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The Protected Cell Company Under the Law of Mauritius

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The Protected Cell Company of Mauritius

The Protected Cell Company (PCC) Act 1999 came into force in January 2000. This legislation provides additional opportunities, flexibility and security for international investment structuring. The object of the legislation is to enable a company holding a Category 1 Global Business Licence, incorporated under the Financial Services Development Act 2001, to create cells within its capital for the purposes of segregating the assets within that cell from claims related to other assets. A PCC may issue cell shares in respect of different cells for the purpose of segregating protecting different assets, referred to as cellular 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.

Key Features

- * Single legal entity.
- * 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.

Uses of PCCs

As provided under the PCC Act, a PCC can be used to carry out two types of global business namely global insurance business and investment funds (i.e. Collective Investment Schemes).

- * 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.
- * Captive insurance companies - segregate distinct areas of risk and activity into different 'cells'.
- * 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. (NB: It is a requirement that there is pooling of investors' funds at the level of the cell).

Incorporation

A PCC may be directly incorporated or may be registered by way of continuation provided that the incorporation and registration requirements prescribed in the Companies Act 2001 and the FSD Act 2001 are satisfied. The incorporation procedure of a PCC is similar to that of a global business category 1. In the case of a continuation, additional requirements as laid down in section 5 of the PCC Act 1999 must be satisfied.

All applications should be submitted to the Financial Services Commission (FSC) on a prescribed form through a management company. Applications should be accompanied by a detailed business plan and policyholders profile for each cell along with corporate statutory documents. Subsequent cells created at a later stage should be disclosed to the FSC with details of its business plans and policyholders.

Similarly for investment funds, promoters need to submit to the FSC, through a management company, an outline memorandum containing the identity, track record and credentials of the promoter, general information regarding the fund, its objectives and proposed investment, its structure, the size of the fund and the minimum subscription, track record of the functionaries of the fund and compliance with requirements of other regulatory bodies.

Taxation

A PCC is liable to Mauritius income tax at the rate of 15% which may be reduced to #% after application of the provisions on foreign tax credit.

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.e. lower or zero tax rate for the promotion of industrial, commercial, scientific, educational or other development in the source country. 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.

Residual tax is often nil since corporate tax rates in most countries are above 15%. 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. The claim for underlying tax credits is available provided the PCC holds at least 5% in the foreign company paying the dividends. However, it is also available if the dividends come through a chain of intermediate holding companies before reaching the PCC, provided the shareholding at each stage is at least 5%.

A PCC that is centrally controlled and managed in Mauritius can accede to the benefits of Double Taxation Agreements. There is no withholding tax on dividends, capital gains and interests.

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