Protected Cell Companies & Protected Cells

FACT SHEET: 2015-2016

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.

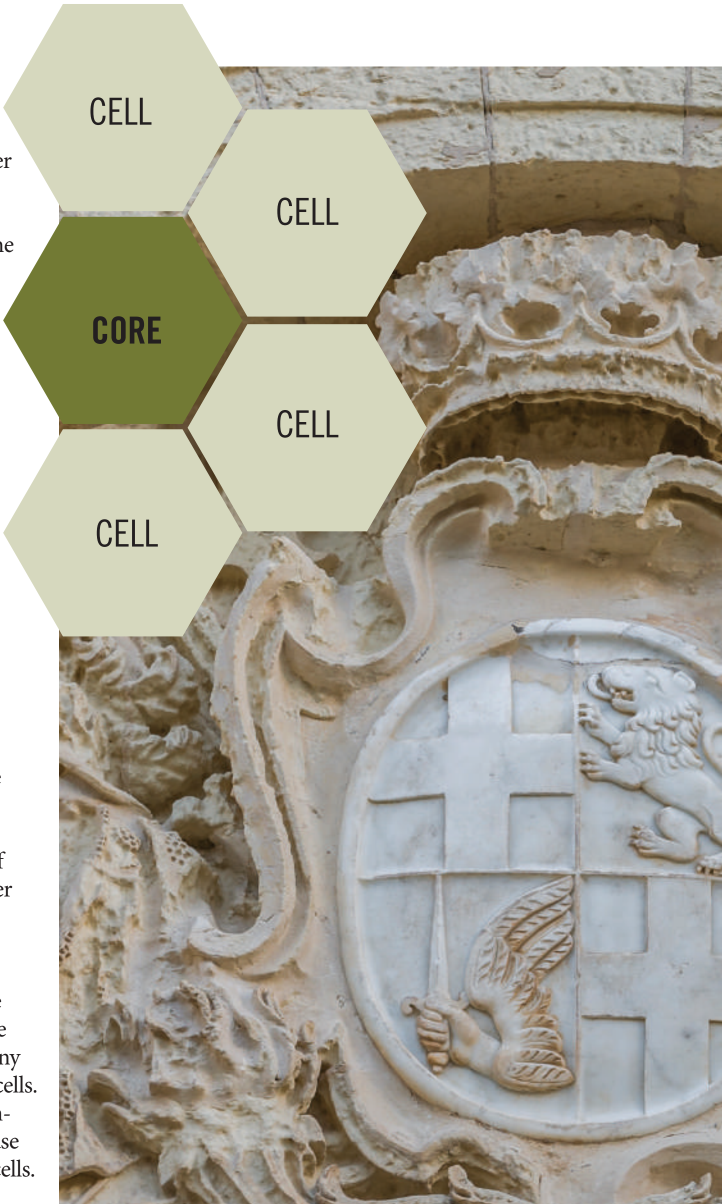
The Protected Cell Company (PCC) has garnered much popularity making it one of Malta's flagship structures, and establishing the country as an attractive jurisdiction for those looking to set up a cell company, or simply a cell. A PCC can have within itself one or more cells for the purpose of segregating and protecting the cellular assets of the company from those of other cells or the assets of the core itself. A cell is in turn formed by a class of shares within the cell company. The core and its cells are to be treated as one legal entity, as cells do not have separate legal personality. Once established, a PCC can also form cells for third parties.

Operating model of a Protected Cell Company

A cell company operates in two parts – the company core and the cells. The core part comprises all non-cellular assets including the company's core share capital, investments, liabilities and so forth. The core share capital may be the minimum required at law or it may be much larger depending on its activities. The core does not need to take any of the insurance risk itself, but must be solvent at all times based on the business written by the whole company, including the cells.

A cell company can create one or more cells within its company structure. The cells are independent of each other and from a legislative point of view are protected from each other. This is done by the issue of cell shares in respect of each individual cell. Each shareholder of a cell receives its own dividend stream. For tax purposes each cell is treated as a separate entity. A protected cell transacts insurance business through the licence held by the PCC.

The PCC has a single board of directors which takes responsibility for the transactions within the core and each of the cells and for the statutory and regulatory compliance and corporate governance requirements of the company as a whole. The assets of any one particular cell are only available to the shareholders and creditors of that cell – creditors of another cell have no recourse against them. However, in the event that the cellular assets of one cell have been exhausted, the company's core assets may be secondarily liable to satisfy any cellular liability of one of its cells. This can be avoided by a non-recourse agreement in the case of captives and reinsurance cells.



Benefit of a Protected Cell Company

► The PCC set-up allows the start-up and ongoing regulatory burden of an insurance company to be spread throughout the owners of the various cells and the core of the PCC without putting any individual cell owners' assets at risk from liabilities of the others. Cells are particularly attractive to medium-sized corporate groups wishing to establish their own insurance vehicle.

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Key Features of Protected Cell Companies

Corporate Form: Limited Liability Company

Name: The name of the company must include the expression 'Protected Cell Company' or its abbreviation 'PCC'. This title needs to be displayed on all its business letters and forms to inform all parties dealing with the company of its status. Each cell needs to have its own distinct name.

Permitted Business: 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. However, insurance PCCs can only have insurance cells, management PCCs management cells and broker PCCs broker cells.

Licensing Timeframe: Six months, reduced to three months in respect to the individual protected cells.

Redomiciliation allowed: Yes. Individual cells cannot redomicile on their own.

Own Funds (applying to the PCC as a whole):

- Long Term Business: €3.7m
- General Business: €2.5m-3.7m
- Reinsurance: €3.4m, reduced to €1.2m for affiliated insurance
- Insurance and Reinsurance: €2.5m-€7.4m

Own funds are to consist of: initial paid up share capital which must not be less than 50 per cent of the value of Own Funds requirement, cumulative preferential share capital, subordinated loans, retained profits, reserves other than reserves corresponding to the technical provisions and where applicable, the equalisation reserves and securities with no specified maturity date and other instruments including cumulative preferential shares. The minimum own funds requirements do not apply to individual cells, but to the PCC as a whole.
Changes expected in 2016 under Solvency II

Solvency Margin: 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.

Minimum Guarantee Fund: The core of the cell company shall maintain at all times a guarantee fund of an amount of assets equal to the greater of the minimum guarantee fund or the value of one-third of the margin of solvency. Cells can use the minimum guarantee fund of the core.

Technical Provisions: Calculated in accordance with regulations modelled on EU directives.

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 or/and a cell committee which many include representatives of the cell owner.

Power to contract: Cells contract through the PCC which acts on behalf of the cell.

Liability: Assets and liabilities are held separately within each cell. However, if the cellular assets of one cell have been exhausted, the company's core assets may be secondarily liable to satisfy any cellular liability of one of its cells.

Intercompany Loans: Allowed with approval from the Malta Financial Services Authority.

Financial Reporting Requirements:
Audited accounts under IFRS.
Captive PCCs are exempt from:

- publishing abridged accounts in local newspapers
- contributing to the protection and compensation fund
- covering technical provisions by equivalent and matching assets to cover currency risk
- localisation rules and custody of assets rules
- the payment of duty on any contract of insurance relating to a risk situated in Malta
- depositing a minimum guarantee fund with an external institution

Regulatory Fees: Authorisation application fees are one-time fees and non-refundable irrespective of whether the application is accepted or refused.

Application Fees:
PCC: €6,500
Individual Cells: €2,500

Annual fees:
According to Schedule in the Insurance Business (Fees) Regulations reduced to €3,250 in respect of cells carrying on exclusively business of affiliated insurance

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Protected Cells

Interest in Protected Cell Companies (PCCs) has been consistent and Malta is now seeing an increased interest in forming insurance cells within existing PCCs.

The purpose of carrying out insurance activities from different cells is to segregate cellular assets and liabilities and allow different owners with varying interests to participate in one company.

Types of Cells that can be set up in any combination within a PCC

Captive Cell:
Commercial/affinity groups looking for a captive risk financing vehicle

- Lower access point to captive solution
- Special purpose applications
- Access to reinsurers & specialist risk-bearers

Fronting Cell:
Captive owners wishing to reduce EEA fronting costs

- Cells in Malta can be used as fronting facilities
- Fronting cell reinsures most/all of the risk
- Reinsurer could be a non-EU captive

Third Party Writing Cell:
Any business planning to sell insurance to third parties

- EU cells offer direct access to European market
- Policyholder Protection Ensured
- Possible products include bolt-on products to non-insurance sales, short tail risks such as extended warranty, property damage, theft, marine cargo and travel cancellation. Long-tail risks also possible

Benefits of Protected Cells in Malta

- Low Capital Requirements
- Direct Writing into Europe through the PCC
- No Setup of Separate Company
- Easier Access to 'Captive' Solution
- Cell Assets Segregated
- No Board of Directors
- Reinsurance for Smaller Entities
- Favourable Tax Regime
- Shared Administration

Key Features of a Protected Cell

A protected cell in Malta allows cell owners to:

- Insure own risks in EEA
- Sell insurance to third parties in EEA
- Insure on non-admitted basis risks globally where allowed
- Reinsure risks outside EEA

- Complies with EU directives through PCC core capital
- No absolute floor minimum capital requirements
- Minimum capital is calculated in accordance with MFSA Guidance Note on Solvency Requirements in relation to PCCs
- No Fronting Required for EU/EEA Risks
- Reinsurance access for smaller insurers
- Lower Running Costs vs. Stand-Alone companies
- Insulation from other Cells and the Core, as a cell has its own income and expenses.
- Cellular dividend & tax independence

When cell liability arises:

- Assets of the cell primarily used
- If insufficient PCC's core assets secondarily used (under certain conditions)
- Use of assets of other cells prohibited