Protected cell companies in Malta

The Companies Act (Cell Companies Carrying on Business of Insurance) Regulations (PCC Regulations) provide that insurance companies (including captives and reinsurers), insurance brokers and insurance managers licensed by the Malta Financial Services Authority (MFSA) may be either constituted or converted into a cell company provided it has sought and obtained written approval of the MFSA.

The key benefit of the PCC model is that a promoter may write insurance business through a cell without having to comply with the own funds requirements by effectively utilising the cell company's core capital as its own.

Allowed activities

The PCC Regulations allow a cell company to be formed in order to carry on the business of insurance. The cell company and its cells may conduct business of insurance and reinsurance as principals, captives, insurance brokers and insurance management companies in respect of general and long term business. The cell company or its cells are not precluded from granting intercompany loans, holding activities and they do not contain other specific limitations.

Cell creation and ownership

The PCC Regulations provide that a cell company may create and issue cell shares in respect of any of its cells subject to approval by the MFSA. Cell shares are subscribed to by the shareholders of a particular cell.

The proceeds of the cell share issue constitute the cell's initial cellular assets. The cell company can own one or more or all of its cells. Every cell created by a PCC must have its own distinct name or designation and is treated as a single legal person but does not have a separate judicial personality from that of the PCC.

Capital structure and Minimum Share Capital

Cell shares may be ordinary or preference shares. While cells are ordinarily established as classes of preference shares issued to cellular shareholders, the PCC Regulations contain no restrictions in this regard.

The cell company's capital structure needs to take into account minimum capital requirements. The company must hold a minimum amount of own funds appropriate to the kind of business which the company applies to carry on. In this respect, the initial paid up share capital of a company concerned shall be equal to not less than fifty per cent of the value of the own funds of the company in respect of the business the company applies to carry on, or is carrying on. The cell company shall also issue sufficient cell shares to cover the minimum solvency requirement in respect of its cells.

Setting up a captive cell company

A cell company may be set up as a captive insurer. Under the Insurance Business (Companies carrying on Business of Affiliated Insurance) Regulations, a captive is referred to as an Affiliated Insurance Company (AIC) and is defined as "the business of an insurance company which is registered in Malta and whose business of insurance is restricted to risks originating with shareholders or connected undertakings or entities".

Under the PCC Regulations, a cell company may also set up cells with the exclusive purpose of carrying on business of affiliated insurance or reinsurance.

Cell management

The board of directors of the cell company has ultimate responsibility for all cells and cellular assets. The board may delegate the management and administration of a cell, or parts thereof, to a third party insurance manager who is subject to its control and supervision. Directors may cause or permit cellular or non-cellular assets, or a combination of both, to be collectively invested or managed by an investment manager, provided that the assets in question remain separately identifiable.

Directors are duty bound to keep cellular assets separate from non-cellular assets and from cellular assets attributable to other cells. Directors are also duty bound to keep separate records, accounts, statements and other documents as may be necessary to evidence that the assets and liabilities of each cell are distinct from the assets and liabilities of other cells.

Cell insulation (creditor and third party rights)

Under Maltese law, a cell's assets and liabilities are insulated from those of other cells in the company. A particular cell's assets are only available to creditors of that particular cell, and a creditor of a particular cell does not have recourse to other cell's assets. However, particular cell's creditors generally also have that right of secondary recourse to the core assets of the company but only once that cell's assets have been fully exhausted. On the other hand, core creditors only have a right of recourse against the core's non-cellular assets.

Recent amendments to the PCC Regulations provide that only the cellular assets of a cell may be utilised to satisfy their cellular liability subject to certain conditions being met. Where the cell company's business relates to compulsory insurance, the MFSA must be satisfied that sufficient guarantees are in place before such limitations can be agreed.

Transfer of cellular assets

The PCC Regulations allow cell companies to transfer cellular assets to third parties, including other cell companies, provided the transfer has been approved by the MFSA. The cell company need not request MFSA's approval to invest or re-invest any assets of a cell or otherwise make any payments or transfers from cellular assets in the ordinary course of the company's business.

Distributable profits

The cell company may distribute profits earned by a cell or capital reserves belonging to its shareholders as cellular dividends provided that such dividends may be paid only from the profits attributable to the cell and only by reference to the cellular assets and liabilities of the cell.

Capital requirements

The minimum capital requirements (minimum guarantee fund and minimum own funds) applicable to a company operating in the insurance business other than a cell company also apply to the cell company as a whole and not individually to each cell. Individual cells are nonetheless required to remain solvent at all times.

Own funds

A licensed insurance company is required to maintain the amount of own funds applicable to the category of business undertaken. Own funds must remain unencumbered at all times. Essentially, the principal minimum own funds requirements are the following:

The minimum own funds requirement for combined business of insurance and reinsurance varies between €2.3 million and €7 million for a principal insurance company and between €2.3 million and €3.5 million for an AIC. The components making up the own funds may consist of paid up share capital and a mixture of issued and unpaid share capital, preferential share capital and subordinated loans, retained profits and reserves.

Minimum Guarantee Fund (MGF)

A PCC shall maintain a guarantee fund of an amount of assets equal to the greater of the MGF or the value of one-third of the margin of solvency. The following table summarises the MGF requirements:

Category of insurance	Principal insurance (€ millions)	Affiliated insurance (€ millions)
Long term	3.5	3.5
General	2.3 - 3.5	2.3 - 3.5
Reinsurance	3.2	1.1

Margin of solvency

The margin of solvency of a cell company is calculated on a cellular basis. Any deficit in the cellular solvency margin is funded through non-cellular assets. The solvency margin must not fall below the guarantee fund.

The required solvency margin for cells carrying on general business is currently determined on the basis of either the annual amount of premiums (premium basis), or on the average burden of claims (claims basis) for the previous three years, whichever is the higher. Owing to the diversity of the various long term insurance products offered, the required solvency margin for cells carrying on long term business is based on a different formula for the calculation of the minimum solvency margins for each class of long term business.

Equalisation reserve

Every company authorised to carry on general business of a prescribed nature (reinsurance business and credit insurance business) has to maintain an equalisation reserve in respect of such business. This requirement would equally apply to a cell company or any of its cells that are writing general business or affiliated general business of a prescribed nature.

This requirement does not apply to a captive cell writing business of a prescribed nature if net premiums written in any financial year in respect of that business are less than 4% of the total net premiums in that year and are less than €2.5 million.

Other exemptions

A cell company shall not be required to make a contribution to the Protection and Compensation Fund in relation to cells carrying on business of affiliated insurance. No payment of claims shall be made out of the Fund in relation to such business.

Incorporated cell companies

The Companies Act (Incorporated Cell Companies Carrying on Business of Insurance) Regulations 2010, enable PCCs carrying on business of insurance to convert into an ICC and similarly an ICC having no incorporated cells can convert into a PCC.

Malta tax treatment

As in the case of any Maltese company, a PCC incorporated under the laws of Malta would be chargeable to Malta tax on its profits at the standard rate of 35%.

The method of computation of chargeable income of an insurance company carrying on general business or long-term business is prescribed in local tax legislation. The Income Tax Act provides that in the case of a company constituted as a PCC or converted as such in terms of the PCC Regulations, every cell of the PCC as well as the non-cellular part shall each be deemed to be a separate company for the purposes of the Income Tax Act.

Each cell which carries on general or long term business of insurance or reinsurance would be considered as a separate company for Malta tax purposes and would therefore each separately be obliged to determine their annual taxable profit or allowable losses. A separate Malta tax return would need to be filed annually for each cell of the PCC as well as in respect of its non-cellular part.

A distribution by a cell of a PCC out of its profits realised from the business of insurance would entitle the holder(s) of the cell share capital to a part refund of the Malta tax suffered on the cell profits out of which the dividend is distributed. Similarly, any distribution of profits attributable to the non-cellular part would entitle the holder(s) of the non-cellular shares to a part refund of the Malta tax paid.

Insurance and related services provided by licensed insurance companies are exempt from VAT in Malta. Any input tax incurred which is attributable to exempt without credit supplies by licensed insurance company is not recoverable.

Malta does not impose an insurance premium tax. However, duty is chargeable under the Duty on Documents and Transfers Act at the relevant rates on insurance policies executed in Malta. No duty is chargeable in respect of an insurance policy relating to risks situated outside Malta.

Continuance

Companies registered, incorporated or constituted under the laws of an approved jurisdiction authorised to carry on the business of insurance or to act as insurance manager may, subject to regulatory approval, be continued as a company formed and registered under the Companies Act by complying with the conditions laid out in the Insurance Business (Continuance of Companies Carrying on the Business of Insurance) Regulations, 2003.

European ‘passporting’ rights

An authorised EU/EEA insurance undertaking pursuing the activity of direct insurance may exercise its European right to establish a branch in Malta or to provide services in Malta without the requirement of obtaining authorisation under the Insurance Business Act, provided that the passporting provisions are complied with.

Similarly, a Maltese insurance company licensed in terms of the Insurance Business Act may exercise its right to establish a branch or provide services in another EU Member State or EEA State by submitting all relevant notifications and documentation to the MFSA in accordance with the passporting provisions.

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