



Opportunity knocks: New legislation in Vanuatu provides fertile ground for Captives

By Kevin J Lindsay, Chairman, Vanuatu Captive Insurance Association

THE ADVANTAGES AND commercial benefits of captive insurance are well documented. Yet, the ideal vehicle for forming a captive and accessing those benefits is often overlooked. For some the incorporation of a separate company for that purpose can be unduly costly and time consuming, while rent-a-captive facilities can give the perception of a relinquishment of control.

The recent enactment of protected cell legislation in Vanuatu has provided one solution to this dilemma by affording the traditional advantages of a separate legal entity without the associated compliance costs. When added to the range of captive options already on offer, the protected cell legislation has enabled Vanuatu to offer a full smorgasbord of captive insurance options for the international client.

Stable History, Dynamic Future

As an established finance centre, Vanuatu has developed a reputation for its commitment to the facilitation of favourable commercial outcomes for overseas clients. A common law legal framework, zero corporate tax rate, and minimal compliance costs provide an accessible and stable platform from which to launch any captive insurance programme.

Vanuatu has enjoyed a long history as an international financial centre. That experience has enabled regulators and industry participants to intimately understand the needs of potential investors and captive clients.

It has also equipped the financial services industry with the support networks and professional expertise necessary to service the international client. Vanuatu is now the largest offshore

captive domicile in the South Pacific.

Vanuatu prides itself on its ability to blend stability with pro-activity. Regulators work with, not against, potential investors in a collaborative process designed to ensure the ongoing credibility and integrity of the financial services industry. That commitment has been enshrined in the recent enactment of three significant pieces of legislation:

- Protected Cell Company Act 2005
- Insurance Act 2005, and
- Insurance Regulations 2006.

The Legislation in Brief

The Insurance Act and Regulations provide the regulatory background against which the protected cell legislation operates. The Protected Cell Company Act, 2005 represents a subtle conceptual shift away from traditional corporate regulation. As foreshadowed in the introduction, a protected cell company (PCC) presents all the benefits of a limited liability company, without the associated set-up and compliance costs. The fundamental principle underscoring the legislation is that assets and liabilities of one cell can be segregated entirely from those of other cells under the ambit of a single corporate structure. This does not mean that all the individual cells within a PCC are legal entities in their own right. Rather, a series of mechanisms within the legislation has the practical effect of treating individual cells as separate legal entities:

- (a) The directors of a PCC are under an obligation to keep the assets and liabilities of one cell identifiable and entirely separate from those of another cell;
- (b) Every third party that contracts or

deals with a particular cell is deemed to accept that in recovering its debts from a particular cell, it will not have recourse against other cells within the PCC. The corollary of this is that every PCC is legally obligated to put third parties on notice that they are contracting with a PCC. This is done by:

- (i) including the expression “Protected Cell Company” or “PCC” at the end of the company name; and
 - (ii) every director of a PCC informing third parties that they are contracting or dealing with a PCC, the director being personally liable for any losses resulting from a failure to do so.
- (c) A PCC can create and issue shares in any of its cells. This enables ownership of a cell to be divided among a number of legal persons, thereby facilitating the equitable distribution of cellular profits.

The Opportunities

This fresh legal framework presents an exciting opportunity for captive and insurance PCCs to be established. Consistent with Vanuatu’s focus on financial services, incorporation of PCCs is reserved solely for captive insurers, mutual funds, or unit trusts. Once that statutory prerequisite is satisfied, the PCC is permitted to operate entirely in Vanuatu, entirely outside of Vanuatu, or within and outside Vanuatu at the same time.

Vanuatu has experienced insurance managers ‘on hand’ who are ideally placed to demonstrate the advantages, and explore the diverse range of possibilities of PCCs. Insurance managers also provide the necessary medium between the captive applicant and Vanuatu’s regulatory body, the Vanuatu Financial Services Commission.

This ensures that the Commission is fully apprised of investor concerns and needs on an ongoing basis, and that the applicant seamlessly complies with all regulatory requirements. All captive

insurance managers belong to the Vanuatu Captive Insurance Association, a professional body dedicated to the maintenance of high service standards.

The Process in Motion

Commencing your captive programme and taking advantage of the ostensibly limitless opportunities that Vanuatu can offer takes two simple steps:

- Submit a draft application and insurance plan to an insurance manager; and
- Submit a full application with a detailed business plan.

Once a full application has been submitted, a decision will be made and an insurance licence issued within one month. Insurance managers work closely with applicants so that they remain fully informed throughout the process and ensure compliance with all regulatory requirements. Upon the licence’s being issued, the company can immediately commence business. ■

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