GUIDE TO PROTECTED CELL COMPANIES
IN THE ISLE OF MAN

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PREFACE

This Guide is a summary of the law and procedures relating to Protected Cell Companies in the Isle of Man.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they should be addressed to any member of the team, using the contact information provided at the end of this Guide.

Appleby
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1. **THE LEGISLATION**

There are two regimes governing the formation and operation of protected cell companies (PCCs) in the Isle of Man. The regime which is applicable will depend upon whether the company in question is incorporated under the Isle of Man Companies Acts 1931-2004 (the **1931 Acts**) or the Isle of Man Companies Act 2006 (the **2006 Act**).

Companies incorporated under the 1931 Acts (**1931 Act Companies**) can only be incorporated as, or converted into, PCCs under the Protected Cell Companies Act 2004 (the **2004 Act**). Companies incorporated under the 2006 Act (**2006 Act Companies**) can only be incorporated as, or converted into, PCCs in accordance with the provisions of the 2006 Act.

2. **USES OF PCCS**

A PCC incorporated or registered under the 1931 Acts\(^1\) or the 2006 Act can be used for any business purpose.

3. **NAME OF A PCC**

The name of a PCC must include one of the following phrases:

- “Protected Cell Company” or “protected cell company”;
- “PCC” or “pcc”.

4. **HOW IS A COMPANY FORMED AS A PCC?**

Only companies limited by shares can be established as PCCs. There are two ways in which a company limited by shares can become a PCC:

- it can be incorporated as a PCC, in which case its memorandum of association must expressly state that it is a PCC; or
- it can apply to the Registrar of Companies (the **Registrar**) to be converted into a PCC. For 2006 Act Companies, this procedure requires the company to submit an application to the Registrar together with its amended memorandum of association, its new articles of association and an application to change its name to meet the requirements described above. For 1931 Act Companies, the conversion must be authorised by the company's articles of association and a statement of conversion in the prescribed form stating that the company's memorandum of association has been amended to state that the company is a PCC must be submitted to the Registrar.

5. **CHARACTERISTICS OF A PCC**

The main characteristics of a PCC are that:

- it is a single legal person;
- it may have one or more cells for the purpose of segregating and protecting cellular assets;
- the creation of a cell does not create, in respect of that cell, a legal person separate from the PCC; and
- each cell of the PCC must have its own distinct name or designation.

A PCC must inform any person with whom it enters into any transaction in respect of a particular cell that the company is a PCC and identify or specify the cell in respect of which that person is transacting.

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\(^1\) Protected Cell Companies (Eligibility) Regulations 2010
Subject to any specific modifications set out in the 1931 Acts or the 2006 Act (as applicable), the whole of the 1931 Acts or the 2006 Act (as applicable) will apply to PCCs in the same way as they apply to any other company incorporated under such act. Accordingly, provisions in the 1931 Acts or the 2006 Act relating to, among other things, the reduction of share capital, the purchase by a company of its own shares and the issue of shares with or without a par value will apply equally to PCCs.

6. CELLULAR ASSETS AND NON-CELLULAR ASSETS

The assets of a PCC are characterised as either “cellular assets” (being those assets of the PCC attributable to one or more cells of the PCC) or “non-cellular assets” (being those assets of the PCC which are not cellular assets).

A PCC must:

- keep its cellular assets separate and separately identifiable from its non-cellular assets; and
- keep its cellular assets attributable to each cell separate and separately identifiable from its cellular assets attributable to other cells.

A PCC can create and issue shares in respect of any cell (cell shares). The proceeds of the issue of cell shares are cellular assets attributable to the cell in respect of which the cell shares were issued. The proceeds of the issue of shares other than cell shares are non-cellular assets.

7. ASSETS AND LIABILITIES

Income, receipts and other property or rights of a PCC which are not attributable to a cell will constitute the PCC’s non-cellular assets. Similarly, a PCC’s liabilities which are not attributable to any of its cells must be discharged from its non-cellular assets.

Generally speaking, if any liability arises which is attributable to a particular cell of a PCC, the cellular assets attributable to that cell will be primarily liable and the PCC’s non-cellular assets will be secondarily liable after the cellular assets attributable to the relevant cell have been exhausted but the liability will not be a liability of any cellular assets that are not attributable to the relevant cell.

However, the PCC can agree with the person in respect of whom a liability arises that the liability is the liability solely of the company’s non-cellular assets or the cellular assets attributable to a particular cell of the PCC.

Without prejudice to the above provisions, cellular assets attributable to a cell of a PCC are:

- available only to the PCC’s creditors who are creditors in respect of that cell; and
- absolutely protected from the PCC’s creditors who are not creditors in respect of that cell.

8. IMPLIED TERMS

Unless expressly excluded in writing, the following terms are implied into every transaction entered into by a PCC:

- that no party will seek or attempt to make liable any cellular assets attributable to any cell of the PCC in respect of a liability not attributable to that cell;
- that if any party succeeds in making liable any cellular assets attributable to any cell of the PCC in respect of a liability not attributable to that cell, that party is liable to the PCC to pay a sum equal to the value of that benefit;
- that if any party succeeds in arresting, seizing or attaching, or otherwise levying execution against, any cellular assets attributable to any cell of the PCC in respect of a liability not
attributable to that cell, that party holds those assets or their proceeds on trust for the PCC and must keep those assets or proceeds separate and identifiable as such trust property; and

- in the case of a 1931 Act Company, that the transaction is governed by Isle of Man law and the parties submit to the exclusive jurisdiction of the Isle of Man courts.

9. **DISPUTES AS TO LIABILITY**

If any dispute arises as to:

- whether any right is or is not in respect of a particular cell;
- whether any creditor is or is not a creditor in respect of a particular cell;
- whether any liability is or is not attributable to a particular cell;
- the amount to which any liability is limited,

the PCC may apply to the Isle of Man court for a declaration in respect of the matter in dispute.

10. **DISTRIBUTIONS UNDER THE 2006 ACT**

The term “distribution” is expressly defined in the 2006 Act and includes the transfer of any assets by a company to or for the benefit of a member or the incurring of a debt by a company to or for the benefit of a member (including by virtue of the purchase or redemption of shares or the making of a dividend).

The directors of a PCC that is a 2006 Act Company may authorise a distribution in respect of a cell (a **cellular distribution**) if they are satisfied on reasonable grounds that the PCC will immediately after the distribution, satisfy the solvency test. Ordinarily, a company satisfies the solvency test if:

- the company is able to pay its debts as they become due in the normal course of the company’s business; and
- the value of the company’s assets exceeds the value of its liabilities.

In applying the solvency test for the purpose of making a cellular distribution in respect of a cell, the directors must not take account of:

- the assets and liabilities attributable to any other cell of the PCC; or
- the non-cellular assets and liabilities of the PCC.

Similarly, the directors of a PCC may authorise a distribution in respect of the PCC’s non-cellular assets and liabilities (**a non-cellular distribution**) if they are satisfied on reasonable grounds that the PCC will, immediately after the distribution, satisfy the solvency test. In applying the solvency test for the purpose of making a non-cellular distribution, the directors do not need to take account of the assets and liabilities of any cell of the PCC (save in limited circumstances).

11. **DISTRIBUTIONS UNDER THE 1931 ACTS**

A 1931 Act Company generally has an implied power to apply its profits to the distribution of dividends amongst its members, but it is not bound to do so. The 1931 Acts are silent as to the rules for ascertaining what profits of a company are available for distribution. Accordingly, these rules have been formulated by case law and reflect the position that existed in England before the introduction of the English Companies Act 1980.

It is generally for the company to determine by its articles or by resolution what sort of profits may be distributed by way of dividend, and the Courts will not normally interfere with that determination. However, dividends must not be paid out of capital or out of borrowed money. It is not necessary to make good the loss of fixed capital (in the current or previous accounting periods) before a company can make a distribution of its profits by way of dividend.
In ascertaining the profits available for distribution in a particular accounting period, loss or depreciation of circulating capital must be deducted before profits, if any, are arrived at. In addition, there seems to be no legal requirement to the effect that a company must not distribute as a dividend the clear net profit of its trading unless its paid up capital is intact or until it has made good all losses incurred in previous years.

Subject to contrary provision in a company’s articles of association, an accretion to fixed assets, when realised, may be brought into the profit and loss account and constitute profits available for distribution by way of dividend. An example of an article to the contrary would be an article providing that dividends must only be paid out of trading profits.

It is less certain whether an unrealised appreciation of fixed assets can constitute profits available for distribution by way of dividend. The increase in value must be a real one and there must be set off against any such increase any loss which the company has suffered in respect of its other fixed assets. The dangers of distributing unrealised appreciation in the value of fixed assets as dividends are obvious: the anticipated gain may turn out to have been overly optimistic, and even if it was not excessive at the time it was made, a subsequent fall in the value of the asset or in market prices generally may make the paper gain unrealisable.

A company is not bound to distribute the whole of its distributable profits among its members, unless its articles so provide. It is usual for a substantial part of the current year’s profits to be carried forward to the next and subsequent financial periods, when they may be dealt with as if they were profits earned during those periods.

These rules only provide a general overview of the principles applicable when ascertaining what profits a 1931 Act Company has available for distribution. Each case would have to be decided on its own facts, and appropriate accountancy advice should be sought.

Subject to having sufficient distributable reserves, a PCC that is a 1931 Act Company may pay a dividend in respect of cell shares (a cellular dividend) by reference only to the cellular assets and liabilities, or the profits, attributable to the cell in respect of which the relevant cell shares were issued. In determining whether the PCC has sufficient profits available to pay a cellular dividend, the directors must not take account of:

- the profits and losses, or the assets and liabilities, attributable to any other cell of the PCC; or
- non-cellular profits and losses or assets and liabilities.

12. RECEIVERSHIP ORDERS

The PCC itself, its directors, any creditor of the PCC in respect of a cell, any holder of cell shares in respect of a cell and such other persons as may be prescribed may apply to the Isle of Man court for a receivership order in respect of a cell. For 1931 Act Companies, the Official Receiver may also apply.

A receivership order is an order directing that the business and cellular assets of, or attributable to, a cell will be managed by a receiver for the purposes of the orderly winding up of the business of, or attributable to, the cell and the distribution of the associated cellular assets.

The court may make a receivership order in respect of a cell if it is satisfied that:

- the relevant cellular assets are, or are likely to be, insufficient to discharge the claims of creditors in respect of that cell (when account is taken of the PCC’s non-cellular assets, if relevant); and
- the making of the order will enable the orderly winding up of the business of or attributable to the cell and the distribution of the associated cellular assets.
The receiver must file a certified copy of the receivership order with the Registrar within one month from the date of the receivership order.

A receivership order cannot be made if a liquidator has already been appointed in respect of the PCC or if the PCC has passed a resolution for voluntary winding up. In addition, a receivership order will cease to have effect if a liquidator is appointed in respect of the PCC.

When an application has been made for a receivership order and during the period of operation of the receivership order:

- no proceedings may be instituted or continued by or against the PCC in relation to the cell in respect of which the order was made; and
- no steps may be taken to enforce any security or in execution of legal process in respect of the business or cellular assets of, or attributable to, that cell,

in either case without court leave.

In addition, during the period of operation of the receivership order:

- the functions of the directors will cease in respect of the business and cellular assets of, or attributable to, the cell in respect of which the order was made; and
- the receiver will be deemed to be a director of the PCC in respect of the non-cellular assets of the PCC (unless no creditors of the cell in question are entitled to have recourse to the PCC's non-cellular assets).

The court can only discharge a receivership order if it is satisfied that the purpose for which the order was made:

- has been achieved or substantially achieved; or
- is incapable of achievement.

If the order is discharged on the ground that the purpose for which it was made has been achieved or substantially achieved, the court can direct that any payment made by the receiver to any creditor of the cell in question will be deemed full satisfaction of the liabilities of the PCC to that creditor in respect of that cell, in which case that creditor's claims against the PCC in respect of that cell will be deemed extinguished. However, any such direction will not affect or extinguish any right or remedy of a creditor against any other person, including any surety of the PCC.

Upon discharging the receivership order the court may direct that the cell be dissolved.

13. LIQUIDATION

In the liquidation of a PCC, a liquidator must:

- keep the PCC’s cellular assets separate and separately identifiable from its non-cellular assets and keep its cellular assets attributable to each cell separate and separately identifiable from its cellular assets attributable to other cells; and
- in discharging the claims of the PCC’s creditors, apply the PCC’s assets to those entitled to have recourse to them in conformity with the provisions of the 2004 Act or the 2006 Act (as applicable) dealing with PCCs.

14. CREATION OF SECURITY

The PCC may create security interests in respect of assets attributable to a particular cell in relation to any liability attributable to that cell or any liability that is not attributable to that cell. For 1931 Act Companies, the written consent of all the members of the relevant cell must be obtained.
provisions of the 1931 Acts and the 2006 Act (as applicable) dealing with registration of charges and receivers and managers apply to each cell of the PCC as if each cell were a separate company.

15. **DIRECTORS’ DUTIES**

The provisions of the 1931 Acts and the 2006 Act relating to PCCs do not affect the functions of the directors of a PCC in respect of the affairs of the PCC including the due administration of the affairs of each cell of the PCC (save as expressly provided in the 1931 Acts or the 2006 Act (as applicable)).

For more specific advice on PCCs in the Isle of Man, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).