

**Industry Comments –Proposed Protected Cell Companies Law
October 2014**

| Industry Comments | Ref. | |
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| General Comments: | | |
| A Licensee: it would be very helpful if CBB develops and publish examples for each of the requirements under this law for a better understanding and implementation of this law by the industry | A | CBB will consider publishing examples in a separate document. |
| A Licensee: Clarification is needed if a PCC could be incorporated elsewhere and CBB consents on it or it is strictly to be incorporated in Bahrain only. | B | The law is about PCCs to be incorporated in Bahrain. Of course, PCCs could also be established in other jurisdictions and will be subject to the law of the jurisdiction in which it is incorporated. It is not believed that the law requires amendments. |
| A Licensee: which department of CBB an application to be made for getting the consent? | C | The relevant department does not have to and should not be identified in the law. It will be identified in the implementing regulations. |
| A Licensee: the law in its current form lacks clarity when it comes to issues such as the requirements for registration. There are references to regulations issued pursuant to the law, however we would like to clarify if all companies formed under the Commercial Companies Law can be eligible to become Protected Cell Companies? | D | The requirements are to be provided in the implementing regulations. |
| A Licensee: The legislation currently lacks provisions in relation to how a party can appeal the decision of the Central Bank in relation to the decision of registration. If it is found that the decision is wrong on fact or law, the party in question should have an opportunity to clarify its position by way of a hearing before the body or the right to appeal to the CBB governor. | E | The procedure in its entirety will be subject to a regulation to be issued by the CBB in accordance with Section 8(2). |
| A Licensee: in jurisdictions like Guernsey, there are provisions for annual validation of information regarding the private cell companies. The compliance director is required to validate that the information about the | F | The CBB will consider this suggestion as part of the implementing regulations to be issued by CBB. |

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| <p>company is up to date</p> | | |
| <p>A Licensee: we would like a clarification on what happens to the cells in an instance where the core (non-cellular) part of the company is undergoing liquidation (due to its inability to pay debts that raised against the core assets and not the cell assets). In order to avoid a situation where the core assets threaten the liquidation of the entire PCC, shouldn't there be a prohibition against the core assets borrowing funds? Otherwise, the liabilities of the core assets could jeopardize the financial health of the entire PCC and lead to a forced liquidation of the cell assets. Even if the assets of each cell are safe from external creditors, this appears to be a major limitation of such a vehicle.</p> | <p>G</p> | <p>The suggestion that there should be a prohibition against the core borrowing funds to avoid forced liquidation is not going to help because the core could still incur debts through its operations (which is probably by far most likely scenario for a financial distress rather than the core borrowing funds).</p> |
| <p>A Licensee: the law should clarify the position of trusts when it comes to protected cell companies. Can the core assets of the PCC be subject to a trust? This would mitigate the risk posed in point 4 above.</p> | <p>H</p> | <p>Obviously, a PCC is well suited to the business of trustees. Whilst, where a trustee operates numerous trusts for unrelated beneficiaries the assets and liabilities of each trust are already legally separated, nevertheless, at least for administrative purposes, the trustee may reinforce the division between the assets and liabilities of each trust, and between those and the trustee's own assets and liabilities, by using a PCC. It is not believed that the law requires further clarifications.</p> |
| <p>A Licensee: further elaboration on the ability of using protected cell companies as an alternative to investment funds.</p> | <p>I</p> | <p>A PCC is not an alternative to funds; it is a legal structure that can be utilized to establish funds. It is not believed that the law requires further elaboration.</p> |

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| <p>A Licensee: the use of the term “the Company” throughout the law creates uncertainty as it does not distinguish whether this is meant to refer to the PCC or a third party company.</p> | J | It is believed that the context makes matters clear enough. |
| <p>A Licensee: we believe the legislation would benefit from the inclusion of a provision which outlines the procedures for dealing with disputes as to the liabilities attributable to a protected cell company’s cells and/or its core. This may help in providing a quick and efficient process for dealing with any such potential dispute.</p> | K | The situation would be similar to a parent company and its fully owned subsidiaries. It is not believed the law needs the suggested procedure. |

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| Proposed Rule | Comments | | |
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| <i>Section 1: Definitions</i> | <p>A Licensee: define the term 'Protected'</p> <p>A Licensee: suggest defining the term "company" as follows: means a company incorporated under the Company Law.</p> <p>A Licensee: Express definitions are required for the terms "insurance captives", "directors", "laws", "special resolutions", and "licensee", due to their common use in the legislation.</p> | L M N | <p>The only term which requires a definition is "insurance captive". This will be added as follows:</p> <p>"Insurance Captives: has the meaning prescribed pursuant to the Central Bank Law".</p> |
| <p><i>Section 1: Definitions:</i> <i>Cell: means a Cell created by a Protected Cell Company for the purpose of segregating and protecting Cellular Assets in the manner provided under this law;</i></p> | <p>A Licensee: while the definition clearly distinguishes the "cell" from the "PCC", it does not convey the contextual definition of the word "cell". Expanding on this would be most helpful to eliminate ambiguity.</p> | O | <p>The definition is adequate and does not require to be expanded on further. The definition should be read in conjunction with other relevant provisions of the law especially Sections 10, 11, 12 and 16 to 20.</p> |
| <p><i>Section 1: Definitions:</i> <i>Cell Shares: means shares created and issued by a Protected Cell Company in respect of one of its Cells pursuant to the provisions of Sub-Section 10(2) of this law;</i></p> | <p>A Licensee: we are unclear how can shares be issued in respect of particular cell which is not a separate legal entity and how such shares will be separately</p> | P | <p>The law is to allow this to happen hence the idea behind this law.</p> |

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| | identifiable or distinguishable from other shares related to other cells? The legislation should include clear provisions on the PCCs shareholding / capital structure, including different classes of shares (if any) | | |
| <p><i>Section 1: Definitions:</i> <i>Cell Share Capital: means the proceeds of the issued Cell Shares;</i> <i>Core Shares: means shares created and issued by a Protected Cell Company in respect of its Core pursuant to the provisions of Sub-Section 10(3) of this law;</i></p> | <p>A Licensee: this definition should be amended to refer to “issued and paid up cell shares”</p> | Q | As the definition uses the word “proceeds” it is clear that payment had been made. |
| <p><i>Section 1: Definitions:</i> <i>Cellular Assets: means the assets that are attributable to the Cells of the Protected Cell Company;</i></p> | <p>A Licensee: the term ‘Cellular Assets’ needs further clarification in its definition</p> <p>A Licensee: we suggest avoiding using the term “attributable assets” as it is unclear on whether such assets are legally or beneficially owned.</p> | R | <p>The law does not require further clarification on the term ‘Cellular Assets’.</p> <p>The term “attributable” is appropriate. It is used in the PCC laws of many other jurisdictions including Cayman, Jersey, Guernsey, DIFC, South Carolina and many others.</p> |
| <p><i>Section 1: Definitions:</i> <i>Collective Investment Undertaking: has the meaning prescribed pursuant to the Central Bank Law;</i> <i>Private Investment Undertaking: has the meaning prescribed pursuant to the Central</i></p> | <p>A Licensee: the definitions of “collective investment undertakings” and “private investment undertaking” in the draft law is referred to the CBB law, while those terms are defined in Volume 7. We suggest</p> | S | The definition does not state that these are defined in the CBB Law but rather “defined pursuant to the CBB Law”. Volume (7) which contains the definition is issued pursuant to the CBB Law. |

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| <i>Bank Law.</i> | that direct reference is made to Volume 7. | | |
| <i>Section 1: Definitions: Protected Cell Company: means a company formed, or converted as such, in accordance with the provisions of this Law</i> | A Licensee: this definition should specify the permitted legal form the PCC may adopt (WLL, SPC, BSC and so on) as per the Commercial Companies' Law. | T | This will be provided in a regulation to be issued pursuant to Section 8(2). |
| <i>Section 1: Definitions: Securitization of Insurance Risk: has the meaning prescribed pursuant to the Central Bank Law.</i> | A Licensee: suggest removing this definition as Section 4 refers to securitization in general. | U | Section (4) does not refer to 'securitization" but to "creation of cells". |
| <i>Section 2: Formation of a Protected Cell Company (1) Subject to the provisions of this Law: a) A new company may be incorporated as a Protected Cell Company; or b) An existing company may, if so authorised in accordance with its Sections of association and resolved pursuant to a special resolution, be converted into a Protected Cell Company.</i> | A Licensee: Section 2 (b) of the draft law states that an existing company may, if so authorized in accordance with its Sections of association be converted to a PCC. Such conversion to a PCC should be permitted by the commercial companies' law as well. | V | It is enough if it is permitted in one law. There is no need for a duplication. However, it is to be noted that a PCC is not a new form company form. A PCC may only take one of the forms already provided in the Company Law. The specific form is to be prescribed in a regulation by the CBB. |
| <i>Section 3: Scope of Activity A Protected Cell Company may only carry out the business of: (a) Private Investment Undertaking;</i> | A Licensee: securitization should be defined to reflect that it shall be pursuant to the new Securitization Law recently promulgated by the CBB | W | No Securitization Law had been issued yet. If a Securitization Law is ever issued, its provisions (as a primary legislation) would prevail over the provisions of the Rulebook (which is a secondary legislation). |

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| <p><i>(b) Collective Investment Undertaking;</i> <i>(c) Securitization;</i></p> <p><i>(d) Insurance Captives; or</i></p> <p><i>(e) any other financial services that the Central Bank may prescribe in a regulation issued pursuant to this law.</i></p> | | | |
| <p><i>Section 4: Creation of Cells</i></p> <p><i>A Protected Cell Company may with the prior written approval of the Central Bank create one or more Cells to segregate and protect Cellular Assets and Non-Cellular Assets as provided under this Law and other rules prescribed by the Central Bank in a regulation issued pursuant to this law. The application for approval to create a cell shall be subject to such procedure and rules, and accompanied by such fee, as the Central Bank may prescribe in a regulation issued pursuant to this Law.</i></p> | <p>A Licensee: we note that the CBB's written approval is required in order to create a cell. We believe this may remove some of the practical advantages of structuring a company as a PCC. If the CBB has given its consent under section 8 of the legislation to a company being incorporated as, or converted into, a PCC, should the CBB further approval be required under Section 4 in order to create a Cell of the PCC? In addition, the legislation should include provisions dealing with the application process for the CBB approval (i.e., timeline, information required, responsible department, and so</p> | <p>X</p> | <p>The requirement of obtaining the CBB's approval is essential to monitor the activities of the licensees and the financial sector as a whole. The procedure will be provided for in regulations to be issued by CBB.</p> |

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| <p><i>Section 8: Consent of the Central Bank</i></p> <p><i>The Central Bank’s decision in respect of the application referred to under Sub-Section 8(2) of this law shall be given in writing and communicated to the applicant. Such decision may be conditional but shall always be reasoned if the consent is denied.</i></p> | <p>A Licensee: we believe that provisions should be included in the Legislation governing the grounds for the rejection of applications and the right to appeal such decisions.</p> | Y | <p>Agreed, the rejection should be reasoned. However, this will be addressed in the regulations to be issued by CBB.</p> |
| <p><i>Section 8: Consent of the Central Bank</i></p> <p><i>(4) Subject to procedure to be prescribed by the Central Bank in a regulation issued pursuant to this law, the Central Bank may revoke or, where appropriate, vary its consent or impose further conditions or restrictions on the consent if it appears to it that:</i></p> <p><i>(a) Any requirement for the continuation of the consent is no longer satisfied;</i></p> <p><i>(b) the company has failed to comply with a condition or restriction in relation to the grant of the consent;</i></p> <p><i>(c) the company has for the purpose of obtaining the consent given the Central Bank information which is false or misleading in a material particular; or</i></p> | <p>A Licensee: what would be the consequences? Third parties could well have undertaken commitments to the company and/or a cell prior to consent being withdrawn or varied, so where would they be left?</p> | Z | <p>The CBB will only revoke if there is a reason for revocation as detailed in the Article. Banks and financial institutions establishing PCCs must comply with regulations at all times to avoid the consent being revoked.</p> |

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| <p><i>and capital interests of which are Cellular Assets or Non-Cellular Assets, or a combination of both.</i> <i>(3) Sub-Section 12(1) of this law does not prevent Cellular Assets or Non-Cellular Assets, or a combination of both, from being collectively invested, or collectively managed by an investment manager, as long as the assets in question remain separately identifiable in accordance with Sub-Section 12(1) of this law.</i></p> | | | |
| <p><i>Section 9: Registration</i></p> | <p>A Licensee: while this section aims to highlight the registration process with the MOIC. It does not detail the CBB application process. We believe that this process should be set out.</p> | <p>AC</p> | <p>The process is to be provided in the implementing regulations to be issued by CBB</p> |
| <p><i>Section 10 Capital and Shares</i> <i>(4) Cellular Dividends may be paid in respect of Cell Shares by reference only to the Cellular Assets and liabilities, or the profits and losses, attributable to the Cell in respect of which the Cell Shares were issued and no account need be taken of:</i> <i>(a) the profits and losses, or the assets and liabilities, attributable to any other Cell of the company; or</i> <i>(b) Core profits and losses, or assets and liabilities</i></p> | <p>A Licensee: it is unclear how separate dividends can be paid in relation to a particular cell which is not a separate legal entity. There needs to be further clarification on the shareholding / capital structure of a PCC.</p> | <p>AD</p> | <p>This law would allow this to happen hence the idea behind a PCC Law.</p> |
| <p><i>Section 10 Capital and Shares</i></p> | <p>A Licensee: This section should</p> | <p>AE</p> | <p>This law is specific to PCCs and the requirements</p> |

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| <p><i>(5) Shareholders rights and obligations prescribed under the Commercial Companies Law shall similarly apply to shareholders of Cells and Core.</i></p> | <p>clarify the prevailing law, whenever there is any conflict between this law and the Commercial Companies’ law</p> | | <p>of the same shall prevail. However, it is not believed that the law needs to be amended to reflect the same.</p> |
| <p><i>Section 11: Cellular Assets and Non-Cellular Assets</i> <i>(1) The assets of a Protected Cell Company are either Cellular Assets or Non-Cellular Assets.</i> <i>(2) The Cellular Assets attributable to a Cell of a Protected Cell Company comprise:</i> <i>(a) assets represented by the proceeds of Cell Share Capital and reserves attributable to the Cell; and</i> <i>(b) all other assets attributable to the Cell.</i> <i>(3) The Non-Cellular Assets attributable to the Core of a Protected Cell Company comprise:</i> <i>(a) assets represented by the proceeds of Core Share Capital and reserves attributable to the Core, and</i> <i>(b) all other assets attributable to the Core.</i> <i>(4) For the purposes of Sub-Sections 11(2) and 11(3) of this law, “reserves” includes retained earnings, capital reserves and</i></p> | <p>A Licensee: this section is unclear in terms of how assets may be segregated or identified in terms of ownership of each cell. Further, clarification is required on cell “ownership” of assets.</p> | <p>AF</p> | <p>The situation should not be any different from the separation of the assets of a company and its owner or a parent company and its fully owned subsidiaries or a company and sister companies. It is not believed that the law requires further provisions on this issue.</p> |

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| <i>share premiums.</i> | | | |
| <p><i>Section 13: Disclosure (2) (a) the subject transaction shall be voidable at the option of that party within twelve (12) months following that party becoming aware of the contravention to sub-section 13(1)(a) or 13(1)(b) as the case may be; and</i></p> | <p>A Licensee: this is excessive. If the third party has suffered no loss, this provision gives it a very easy way out of a transaction that is not as profitable as anticipated for a relatively trivial oversight / omission.</p> | AG | <p>Failure to disclose is not necessarily “a relatively trivial oversight/omission”. However, one year to avoid is excessive. The period will be reduced to 30 days.</p> |
| <p><i>Section 13: Disclosure (2) (b) the directors shall (notwithstanding any provision to the contrary in the company’s Sections of association or in any contract with the company or otherwise) incur personal liability to that party in respect of the transaction except that the directors shall have a right of indemnity</i></p> | <p>A Licensee: the reference to “company” should read as “protected cell company”</p> | AH | <p>This law regulates PCCs so it is clear from the context that the reference is to a PCC and not to any company. Repeating the word “company” in the law would be verbose.</p> |
| <p><i>Section 13: Disclosure 3) Notwithstanding Sub-Section 13(2)(b) of this law, the competent court may relieve a director of all or part of his personal liability thereunder if he satisfies the competent court that he ought fairly to be so relieved because-</i></p> <p><i>4) Where, pursuant to the provisions of Sub-Section 13(3) of this law, the competent court relieves a director of all or part of his personal liability under Sub-Section 13(2)(b) of this law, the competent court may order that the liability in</i></p> | <p>A Licensee: disputes may go to arbitration. Suggest to change the word “court” to “tribunal”</p> | AI | <p>A law may not impose arbitration on any party. This would be unconstitutional in almost all jurisdictions (including Bahrain). Arbitration is a consensual mean for dispute resolution.</p> |

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| <p><i>question shall instead be met from such of the relevant Cellular Assets or Non-Cellular Assets of the Protected Cell Company as may be specified in the order.</i></p> | | | |
| <p><i>Section 14: Transfer of Cellular Assets and Non-Cellular Assets from a Protected Cell Company</i></p> | <p>A Licensee: it is unclear to whom such PCC assets may be transferred and what the criteria are for such transfer.</p> | <p>AJ</p> | <p>As to whom a Cellular Asset may be transferred, this is very clear under Paragraph (1) which states” transferred in the ordinary course of the company’s business, through payments, investments or otherwise to another Cell of the Protected Cell Company or to a Person, wherever resident or incorporated, and whether or not a Protected Cell Company”. As to the “criteria”, Paragraph (1) clearly states the transfer may be made “subject to such rules and procedure as the Central Bank may prescribe in a regulation”. No further provisions are necessary to address these issue.</p> |
| <p><i>Section 14: Transfer of Cellular Assets and Non-Cellular Assets from a Protected Cell Company</i> <i>(5) Without prejudice to the rights of innocent parties, a transfer pursuant to this Section shall be voidable upon an application to the competent court by an affected Person entitled at the time of the transfer to have recourse to the transferred Cellular Assets if such Person had been unfairly prejudiced by the transfer.</i></p> | <p>A Licensee: disputes may go to arbitration. Suggest to change the word “court” to “tribunal”</p> | <p>AK</p> | <p>A law may not impose arbitration on any party. This would be unconstitutional in almost all jurisdictions (including Bahrain). Arbitration is a consensual mean for dispute resolution.</p> |
| <p><i>Section 16: Position of Creditors</i></p> | <p>A Licensee: we should be grateful if the CBB would</p> | <p>AL</p> | <p>It should be noted that unlike the Cellular Assets, recourse to the assets of the Core by creditors of</p> |

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| | consider adding wording to cover situations where the assets of the core of the PCC are used (or attempted to be used) by the third party to satisfy a liability which is attributable to a cell rather than to the core. | | a cell is permissible under Section 18(C) pursuant to a recourse agreement. |
| <p><i>Section 16: Position of Creditors</i> <i>(4) In the event of any court order enforced on any Cellular Assets attributable to a Cell of a Protected Cell Company in respect of a liability not attributable to that Cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the Cell affected, the company shall:</i> <i>(a) cause or procure its auditor to certify the value of the assets lost by the Cell affected; and</i> <i>(b) transfer or pay to the Cell affected, from the Cellular or Non-Cellular Assets to which the liability was attributable, assets or sums sufficient to restore to the Cell affected the value of the assets lost.</i></p> | <p>A Licensee: disputes may go to arbitration. Suggest to change “court order enforced on” to “enforcement against”</p> | AM | A law may not impose arbitration on any party. This would be unconstitutional in almost all jurisdictions (including Bahrain). Arbitration is a consensual mean for dispute resolution. |
| <p><i>Section 16: Position of Creditors</i> <i>(6) This Section shall apply to Cell and Non-Cellular Assets wherever these are situated.</i></p> | <p>A Licensee: these sections do not address cases where such assets are held or registered outside of Bahrain</p> | AN | The provisions of this law shall apply to such assets. However, assets held outside Bahrain will be subject to the rules of private international law (conflict of laws). Creditors would in any event be subject to the provisions of this law as far as their debts to the core or any cell is concerned. It is believed that the law does not |

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| | | | require further provisions on this issue. |
| <i>19. Liability of Cellular Assets (3) This Section applies to Cellular Assets of a Protected Cell Company wherever these are situated</i> | A Licensee: these sections do not address cases where such assets are held or registered outside of Bahrain | AO | Refer to answer AN above |
| <i>20. Liability of the Non-Cellular Assets (3) This Section applies to the Non-Cellular Assets of a Protected Cell Company wherever these are situated.</i> | A Licensee: these sections do not address cases where such assets are held or registered outside of Bahrain | AP | Refer to answer AN above |