



GUIDANCE NOTE 32

Protected Cell Companies

What is a Protected Cell Company (a “PCC”)?

Protected cell companies have been in existence in Gibraltar since 2001. A PCC is a limited liability company that is able to form cells that are segregated from each other and from the company. The idea is to ensure that any one cell is not affected by the business of another cell. A PCC is a single body corporate, consisting of a core company, and an “umbrella” structure consisting of any number of subdivisions (i.e. cells). Each cell may be used for specific investment objectives or strategies, or even for specific clients. The number of cells that can be created under Gibraltar law is unlimited. Provided that the applicable legislation is complied with, only the assets of each cell are available to meet liabilities to creditors in respect of that cell; where there are liabilities arising from a matter attributable to a particular cell, the creditor may only have recourse to the assets attributable to that cell, thus the assets and liabilities attributable to each cell are “ring-fenced”.

The cells themselves are not companies but have sufficient attributes such that they may trade under the umbrella of the PCC. The PCC structure is popular in the captive insurance market and in collective investment schemes.

The law governing PCCs

The law governing Gibraltar PCCs is found in the Protected Cell Companies Act 2001 (“the PCC Act”). The provisions of the Companies act also apply to PCCs unless there is a conflict, in which case the provisions of the PCC Act would prevail.

Name of a PCC

A PCC must include in its name the expression “Protected Cell”, or “PCC” or similar expression approved by the Registrar of Companies.

Requirements as to Memorandum and Articles of Association

The Memorandum (or from the Companies Act 2014, the Articles) of Association of a PCC must state that it is a protected cell company. A company may alter its memorandum or articles in order to comply with this requirement.

Cell Shares and Share Capital

A PCC may create and issue cell shares, the proceeds of which shall be comprised in the cellular assets of the cell in respect of which the shares were issued. Shares may also be issued in respect of the “core” company, and be comprised as part of the company’s non-cellular assets.

Reduction of cell share capital

A reduction of the share capital of a cell is possible only upon application to court.

Collective Investment Scheme

Collective investment schemes may be set up as PCCs. There is specific legislation governing collective investment schemes, including certain notification requirements, (see below) as well as filing obligations and exemptions. If your PCC is a collective investment scheme, please refer to our website Circular No. 31 - Collective Investment Schemes - for further information.

Notification Requirements

Notification that a PCC is a Collective Investment Scheme

Under section 18 (1) of the Companies Act, a company that is a collective investment scheme licensed, authorised or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2011 needs to notify the Registrar in writing within 30 days of the establishment of the scheme that it is a collective investment scheme. The notification must confirm whether the company is a “private scheme” (as defined in section 2(1) of the Financial Services (Collective Investment Schemes) Act 2011); or any other type of collective investment scheme authorised under the Act.

Existing Collective Investment Schemes

A company that was a collective investment scheme before the coming into force of the new Companies Act on the 1st November 2014 should also notify the Registrar in writing of the fact. The notification should state the date on which the scheme was established and that it continues to be a collective investment scheme, so that the exemptions available under the Act may apply.

Notification that the Company has ceased to be a Collective Investment Scheme

When a company ceases to be such a scheme, the company must, within 30 days, send written notification to the Registrar requesting that it no longer be treated as such a scheme.

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Winding Up

Of a PCC

The Insolvency Act 2011 and Part X of the Companies Act 2014 apply to the liquidation or voluntary liquidation of a PCC and so a PCC is wound up in very much the same way as a company subject to any modifications necessary to give effect to its attributes as a PCC. However in the event of any conflict between the provisions contained in the Insolvency Act or the Companies Act and the PCC Act, the provisions in the PCC Act are to prevail. The above applies when the whole PCC is wound up, and not to individual cell liquidations

Cell Liquidations

Individual cells may also be wound up. This occurs by making an application to Court for an order (called a cell liquidation order) that can be made in respect of one or more cells. An application for a cell liquidation order can be made by the company, the directors of the company, any creditor(s) of the cell, any holder of cell shares of that cell, the administrator of that cell or the Chief Executive of the FSC in respect of a licensed PCC.

During the period of operation of a cell liquidation order the functions and powers of the directors shall cease in respect of the business and cellular assets of that particular cell and the cell liquidator appointed pursuant to the order shall be deemed a director of the protected cell company in respect of the non-cellular assets of the company, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets.

The PCC Act specifies that the Insolvency Act 2011 applies to cell liquidations as if the cell were a company in liquidation under that Act, and that for the purposes of the cell liquidation the cell is to be treated as if it were a separate legal person. Therefore in relation to cell liquidations Part 6 of the Insolvency Act would be applicable, and any reference to a company therein should be construed as a reference to a cell. These provisions are to be read in conjunction with those contained in the PCC Act in relation to cell liquidations.

Guidance only

This Circular is intended for general guidance only. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem, we recommend that you seek professional advice.

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