



GUIDE TO CELLS IN MALTA

Ganado Advocates associate Emma Cassar Torreggiani on why Malta has earned its position as the only EU member state to have protected cell company legislation

Malta is the smallest member state in the European Union and yet it's the only member state which has protected cell company legislation. Despite its geographical limitations, Malta's history has demonstrated the island's appetite for innovation, creativity and perseverance in developing a financial services sector which has established a valid presence in the global financial services industry, not least in the insurance sector. With protected cell company legislation having been introduced almost 20 years ago, Malta's thought leadership and experience has granted it an advantageous position in this ever-growing market.

The attractiveness of a PCC

A protected cell company (PCC) is a corporate legal vehicle which may establish within itself one or more cells for the purposes of segregating and protecting the cellular assets of the company. Designed specifically for the carrying on of the business of insurance, such structures permit the segregation between the main body of the company known as the 'core' and the different cells, through variations in matters not limited to shareholding, capital requirements and assets and liabilities of each cell, and the type of business conducted by the cells. While each cell has its very own distinct patrimony, a PCC is recognised as a single legal person and the creation of a cell does not create, in respect of that cell, a legal person separate from the company.

The most attractive feature of a PCC is the ringfencing of cellular assets (those assets attributable to one cell) from non-cellular

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assets (those assets of a PCC which are not cellular assets, ie those belonging to the core). This means that each cell is protected from the liabilities of other cells or of the core. Cellular assets of a particular cell may in no event be used to satisfy the liabilities of another cell.

Coupled with the possibility of having different types of business carried on through each cell, this effectively means that different investors, referred to as 'cell owners', may establish a cell within an already existing PCC, and by latching on to the licence of the PCC, may carry on the business of insurance separate to the other cells within the same PCC, without the need to create a fully-fledged standalone insurance company.

Apart from rapidity of establishment, the main benefit is ultimately cost effectiveness through significant cost burden sharing. A PCC facilitates market access for those ventures, including startups, which may struggle to cover the basic expenses or may not wish to invest such substantial amounts in the establishment of a fully fledged insurance company considering initial low volumes. Working capital required for an insurance business is minimised to the notional capital requirements

applying at cell level depending on the cell's own business as a cell is not expected to meet the legal minimum requirements since these are already covered by the core.

The sharing of resources between the core and the different cells is not only in relation to costs, but also with respect to governance and human resources. The corporate aspects, including governance and Solvency II functions, as well as finance, transparency and reporting requirements, are carried out by and covered by the board of directors of the PCC, enabling the cell owners and operators of each cell to concentrate on the business itself. Apart from benefiting from the common pool of knowledge, expertise, experience and support of the common management system at the core of the PCC, certain functions may also be outsourced to specialised service providers.

The PCC structure offers flexibility and economies of scale, with the aim of increasing productivity and indirectly attracting a wider reach of investors. It offers a convenient way of acquiring a dedicated space on an already active insurance platform, or alternatively offers a suitable model for large insurance groups or global corporations, for instance, wishing to consolidate various operations into one structure. The segregation of cells allows the separate portfolios to be distinct and thus protects each portfolio without any risk to the other branches of business.

Most insurance companies established in Malta sell insurance to clients outside of Malta, especially those located in other European countries, and a high number of cells established in Malta cater for the needs of insurers, captives and intermediaries.



aries alike. PCCs may be used for different business models both in the insurance and insurance intermediary spheres, including for reinsurance, (re)insurance-linked security models, managing general agents, brokers and managers, although they are proving to be an important element in the captive insurance sector.

PCCs could also provide an attractive model for directors' and officers' liability insurance as this market has become more challenging in recent times. Captive insurance undertakings wishing to delve into this business may benefit from the PCC model, particularly if cells are orphaned as the cell may be seen to be under the control of a third party given the cell does not have separate legal personality; the cell owner does not have any voting rights and the directors of the PCC are not appointed by the cell owner but by the third party owners of the PCC; and also since the ownership of the cell may be distinguished from the ownership of the company of the directors and officers in question. This would provide comfort in relation to the circularity of funding and ringfencing of assets. PCCs have also led to a decrease in costly fronting arrangements and are also commonly used for legacy and run-off insurance business in relation to claims made against companies that are in the process of being or have been acquired, or have merged or ceased operations.

Insurtech

Insurance market players are, today, excited for the evolution of insurtech,

which is intended to innovate and disrupt the insurance market by improving the efficiency (and costs) of the insurance market. The insurtech market should also be able to take advantage of the PCC structure through the benefits of lower barriers to entry due to solvency capital requirements being minimised to the notional capital requirements at cell level. A PCC may therefore provide the perfect basis to test, incubate, develop, experiment, launch and implement powerful insurtech solutions, particularly through the creation of an insurtech cell.

The use of the PCC in relation to insurtech may also be envisaged in a scenario where an insurtech firm may create a unique PCC structure whereby cells may be established for third-party insurers, reinsurers and captives that may utilise the insurtech products manufactured by the insurtech firm. This may be attractive to insurers and tech companies seeking to develop and implement insurtech products including blockchain solutions, smart contracts and machine learning, while basing themselves on the tried-and-tested PCC legislation and ultimately benefiting from the flexibility and cost-effectiveness offered by the said PCC model.

The PCC model is not the only innovative structure Malta has to offer the insurance market but also provides the framework for other robust structures such as incorporated cell companies and securitisation cell companies. A reinsurance special purpose vehicle is another appealing option which assumes risks from ceding

companies and fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment right of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such a vehicle.

About us

Ganado Advocates is a leading commercial law firm with a particular focus on the corporate, financial services and maritime/aviation sectors, predominantly servicing international clients doing business through Malta. The firm also promotes other areas such as tax, pensions, intellectual property, employment and litigation. The firm traces its roots back to the early 1900s, and is today one of Malta's foremost law practices, consistently ranking as a leading firm in all its core sectors.

Ganado Advocates has over the past decades contributed directly towards creating and enhancing Malta's hard-won reputation as a reliable and effective international centre for financial and maritime services. Today, the firm continues to provide high standards of legal advisory services to support and enhance Malta's offering.

Ganado Advocates is considered to be one of the leaders in the insurance legal sphere in Malta. As one of the only law firms in Malta to have a team of dedicated insurance and reinsurance lawyers, the firm is well placed to provide the insurance industry with the necessary legal, corporate and regulatory advice, as well as with any forms of assistance. ☪