the creditors of other cells. The PCC structure also allows investors to be segregated according to risk. So, investors with a high risk profile can invest into a cell which invests in riskier assets without the danger of any losses arising from those riskier investments spreading to investors who have a low risk profile. In certain circumstances a PCC may outgrow its purpose. For example, a single cell of a PCC might achieve such success in its business that it needs additional freedoms not available as a cell of a PCC for example, the ability to transact in its own right. In such cases, there are a number of options available under Guernsey Law, whereby the cell can be converted into a stand alone company. Where a PCC is required to have a resident agent namely, if it is utilised for a purpose other than as an open-ended or closed-ended collective investment scheme, listed on a recognised stock exchange, a supervised company, or a States of Guernsey trading company the registered agent is required to hold details of beneficial ownership of the shares. These details are not a matter of public record although the resident agent may be required to release the information pursuant to a court order or regulatory request. Annual Validation Procedure A PCC must adhere to the annual validation procedure which requires a filing to be made with the Company Registry once a year before 31 January together with a declaration of compliance signed by a director. The details required to be set-out in the annual validation are: Transfer of Cellular Assets It is not possible to transfer a cell which has no legal personality but it is possible, in certain cases, to transfer cellular assets. Generally the consent of the court is required for the transfer of the cellular assets attributable to any cell of a PCC a "cell transfer order". It should be noted that it is not possible to transfer the core assets of a PCC. No transfer of the cellular assets attributable to a cell of a PCC may be made except under the authority of and in accordance with the terms and conditions of a cell transfer order. The court must not make a cell transfer order unless it is satisfied that the creditors of the PCC entitled to have recourse to the cellular assets attributable to that cell consent to the transfer or that those creditors would not be unfairly prejudiced by the transfer and the court must hear any representations of the GFSC. The court may attach conditions to any cell transfer order, particularly with regard to discharging claims of creditors. A cell transfer order is not required for a PCC to lawfully make payments or transfers from the cellular assets attributable to any cell of the Company to a person entitled to have recourse to cellular assets. It is possible to list the shares of a cell or cells of a PCC on a stock exchange in accordance with the rules of the particular exchange. In respect of shares in the cell listed on the Channel Islands Stock Exchange, the shares would have to be freely transferable. Property Ownership A PCC holding an asset, including property, would do so in the same way as any limited liability company. For example, in respect of UK property, the PCC would be noted on the title deeds and registered at the Land Registry if registered land as the legal owner of the property for and on behalf of the relevant cell of the PCC. The Land Registry accepts the confirmation from the solicitor registering the property on the register that the structure is capable of owning property. Ownership of a Company In relation to how shares held in a company by a cell of the PCC would be registered, the same principle applies as with property ownership addressed above. The PCC would be registered on the share register as the legal owner holding the shares for and on behalf of the cell of the PCC. Utilisation of a Purpose or Hybrid Trust to Hold Ownership of the PCC One option, which may suit a client for tax or confidentiality reasons, could be to utilise the innovations contained within the Trusts Guernsey Law the "Trust Law" to establish a purpose trust to hold the shares of the core or cells of the PCC. The Trust Law permits pure purpose trusts or hybrid purpose trusts that combine persons and purposes as objects. The trust, which is intended ultimately to benefit individual beneficiaries, can subject the interests of those beneficiaries to the overriding purposes of the trust, which can be to hold the shares in the PCC. For even greater confidentiality, the trust could begin as a pure purpose trust, with the ability to add beneficiaries later. Discretionary trusts have been used in the past for a similar objective, but have now fallen out of favour and the purpose trust is considered to be more resilient against attack. Purpose trusts offer flexibility to permit a significant degree of settler control, as well as remoteness for those who may ultimately benefit from the structure. Note This is a short note on some of the general characteristics of a PCC and some of the advantages of such a structure. If you require more specific information, please do not hesitate to contact us. Legal advice should be taken in respect of your specific structure or any specific queries you might have. The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

8: Protected Cell Companies: Untangling The Cellular Knot - Corporate/Commercial Law - Worldwide

A protected cell company is a single legal entity, but the company is made up of individual "protected cells". It has a "core" capital (the ordinary share capital provided by the owners). Each cell has its own additional capital (usually redeemable preference shares) provided by the client using that cell.

9: Protected Cell Companies In Guernsey - Wealth Management - Guernsey

Protected Cell Companies (PCCs) have existed in Guernsey for more than ten years and have been widely replicated in *other jurisdictions. Most people are familiar with their traditional uses for captive insurance and collective investment schemes - but how are they being used beyond this?*

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