Protected Cell Companies

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Background and purpose of legislation

The legislation governing protected cell companies in Mauritius is The Protected Cell Companies Act 1999 (the "Act") which came into force in 2000.

The concept of the protected cell company involves the creation of a company having different "cells". The protected cell company ("PCC") refers to a company structured with one or more cells, each cell being segregated from the other cells. Thus, the assets and liabilities of each cell within a PCC are mantained in a distinct manner such that the cellular assets attributable to a cell would only be affected by the liability of the PCC arising from transaction attributable to that specific cell. Since the assets and liabilities of each cell are segregated, in the event of the insolvency of a particular cell, creditors shall have recourse to the assets of that specific cell only and to no other cell within the PCC.

The purpose of the Act is to enable a company carrying out a global business activity to create "cells" within a company so as to segregate the assets of the company into different cells with a view to protecting each cell from the liabilities of the other cells.

This legal segregation is often described as 'ring fencing' and this obviously offers flexibility in managing the assets of the PCC in a cost effective and efficient manner through directors forming part of a single board of the PCC. Furthermore, a PCC may prove beneficial for a single investment entity to have several investment portfolios, each portfolio having its own investment strategy and risk profile. In brief, the key interesting feature of a PCC is that the liability of each cell should not impact any other cell of the PCC entity.

Features of a PCC

Single legal entity

A PCC can create an unlimited number of cells with each one having its own name and designation. Although each cell is legally independent from the other cells, the creation of a cell does not create in respect of that cell, a legal entity separate from the PCC. Furthermore, the business activity of each cell must not be different from the overall business activity of the PCC.

Incorporation and registration

- A company in Mauritius may be incorporated as a PCC or if it is an existing company, it may be converted into a PCC provided it is authorised to do so by its constitution.
- A foreign company established in a jurisdiction other than Mauritius may be registered in Mauritius by way of continuation as a PCC.

Name

- The name of a PCC must include the words "Protected Cell Company" or "PCC" at the end of its name and each cell of the PCC must have its own distinct name, designation or denomination. A foreign company continuing as a PCC in Mauritius may use the name designated in its articles of continuation with the words "Protected Cell Company" or "PCC" added to it.

Capital requirement

Although there is no minimum capital requirement for a PCC and for each cell, the Financial Services Commission of Mauritius (the "FSC") may prescribe certain capital requirements having regard to the nature of the business of the company.

Issue of shares

A PCC may create and issue shares in the capital of its cells ("cell shares") and the proceeds of the issue shall form part of the cellular assets of that cell. The proceeds of the issue of shares other than cell shares shall form part of the non-cellular assets of the PCC.

Dividend

Payment of dividends apply to each cell independently. A PCC may pay a dividend in respect of the shares issued with regard to a particular cell irrespective of whether a dividend would be permitted to be paid in respect of any other cell.

Segregation of Assets of the PCC

The assets of a PCC consist of "cellular" assets or "non-cellular" assets. The cellular assets of a PCC are those assets of the PCC that are attributable to the particular cells of the company. The non-cellular assets are those belonging to the PCC in its own right and which are not attributed to any cell.

- The directors of a PCC are under a duty to keep cellular assets separate and separately identifiable from non-cellular assets; and cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.

Liabilities of a PCC

- A PCC is under an obligation to inform any person with whom it deals or transacts that it is a PCC. Further the PCC is under an obligation to 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.

- A failure by the PCC to inform the person that he is transacting with a PCC or a failure by the PCC to identify or specify the cell in respect of which a person is transacting will result in the directors incurring personal liability to that person in respect of the transaction. However the directors have a right of indemnity against the non-cellular assets of the PCC with respect to their personal liability unless they were fraudulent, reckless or negligent, or acted in bad faith.

Liability of a PCC with respect to a particular cell

- If the liability of a PCC arises from a transaction in respect of a particular cell, that liability shall extend to the cellular assets of that particular cell in question which shall be primarily liable. Should these prove to be insufficient, then only will the PCC's non-cellular assets be secondarily liable. It should be emphasised that the liability of a cell will not impact on the assets of other cells. Hence, creditors of a particular cell are protected from other creditors who are not creditors of that cell and who accordingly do not have recourse to the assets of that particular cell.

- On the other hand, a liability of the PCC not arising from any transaction in respect of a particular cell shall be the liability of the PCC's non-cellular assets only.

Setting up a PCC

A PCC may be incorporated in Mauritius as a category 1 global business company ("GBC1"). As stated above, foreign companies and existing Mauritian companies may also apply to be registered as a PCC. Further an existing company may be converted into a PCC.

A PCC is a suitable vehicle for investment funds, insurance business and asset holding.

Insolvency

Administration order

An administration order functions as a rescue mechanism for an insolvent PCC or its cells and allows them to carry on running their business whilst being insolvent. Such an order can be sought where a more advantageous realisation of the business and assets of the PCC or the cell concerned would be achieved than by receivership or liquidation.

An application for administration order can be made by the PCC, its directors, its shareholders, the shareholders of any of its cells, any creditor of the PCC (or, where the order is sought in respect of a cell, any creditor of that cell), the FSC or the Registrar of Companies of Mauritius.

Generally speaking, where the liabilities of a cell is concerned, the Court may make an administration order if it is satisfied that the cellular assets attributed to a particular cell are insufficient to discharge the claims of its creditors. Where the liabilities of the PCC itself are concerned, the Court can make such order only when the PCC's cellular and non-cellular assets are insufficient to discharge the liabilities of the PCC.

Cellular assets attributable to a cell of a PCC are only available to the creditors of that particular cell.

Receivership order in relation to a cell

Where an administration order is inappropriate, the same parties entitled to ask for an administrative order can ask for a receivership order with respect to a particular cell.

While making a receivership order, the court directs that the business and cellular asset of the cell be managed by a receiver for the purposes of the orderly winding up of the business of the cell. The court should first be satisfied that the claims of creditors of a cell would not be discharged by the assets of that cell.

The receiver may do all such things he deems necessary for the purpose of the receivership.

After the winding up, the receiver will distribute the cellular assets attributed to the cell to those persons who are entitled to have recourse to such assets.

Liquidation

In the liquidation of a PPC the liquidator is bound to keep cellular assets separate and separately identifiable from non cellular assets and keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.

Uses of PCC

A PCC is a suitable vehicle for investment funds, insurance business and asset holding. For example an investment fund can comprise different cells to invest in different countries or different sectors such as pharmaceuticals, IT, Energy and Power sector, or captive insurance

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