ISLE OF MAN
FINANCIAL SERVICES AUTHORITY
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Guidance Note - Protected Cell Companies and Funds

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1 Introduction

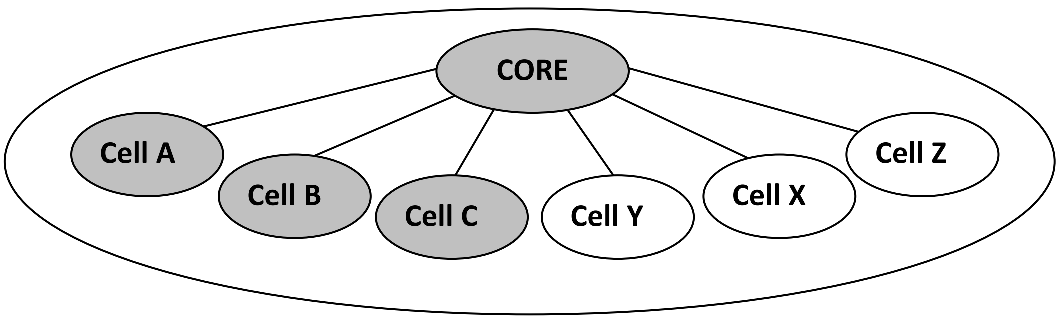
This Guidance Note is intended to provide operators of collective investment schemes[i] (“funds”) with an understanding of

- the application of the Isle of Man Protected Cell Company Regime to funds and
- the Authority’s expectations for the nature and extent of the information (including risk and disclosure statements) that should be contained in the offering document of a fund constituted as a protected cell company (“PCC”).

2 What is a PCC?

A PCC is a company with an internal structure that allows for the legal segregation of assets and liabilities into different cells and a central core. This framework is designed to offer increased protection to investors in individual cells from the liabilities and creditors of other cells.

PCC COMPANY



3 The key features of a PCC

- It is one legal entity (the company)
- It provides for legal segregation and protection of assets and liabilities of each cell
- It may create core shares and cell shares, thereby providing two classes of share capital - core (attributable to the PCC directly) and cellular (attributable to the individual cells)

- It can create an unlimited number of cells (and new cells can be added at any point)
- An existing company can convert into a PCC
- It offers flexibility in the allocation of capital between the core and individual cells
- Creditors of a cell have recourse to core assets but do not have recourse to assets of other cells

4 Use of PCCs as collective investment schemes

4.1 Umbrella fund / Multi- fund

A PCC constituted as a fund will either be structured as an -

"umbrella fund" - a structure comprising a number of sub-funds with common investment management, each constituted by a different cell ; or

"multi-fund" - a structure whereby new funds, each constituted by a different cell, may be added onto the existing structure in circumstances where the investment management of, and/or other parties associated to, one cell is unconnected to that of any other cell within the PCC (although see 4.5 below).

4.2 Switching rights and the status of schemes

As with traditional schemes, where there is more than one fund underneath a common legal structure (i.e. an umbrella fund or a multi-fund), licenceholders should have regard to the provisions of section 1(4) of the Collective Investment Schemes Act 2008.

> *"1. (4) If arrangements provide for pooling in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another."*

Where shareholders can exchange their rights for rights in another cell (or sub-fund in a multi-fund structure) the PCC is treated as 1 fund.

Where switching rights do not exist, each cell of the PCC (or sub fund) is treated as a separate fund. In this case, the Authority's reporting and notification requirements (e.g. in relation to statistical returns and notification of the establishment of funds) will apply to each cell.

In order for a PCC (or other multi-fund structure) to be treated as 1 fund the switching rights should be meaningful (and can not be artificial). The Authority would not expect such a fund to only provide limited switching rights, for example, at the discretion of the manager or administrator.

4.3 Additional funds added under a PCC

It is recognised that it may not be possible, or indeed practical, to use one offering document for a PCC with multiple sub-funds.

In this case, as the PCC is one legal entity, the Authority expects that:

- Investors in one cell should be made aware of the existence of other cells under the PCC structure at the time of investing;
- A list of cells under the PCC structure, and a note of any that have been added during the year, should be included in the annual accounts;
- Investors should be made aware that they have the option to request copies of the offering document for any other cell structures in existence under the company at any time.

The Authority would expect licenceholders to put in place procedures to deal with this matter.

4.4 Common type of scheme

Although it may be technically possible for different cells of a PCC to fall into different regulatory classes e.g. a PCC to have one cell structured as a Regulated Fund, another cell as a Qualifying Fund and another cell as a Specialist Fund, the Authority would not expect a mixed structure to be established. The PCC structure should only be used for one common type of scheme e.g. a Regulated Fund umbrella fund (or a series of Regulated Funds under a multi- fund).

4.5 Common management and administration

Although it may be technically possible, in the case of a multi-fund, for each cell to have a different manager or administrator, the Authority considers that PCCs structured as collective investment schemes should be managed or administered by the same licenceholder.

5 Risk warnings and disclosures

Consistent with the regulatory regime of risk disclosures for Isle of Man funds, it is important that the risks associated with a PCC structure are clearly disclosed to investors. The Authority expects that licenceholders will ensure all material risks are clearly disclosed in a prominent position within the scheme's offering document. **The following PCC specific disclosures should be made in all cases.**

5.1 Legal status of the PCC

It is a requirement of companies legislation that PCCs have the words "Protected Cell Company" or "PCC" in their title and that their status is covered in the constitutional documentation. In addition, PCCs must inform persons with whom a cell does business that the Company is a PCC and that any transactions with the PCC are with reference to that particular cell and that in the event of default their recourse is limited to the assets of that cell only.

The PCC's offering document and constitutional documents should clearly explain the legal status of the PCC as provided above.

5.2 Legal uncertainty

PCCs are a relatively new concept and whilst they are, for example, recognised under Isle of Man law it is uncertain whether the segregation of cells under Isle of Man law would be upheld if there were a legal action in another jurisdiction disputing the PCC's segregated cell status. This legal status has not been tested in court. The Authority expects that a disclosure substantially in the form set out below will be included in the scheme's offering document.

> *"XYZ Fund PCC ("the Company") is established as a protected cell company, (under the Protected Cell Companies Act 2004 of the Isle of Man ("the Act")/ under the Companies Act 2006 ("the Act")). This means that under Isle of Man law, and provided the conditions of the Act have been complied with, the assets attributable to each cell of the Company will only be available to creditors of that cell.*
>
> *Prospective investors should bear in mind that the segregation of assets and liabilities as provided for in this manner, whilst recognised and protected under Isle of Man law, may not be recognised in certain other jurisdictions in which the Company's assets are or may be located".*

5.3 Accounts and Audit

The PCC is a company for audit and accounting purposes under Isle of Man company law.

In relation to the accounting basis and disclosures within the accounts of a PCC, it is understood that two presentations may be utilised– namely:

- A separate set of financial statements for each cell, and a set of "consolidated" financial statements to show the aggregate results of all cells in the PCC; or
- A columnar set of financial statements, with a column for each cell and an aggregated total column (this approach is often used where a structure exists of a fund with different classes of sub-funds). In this case, the total column is an aggregation of the cells and there is a column for non-cellular items such as share capital.

A statement as to the structure of the company and the attribution between cellular and non-cellular assets should also be made in the notes to the accounts.

Under the funds legislation, there is an obligation to send accounts to all participants of the fund. The Authority expects that for a fund constituted as a PCC, the annual audited accounts will be consolidated accounts.

provide examples or illustrations. Guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.

[i] Including Regulated Funds, Specialist Funds, Qualifying Funds, Experienced Investor Funds (and for companies under the Companies Act 2006, exempt schemes).