

Application Guidelines for a Protected Cell Company



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1. INTRODUCTION

This Guide to application for incorporation under the Protected Cell Companies Act, 2003 has been prepared to ensure that information about the above incorporation is readily available to those interested. The guide specifies the criteria against which the Financial Services Authority (FSA) conducts its assessment of applicant companies. The Guide also provides a summary of the Act and explanations of application requirements expected from an applicant. Please direct any questions, or requests for documents, to:

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2. BACKGROUND

According to the Act, a protected cell company is able to segregate its assets into different cells within that company with a view of protecting each cell from liabilities of any other cell. It is necessary that such companies require applicable licences in respect to the activity or activities to be conducted by the PCC in accordance with the laws of the jurisdiction where they conduct their business.

2.1 Administration and Regulation of the Act

The Act is administered by FSA, described in the Act as the Authority. The incorporation is made by the Registrar of Companies appointed under the Companies Act, 1972.

2.2 Scope of the Act

The Act may be used by those companies for the businesses stated in Schedule 1. Due to the evolving nature of the applicability of Protected Cell Companies, the PCC Act, 2003 provides for flexibility in that the Authority may approve other relevant activities.

2.3 Management of the company

There shall be at least two individual directors. There is no provision for companies to be appointed as directors. The secretary must be an International Corporate Service Provider (ICSP) in Seychelles who will be responsible for submitting and authenticating signatures on all documents which are submitted to the Authority. The ICSP is responsible to conduct all enquiries and due diligence checks under the KYC norms. Documents may be served on a PCC by service of such documents on the ICSP at the registered office of the PCC, and any such service on the ICSP shall be deemed to have been serviced on the PCC.

2.4 Meetings and resolutions

Meetings by shareholders and directors may be conducted by telephone or any other electronic means providing that they are able to hear and recognise each other. All resolutions may be consented to in writing, telex, cable or e-mail.

2.5 Cellular and Non Cellular Assets

A Protected Cell Company may have one or more cells with their own cellular assets. It is the responsibility of the directors to separate cellular from non-cellular assets as well as keeping cellular assets separately identifiable. Directors may also permit cellular and non-cellular assets to be held either by nominee or by a company the shares and capital of which may be cellular or non-cellular assets or a combination of both.

Cellular assets are defined as assets represented by the proceeds of cell share capital and reserves attributable to a cell as well as all other assets attributable to a cell.

2.6 Liability of Protected Cell Company

- The Cellular assets attributable to that cell shall be primarily liable
- The Company's non-cellular assets shall be secondarily liable provided that the cellular assets attributable to the relevant cell have been exhausted.
- The liability shall not be a liability of any cellular asset not attributable to the relevant cell

2.7 Obligations of a Protected Cell Company

A Protected Cell Company must identify itself as a Protected Cell Company when transacting with any person as well as identifying the specific cell with which the person is transacting.

2.8 Converting an existing company into a PCC

An application for an existing company to convert into a Protected Cell Company has to be made to the Registrar of Companies through the Authority, accompanied by:

- the notice of alteration of memorandum and articles
- the registration and application fees
- the declaration that the company has complied with all the relevant requirements of the Companies Act, 1972 and the Protected Cell Companies Act, 2003.

This, as well as an application for a new company to be incorporated as a Protected Cell Company, is subject to the Authority's written consent. When and if consent is given by the Authority, a copy of the written consent, the application and accompanying documents will be forwarded to the Registrar of Companies. Upon the Registrar of Companies' satisfaction that the provisions of the Companies Ordinance, 1972 and the Protected Cell Companies, Act, 2003 are complied with in relation to the alteration of the memorandum and articles of association, he shall retain and register such alterations. Thereafter, the applicant and the Authority will be informed in writing of the action taken by the Registrar of Companies.

2.9 Transfer of Cellular Assets

Cellular assets are allowed to be transferred. It is, however, to be noted that non-cellular assets cannot be transferred to another person.

2.10 Taxation

The rate of tax payable by a PCC shall be subject to the applicable rate wherever the business is situated.

2.11 Exemptions

A Protected Cell Company is exempt from the following:

- Stamp duty in respect to all transfers of property to a Protected Cell Company; all transactions in respect to the shares, debt obligations or other securities of a Protected Cell Company; and all transactions relating to the business of a Protected Cell Company
- Exchange Control Act

It is to be noted that a Protected Cell Company shall be entitled to further concessions and incentives under the respective licensed activities

2.12 Offences under the PCC Act, 2003

Section 11 of the PCC Act, 2003 allows the Authority to attach terms and conditions on the Certificate of Consent. If any terms or conditions are not complied with, the Authority shall apply section 30(1) of the PCC Act, 2003, which may lead to a fine not exceeding SR 200,000 upon conviction.

2.13 Fees

These are provided in Schedule 3 to the Act, as follows:

- Application fee: US\$ 200 + 5% Tax
- Annual registration fee: US\$ 1000 + 15% and upon renewal 7.5%
- Fee for filing of annual return: US\$ 200 + 5% Tax

It is to be noted that the application fee for incorporation is not refundable.

3. APPLICATION REQUIREMENTS

When making an application for incorporation as a PCC, the applicant company will have to submit the following documents and information:

- Covering Letter
- Application Form
- Name reservation certificate from local Registrar of Companies
- Memorandum and Articles of Association
- Declaration Certificates by the Directors and Secretary and of Registered Address
- Certificate from a legal practitioner from within the jurisdiction declaring that the Memorandum and Articles of Association of the company complies with the Companies Act 1972
- Due diligence and KYC Declaration
- Application Fee of USD 200 + 5% Tax

3.1 Covering Letter

For every application to incorporate as a PCC, the documents listed below must be accompanied by a covering letter. This letter must specifically state the documents (and the number of copies) that have been submitted to the Authority.

3.2 Name Reservation

The ICSP shall make formal request directly to the Registrar of Companies for name reservation as per procedures under Companies Act, 1972. Upon submission of PCC application, proof of the name approval must be enclosed.

3.3 Application Form

The application form has been designed in such a way as to contain the information that is requested to be submitted in accordance with the application procedures set out in section 12 of the Protected Cell Companies Act, 2003. The information requested is the following:

- a) Name and contact details of the Secretary
- b) Registered address of the Applicant Company
- c) Names and addresses of Directors
- d) Name and contact details of Company's auditors
- e) Name and contact details of Company's legal advisor

- f) Name and contact details of the beneficial owners and / or shareholders of the Company. If the shares are held by nominee, please provide the name(s) and address(es) of the person(s) on whose behalf the shares are held by the nominee.

3.4 Declaration Certificate by the Directors, Secretary and of Registered Address

In accordance with Companies Act, 1972, the directors and the secretary have to consent in writing that they are to act in the capacity of directors and secretary to the PCC. Furthermore, the directors and secretary have to consent that they are not disqualified from performing their duties, as per section 165 of the Companies Act.

A form has been created which directors and the secretary can fill out in order to provide written consent. Please note that the Declaration Certificates have to be completed in full.

3.5 Application Fees

When making an application for incorporation as a PCC, the applicant shall pay an Application Fee of US\$ 200 + 5% Tax. The Authority will not process any application documents if that fee has not been submitted.

3.6 Memorandum and Articles of Association

The objects as stated in the Memorandum shall be limited to the carrying out of any one or more of the activities specified in Schedule 1 of the Protected Cell Company Act, 2003. The name of the PCC shall include the expression "Protected Cell", "PCC" or any cognate expression approved in writing by the Authority. Furthermore, each cell shall have its own distinct name and designation. The memorandum must comply with sections 3 to 9 of the Companies Act, 1972.

The Memorandum together with the Articles of Association have to be submitted to the Authority in triplicate.

4. APPROVAL PROCESS

4.1 Submission of documents to Registrar of Companies

Once all the information has been received, the Authority will issue a Certificate of Consent, confirming that all the documentation submitted is to the Authority's satisfaction and stating the terms and conditions. However, before such a certificate is issued, the Authority will request the Applicant Company to make payment of the annual registration fee, which is US\$ 1000. Thereafter, FSA will send the following documents to the Registrar of Companies for processing:

- Certificate of Consent
- The memorandum and articles of association
- Declaration Certificate by a Seychelles' legal Practitioner
- Articles of continuation (if applicable)
- Declaration Certificate of Directors
- Declaration Certificate of Secretary
- The declaration of registered address of the company
- The name reservation certificate

Under section 12(3) of the Protected Cell Companies Act, 2003, the Registrar of Companies may retain and register the memorandum and articles of the applicant company. Upon registration of these, the Registrar will issue a Certificate of Incorporation or Continuation.

4.2 Issuing of Licences to carry out objects of the Protected Cell Company

When the Registrar of Companies has issued the Certificate of Incorporation or Continuation, the applicant company shall apply to the appropriate Regulatory Authority to receive approval to conduct activities as specified in the objects contained in the Memorandum of Association.

If the activities of the PCC fall within the category of “*Any other business approved by the Authority*” as per Schedule 1 of the Protected Cell Companies Act, 2003, approval of the proposed activity shall be first obtained by the Financial Services Authority (FSA).

5. ANNUAL RETURNS

5.1 Filing of Annual Returns

Annual returns shall be filed with the Registrar of Companies in accordance with the Companies Act, 1972. The Protected Cell Company will have to make the annual returns in the form prescribed in the Fifth Schedule of the Companies Act, 1972.

5.2 Failure to file annual returns

If a PCC does not file returns within 90 days, section, section 114 (3) of the Companies Act and the appropriate penalties shall apply. Section 117 (relating to offences in connection to annual returns) will apply.

6. RENEWAL OF REGISTRATION

Protected Cell Companies shall renew their registration on an annual basis. The annual registration fee shall be paid before the Company's anniversary.

The fee for annual renewal of registration is US\$ 1000 + 7.5% Tax

6.1 Failure to Renew Annual Registration Fees

The terms and conditions contained on the Certificate of Consent as per section 11 of the Protected Cell Companies Act, 2003 shall contain a condition whereby the Company shall pay registration fees on an annual basis prior to the company's anniversary. Failure to satisfy this requirement will result in the Authority enforcing section 30 of the Protected Cell Companies Act, 2003 as well as informing the appropriate regulatory Authority to this effect.