



In association with **SAB&T inc.**
CHARTERED ACCOUNTANTS (S.A.)

**Global Business
in Mauritius
The GWMS PCC Solution**

...yet another high end business solution brought to you by GWMS in association with SAB&T

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This Information Pack, IP 05, has been prepared for international investors and businesses who are seeking a cost and tax efficient jurisdiction for the structuring of their international business activities. IP 05 should be considered as a general guide only. IP 05 contains information, which, to the best of our knowledge and belief, is correct at the time of writing. You are however, strongly recommended to seek specific advice before acting on any information contained in IP05.

Background

While investing with several other investors with varying risk profiles often under an umbrella structure, an investor often has to simultaneously expose himself to the cross-over liabilities of such other investors. The manager of an umbrella structure normally attempts to minimise the exposure to such cross-over liabilities by ensuring that there is only one investment manager to ensure better control, and by minimizing risk laden investments. But this limits investor freedom. The individual sub-unit investor is compelled to use the services of the investment manager appointed by the institution promoting the structure.

The Solution

The Protected Cell Company (“PCC”) could be the solution. A PCC could be viewed very simplistically as an umbrella vehicle where there are no cross-over liabilities amongst investors. Such a cross-liability-free environment is clearly and simply provided by statute and not dubiously and questionably by complex devices. Complex structuring often triggers the far reaching taxation avoidance rules to the detriment of the investor.

Generally umbrella vehicles may only enhance investor protection against cross-over liabilities by insisting that the investor use the institution-chosen manger, and no one else.

In the case of a PCC, each investor has no cross-over liability and has the freedom to use his own personal manager/s, with the freedom to change the manager/s as he sees fit from time to time.

Protected Cell Company

The Mauritius Protected Cell Companies Act 1999 (the “PCC Act”) provides for the establishment of a new form of company, the protected cell company (the “PCC”) which can have one or more cells. The key to the PCC concept is that one cell and its assets are legally segregated from, and cannot be contaminated by, liabilities arising in relation to the other cells and their assets. The PCC is a single legal entity and its cells do not constitute legal persons separate from the PCC.

This inbuilt flexibility of a PCC therefore offers the possibility of legally segregating portfolios within the same company, based for example, on the risk profiles of investors or geographical locations of investments or type of investments. The PCC is a new corporate vehicle which offers enhanced flexibility to financial planners and investors at lower costs. In effect, this could be viewed as a multitude of investment companies within one vehicle!



The PCC structure offers the promoters of collective investment vehicles the flexibility and cost-savings of multi-class investment vehicles, without the risk that the losses associated with the investments of one class will diminish the profits associated with the investments of another class.

The Board of Director of the PCC is appointed by the Core shareholders. The Cell shareholders have no management or control role or function with respect to the PCC, its business or its affairs.

A PCC generally has two classes of shares:

1. Ordinary shares with voting rights which control the Core; and
2. Cellular shares, with no voting rights, which are attributable to individual cells and which will be distinct and separate from all other Cells (and from the Core).

Cellular shares may be identified by names or numbers to represent, the particular Cells to which they are attributable. This connection between named cellular shares and the Cell to which they are attributable, may be enshrined in the Constitution of each PCC and is mandated by the PCC Act.

Under the PCC Act, the assets of each individual Cell are attributable to that Cell alone and to no other or others. By law, creditors of one Cell have no recourse to the assets of any other Cell.

By law, creditors of a cell may, in certain limited circumstances, have recourse to assets held within the Core that is to say, the Core assets. The Core assets (which will normally be minimal relative to Cell assets) are themselves separately identified in order that there can be no confusion as which assets are Core assets, and which are not.

There are numerous advantages of the PCC structure over, say, a Unit Trust or an Open Ended Investment Corporation, principally because, in a PCC, the ring-fencing means that there is no cross-over liability amongst investors and their individual investment activities.

Taxation

From a Mauritius taxation standpoint, a PCC is a single entity and is taxed accordingly at the incentive rate applicable to Global Business Companies, of 15% reduced by the deemed foreign tax credits of 80% to an effective rate of 3%.

There are no Mauritius capital gains tax, dividend or interest withholding tax in Mauritius.

Unlike other international jurisdictions, subject to proper structuring, the PCC (or other investment vehicles) may also avoid or minimize taxes on dividends, interest and capital gains ***at source*** as well. Additional tax treaty benefits may also be available depending on the terms of such treaties with specific countries.



For countries where “Controlled Foreign Company” (“CFC”) taxation rules applies, the PCC could be structured with a sufficient number of cells to ensure that individual investors’ shareholdings remain below the stipulated thresholds to avoid such CFC rules.

Furthermore, cellular cells do not have any voting rights and do not confer any participation rights to its holders. This is because the cellular shareholders do not have the right to participate directly or indirectly in the share capital, share premium, current or accumulated profits or reserves of that foreign company, whether or not of a capital nature. That right accrues only to the holders of the core shares which could be the promoters of the PCC. Cellular shareholders only have the right to reap the returns on their identified cellular shares. For further protection, it may be appropriate that “Units” be issued to the cellular “Unit holders” instead of shares. This would further weaken any fiscal attack under the CFC rules.

It is strongly recommended that expert professional advice be obtained prior to any structuring of the PCC.

Administration / Management of the PCC

The Supervising investment manager normally ensures that the operation of the PCC is conducted efficiently, securely and transparently. In particular, his responsibility would be to:

PCC administration (*non-exhaustive list*)

1. Install an appropriate mechanism so as to ensure that no Cell is being used for money-laundering purposes;
2. Institute procedures for the creation of Cells, that is to say, the creation and issue of cellular shares, the payment therefore and the placing of the proceeds attributable to each Cell with the relevant Cell manager or Cell Managers;
3. Establish procedures for the redemption of Cell investments (the reduction of cellular share capital/sale thereof);
4. Appoint Cell Managers in consultation with the personal investment advisors to the investors .This will also include dealing with such matters as the PCC’s right to refuse or accept, or to remove, Cell Managers; the terms of investments restrictions (for example, restrictions on holdings in private trading enterprises).

Registrations of investments (*non-exhaustive list*)

1. Determining (and monitoring) the frequency and method of delivery of investment valuations provided by Cell Manager;
2. Tracking income with Cells; determining the distribution and roll-up policy for each Cell; where appropriate, the creation of separate income and capital Cells;
3. Causing and procuring audits for the PCC and the auditing of the investments attributable to individual Cells (an option for both the particular, individual cellular shareholder and the PCC);
4. The procuring of tax certificates where required;



5. The tracking of portfolios so as ensure that the PCC does not become a CFC under relevant tax laws;
6. In terms of Private Equity Finance Initiatives (PEFIs”) and like investment opportunities, defining restrictions (for example, prohibiting cellular attributable investment in an amount or greater than 10% of the relevant cellular shareholder’s net worth);
7. Instituting custodian regimes.

Other benefits of a PCC

Higher returns

A PCC is a structure which may allow investors potential access to investments which were previously unavailable to them, for example, the Private Equity Finance Initiatives (“PEFI”s). The concept behind PEFIs is that many client investors would like to invest a relatively small percentage of their overall wealth/investments in more speculative ventures. As most professional investment advisors are aware, whilst considerable profits are made when companies are floated, the real profits are made prior thereto. It is this anterior opportunity that the PCC can make available to investors. Companies, which promote PEFIs and like investment opportunities generally only accept investments from larger investors. The benchmark for larger investors is generally one who may invest US\$1 million upwards without, at the same time, investing more than 10% of his wealth.

Clearly, then, individual investors (cellular shareholders) – via the PCC – will have available to them opportunities to invest, together with other cellular shareholders, in potentially high profit PEFIs and like investment opportunities. Such opportunities are not likely to be otherwise available to them. In addition, even if an investment in PEFIs etc. is perceived to be at the higher end of the investment risk spectrum, the individual cellular shareholder: (a) is investing less money than he would if he were an individual investor in PEFIs etc.; and (b) he still has the protection of the protected cell companies legislation (in relation to his other cellular assets) should financial disaster strike another or other Cells of the PCC.. An individual investor, through the PCC, can therefore avail himself of high gain returns not otherwise available to him.

Lower costs

The setup cost of a PCC, which is after all one company, is much lower that that of setting up several companies individually within an umbrella structure. This means a greater net return on investments. The fact of having statutory cellular protection with reduced costs in an environment of investor chosen CIS manager/s will no doubt prove very attractive to investors.

Other considerations

A PCC was limited by Mauritius law, in its use, to general and specialized Global Business collective investment schemes and Global Business insurance but the legislation has been amended recently to allow PCCs to be used for activities such as asset holding and structured finance business.



About us...

GWMS is an emerging Management Company incorporated in Mauritius and licensed by the Financial Services Commission to provide advisory and management services to businesses worldwide.

The board of GWMS comprises mainly of Chartered Accountants of calibre and experience in diverse sectors encompassing accounting, audit, management, global business, international and local taxation among others.

Kamal Hawabhay, B.Com, Dip Acc, CA (SA) is the Managing Director of GWMS. He is ex-KPMG (Durban) and has held senior management position with leading offshore management companies in Mauritius. His experience in the Global Business Sector extends to international tax planning, supervision of the setting up and on going administration of Category 1 & 2 Global Business investment holding and other companies, trusts, venture capital Collective Investment Schemes, open and close ended Collective Investment Schemes, Protected Cell Companies and has valuable experience in the procedures of listing of CISs on the Irish Stock Exchange and the Stock Exchange of Mauritius. ***Kamal Hawabhay is a currently serving Board member (& Secretary) of the recently established statutory regulatory body, the Mauritius Institute of Professional Accountants, which is the regulator and registrar of all professional accountants in Mauritius.***

GWMS is in association with SAB&T Incorporated (“SAB&T”), Chartered Accountants (SA). SAB&T, an audit and financial services firm, with eighteen directors and five offices in the major centres of South Africa, is a full fledged member of SC International, an international and widely known group of independent accountants, represented in over 60 countries and with 203 member offices globally. The CEO of SAB&T is also a director of GWMS.

GWMS is also proud to be the Preferred Partner in Mauritius, of Corporate Catalyst (India) Pvt Ltd (“CCI”), a Business Advisory, Corporate Finance and Tax Advisory firm based in Delhi with offices in Mumbai and associate offices in major centres in India. The Chairman of CCI has served as the Chief Consultant to the Ministry of Finance, Government of India and another director of CCI has been the Ambassador of India to Japan, Thailand and Libya. The board of CCI also comprise of professionals of calibre and vast experience.

GWMS...the smart way to do business

To obtain further information on our services, please contact:

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