PCC *as* PSP

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“maintain Guernsey at the forefront of international pension provision”

This cryptic title is the subject of a recent consultation by the Guernsey Financial Services Commission (GFSC). It responds to requests from Pension Service Providers (PSPs) in Guernsey to enable them to provide services through a Protected Cell Company (PCC).

What is a Protected Cell Company?

First introduced in 1997, Protected Cell Companies were developed in Guernsey as an innovating corporate structure. Since then, PCCs have been used widely in Guernsey and in several other jurisdictions. They provide for a core and a range of cells within a single corporate structure. The core and the cells may have different shareholders and shareholding rights, and the assets of the cells are segregated from each other, so that the profits of a cell accrue only to the shareholders of that cell. Creditors of a cell only have recourse to that cell. However, with a single board of directors, the activities of all the cells can be managed centrally, thus streamlining the administrative, regulatory and governance operations.

PCCs have been widely used both by captive insurance companies (the original purpose of their creation) and by investment vehicles.

Why is it an issue?

Because of the novel nature of PCCs when they were introduced, their usage was limited in Guernsey to licensed insurance companies and investment vehicles, or certain companies administered by regulated financial services businesses. Pension Service Providers were not expressly included within the approved classes of use, since PSPs were not regulated as pension providers until 2017. This meant that a PSP could not be created as a PCC, although a PSP can use a PCC vehicle within its product range.

What is its relevance to pensions?

Typically, most pension assets have been held under trust, so that the trust assets are legally separate from the trustee’s own assets, and the fund for each member in a defined contribution pension arrangement can be held in a separate member account or sub-trust. As can be seen, this is very similar to the structure of a PCC. Therefore, if it were permitted, a PCC could potentially be used as the provider of a contract-based pension as a viable alternative to a trust structure.

Why use a PCC?

Trusts have been used to protect assets for hundreds of years and have typically been used for pension provision both in the UK and locally. However, while they are familiar in common law jurisdictions, such as the UK and parts of the former British Empire, trusts are less familiar in civil law jurisdictions, such as continental Europe and the Middle East. In marketing pension products to civil law jurisdictions, PSPs may prefer to offer contract-based products, rather than trust-based products; a PCC provides a natural vehicle to facilitate this.

Where Next?

We welcome this potential new development and the GFSC’s consultation on the subject. While the consultation period has closed, the results are not yet known. Extending the ability of PSPs to establish as a PCC could be achieved by a GFSC regulation, without requiring a change to primary legislation. Therefore it could be implemented quite rapidly. Enabling a PSP to be set up as a PCC would provide extra flexibility and help to maintain Guernsey at the forefront of international pension provision.