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The Liechtenstein Protected Cell Company (PCC) – Instrument for long-term asset structuring and succession planning

In the same way that Liechtenstein was the first continental European country to codify trust law in 1926, in 2015 it enshrined the protected cell company (PCC) in law, along with several other countries in continental Europe. The PCC is, inter alia, an ideal instrument to protect an estate and to optimally ensure an orderly transfer of assets to a successor generation.

At the same time, the PCC can offer answers when it comes to questions of philanthropy and sustainability. On the occasion of its 90th anniversary in 2019, Allgemeines Treuunternehmen (ATU), Liechtenstein, established the “ATU Charity Foundation PCC”.¹ With this, ATU is aiming to offer all those philanthropists who do not wish to establish their own foundation for their common-benefit activities an opportunity to pursue common-benefit or charitable purposes by establishing a dedicated cell in a kind of umbrella foundation. To date, two such cells have been established, one to support the Red Cross and one for regional emergency aid.

Due to the wide range of possible applications as an instrument for asset and succession planning, we are taking a closer look at the PCC in the following. This is not a comprehensive overview. Only the most important practical aspects are explored in greater details.

Basic characteristics of the PCC

The PCC is not a separate new form of legal entity. A central aspect of the PCC is the circumstance that it may have one or more cells, with certain assets being explicitly and exclusively allocated to each cell. This is similar to segregated investment funds in Cayman or the BVI.

¹ The topics “ATU Charity Foundation PCC” and “Family Governance – an important planning instrument in times of constant change” are covered in greater detail in ATU Infos 02-06/2020 and 06-12/2020 respectively (under www.atu.li/en/publications).

The assets of the PCC consist of the so-called core assets and one or more cellular assets, which are not legally independent. The registered owner of a PCC is the owner of the core assets; the core assets are primarily used to finance the management and administration of the PCC. The respective cellular assets are used to realise the activities of a cell, as determined by the respective promoter. The activities of a cell must focus on the purpose of the core. From a legal perspective, the cellular assets constitute separate pools of assets.

The various forms of a PCC are limited to the purposes mentioned in Art. 243 Para. 1 Nos. 1-4 of the Persons and Companies Act ("PGR"):

- Common-benefit or charitable purposes (pursuant to Art. 107 Para. 4a PGR);
- Holding activity (parent company with distinct cells, whereby operational activity is not permitted);
- Exploitation of intellectual property (patents, trademarks, copyrights, etc.);
- Deposit guarantee and investor protection schemes.

Motives for setting up a PCC

According to the consultation report as well as the report and proposal, the PCC was introduced, inter alia, to provide the market or investors with a flexible instrument that facilitates a separation of liability between the individual pools of assets (separated cell assets, see below). This has proven successful, as the PCC is a way to build a group-like structure without having to set up several separate legal entities.

The relationship between the core and the cells of a PCC shows its similarity to the Liechtenstein trust pursuant to Art. 897 et seq. of the PGR. Its provisions are applicable *mutatis mutandis*, unless otherwise stipulated by law or by the articles of the PCC.

Separation of assets and liabilities

The individual cellular assets must be clearly identifiable and must be kept separate (including from the core assets). In the case of public limited companies, so-called cellular shares, comparable to preference shares, can also be issued. The separation of the cellular assets means that contractual claims brought by third parties are limited to the assets allocated to the individual cell. The core assets have only secondary or subordinate liability.

Practical advantages

In practice, PCCs are established partly because of the separation of liability between the individual cells. Because the pools of assets are separate from each other, the cells can operate independently. Contractual claims of third parties must, as aforementioned, be primarily limited to the individual pools of assets.

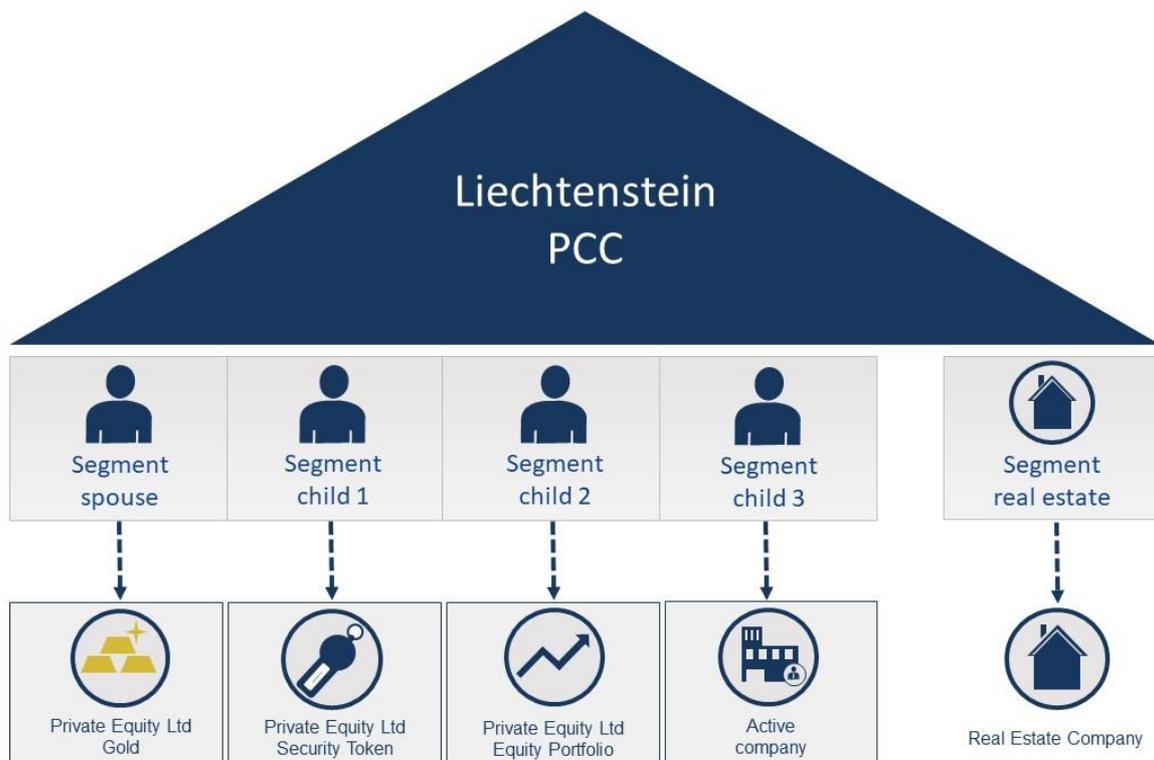
Since only one legal entity has to be founded and administered, the administrative costs are correspondingly lower. Nevertheless, the contributions of the individual promoters of cells are legally separated from each other (including in terms of liability law), but they can also be easily economically consolidated, whereby similar economic interests can be bundled in one and the same legal entity.

Another advantage is the increasingly important substance requirements when it comes to claiming treaty benefits in connection with double taxation agreements (DTAs). As a holding structure, the PCC is ideally suited to establishing this substance in an efficient manner, e.g. for different subsidiaries that are separated in the individual cells.

Practical example

Succession planning by means of Holding PCC

If you own different assets such as liquid bank assets, real estate, gold, art, etc. (each held through different company shareholdings) and you want to transfer these assets to your descendants, you can assign a separate cell to each family member or classify the assets into different cells. This is a flexible way of benefiting descendants in accordance with the wishes of the founder in terms of the amount and assets. By this means, family businesses can be kept together, yet still distributed amongst descendants on a pro rata basis through the PCC. As a consequence, the assets that are to be transferred are held together in a single company, but are separated under liability law by the establishment of different individual cells.



For further information please do not hesitate to contact the authors of this article, Hansjörg Wehrle or Dr Jürg Brinkmann, or your client advisor.

Yours sincerely,

Allgemeines Treuunternehmen



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