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THE INSOLVENCY OF PROTECTED CELL COMPANIES IN RWANDA VIS A VIS OTHER JURISDICTIONS

By

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DECLARATION

I, **KUBWAYO GAKWAYA Rhodam**, a student at Kigali Independent University (ULK), Post-graduate studies, Master's in International Economics and Business Law do hereby declare that this final dissertation entitled **"*The insolvency of protected cell companies in Rwanda vis à vis other jurisdictions*"**, under the supervision of **Dr. BIDERI Diogene**, is my original work to the satisfaction of Graduate degree in regulation and it has never been introduced to the partial or complete by any other person at any College. Where some other people's works have been utilized, references and list of sources have been recognized.

Date………/……. /……….

Signature …………………

KUBWAYO GAKWAYA Rhodam

DECLARATION BY THE SUPERVISOR

I, **Dr. BIDERI Diogene** , appointed supervisor of the work presented in this dissertation entitled "*The insolvency of protected cell companies in Rwanda vis à vis other jurisdictions*", hereby confirm that I have supervised this thesis and that submission is made with my approval.

Date: ……/………. /…………..

Signature: …………………….

Dr. Bideri Diogene

DEDICATION

To Abba Father,

To my beloved family,

To my future Family

To my colleagues and friends,

May the Almighty God, bless all of them exceedingly

ACKNOWLEDGEMENTS

It is with my highest pleasure to take this opportunity to acknowledge all who have contributed to this study. First of all, I sincerely that Almighty God and his Son Jesus Christ for strong protection and direction to me during my studies till at the completion of this dissertation.

I extend special thanks to Kigali Independent University for providing Books & legal Texts to facilitate my research. They provided with us with a productive abundant experience in law through carrying out the research. I also offer this appreciation to the academic staff for their support in different ways.

I am grateful to all of those with whom I have had the pleasure to work during my research. Each of the members of my Dissertation Committee has provided me with extensive personal and professional guidance and taught me a great deal about both scientific research and life in general. I would especially like to thank **Dr. BIDERI Diogene**, the supervisor of this dissertation. As my lecturer and mentor, he has taught me more than I could ever give him credit for here. He has given up his time to suitably supervise and instruct me in all the processes to prepare this final dissertation.

Nobody has been more important to me in the pursuit of this research than the members of my family. I would like to thank my parents, whose love and guidance are with me in whatever I pursue. They are the ultimate role models. My beloved siblings for the insightful comments. The generosity and expertise of one and all have improved this study in innumerable ways and saved me from many errors; those that inevitably remain are entirely my own responsibility.

Last, but not least, it would be unfair to finish my appreciation without acknowledging all people, especially my friends who provided me with intensive moral support for the completion of my studies and this dissertation, thus the utmost gratitude goes to all my colleagues who helped me through powerful discussion that paid to the effective achievement of this final dissertation.

End.

KUBWAYO GAKWAYA Rhodam

LIST OF ABBREVIATIONS AND ACRONYMS

Art. : Article

PCC: Protected cell company

PC: Protected cell

ICC: Incorporated cell company

ULK : Université Libre de Kigali

Para. : Paragraph

UK : United Kingdom

UN : United Nations

US : United States

P/PP : Page/pages

***Supra* :** As cited before

***Infra* :** As cited after

SPC : Segregated portfolio company

Dr. : Doctor

CRA : Captive Reinsurance Agreement

TIC : Technology Insurance Company

SIS : Safebuilt Insurance Services

O.G: Official Gazette

IBID: Ibidem

OECD: The Organisation for Economic Co-operation and Development (OECD)

ENACT: European Union Cross-Border Insolvency Regulations

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CHAPTER I: GENERAL INTRODUCTION

1.1 BACKGROUND OF THE RESEARCH

The history of Rwandan law's corporate legal system is not that long ago. Adopted in 1988, the particular domestic law elaborated on the operations of companies in Rwanda[1] . However, as of the colonial period, the French and Belgian company laws substantially predominated this law. The Company Law of 1988 was subsequently repealed by the Law No. 07/2009 of April 27, 2009, relating to Companies, as a result of extensive legal reforms that have taken place in Rwanda since 2000 in a number of different fields[2] .

Nevertheless, the law n° 14/2010 of 07/05/2010 was modified and added to the latter right away after a year[3] . Additionally, the Law n° 07/2009 of April 27, 2009, relating to Companies, as amended and supplemented to date, was repealed by the Law n° 27/2017 of May 31, 2017, governing companies, which was then repealed by the Law n° 17/2018 of April 13, 2018, governing companies.

The legislators are determined to enhance Rwanda's corporate legal framework to improve the business climate there and draw in more foreign investment. This was demonstrated by various amendments to or modifications made to Rwanda's corporate law [4]. In contrast to many other nations around the world, Rwanda's corporate legal system is not as old. A new Companies Act, law no. 007/2021 of February 5, 2021, which governs companies in Rwanda, was gazetted on February 8, 2021, repealing and replacing law no. 17/2018 of April 13, 2018. As a result, there have been significant adjustments and advancements, including those pertaining to newly modified corporate forms. There were several options for the types of companies that could be incorporated or registered in Rwanda prior to the passing of the Rwandan New Companies Act.

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[1] Loi No. 06/1988 du 12 Février 1988 portant sur l'Organisation des Sociétés Commerciales (Journal Officiel No. 7, 1988-04-01, pp.437-497).

[2] Art. 386 of the Law N°. 07/2009 of 27/04/2009 relating to companies provides that "All previous legal provisions inconsistent with this Law are hereby repealed"; Official Gazette N°17bis of 27/04/2009

[3] Law N° 14/2010 of 07/05/2010 modifying and complementing Law N° 07/2009 of 27/04/2009 relating to companies, Official Gazette n° special of 14/05/2010.

[4] X, "New Company Law Including New Beneficial Ownership Information Requirements" https://www.orbitax.com/news/archive.php/Rwanda-Publishes-New-Company-L-45421,accessed on 28/1/2023

Throughout this cycle of amendment and modification of laws governing companies in Rwanda, the aim of policymakers and legislator is to promote the business sector in a country and attract investment even from across the country. In this regard, The Law no 17/2018 of 13/04/2018 governing companies provide that A company is a legal entity created by a group of people to conduct business and run a commercial or industrial enterprise. Every incorporated company is formed on the basis of it being either private company or public company .Typically, the goal of a company's incorporation in the business sector is for it to become a legal entity with the same rights and obligations as an individual, one that is separate and distinct from its owners. It also stipulates the categories of companies into the following types: *1° a company limited by shares; 2° a company limited by guarantee; 3° a company limited by shares and by guarantee; 4° an unlimited company*[5] .

Although recognized as a corporate form by the Rwandan corporate legal framework, protected cell companies have yet to be used in Rwandan cultural media. In light of this new corporate framework, the study places particular emphasis on the application of the new corporate law in Rwanda. Henceforth, in order to shed more light on this study, the investigator must first present the historical background of a company in general and the protected cell company in particular. This new law introduced other new forms namely the protected cell companies and community benefit companies.

A protected cell company is a new concept in corporate law that allows the formation of a multi-part company made up of several cells in a single legal vehicle[6] . In other words, A cell is a sub-set within the corporation, which has its own assets, liabilities, its own cellular capital, its own dividends, accounts, and all.

[5] Art 11, law n° 007/2021 of 05/02/2021 governing companies *O.G* n° 04 *ter* of 08/02/2021
[6] N. Dieudonne, N. Elie, (ENSafrica), “A glance at the new corporate forms and compliance obligations under the new Companies Act” https://www.lexology.com/library/detail.aspx?g=3bf2d494-1607-4ac6-927c-d063d23900ff published on 11/5/2021.

Each cell functions as an independent unit within the umbrella of the corporation, and the debtors and creditors of each cell have no claims against the assets or liabilities of other cells. This mutual independence among the cells is also applied to the core capital of the company. The introduction of the PCC structure under Rwandan company law is a game-changer because it now permits a company to draw investors who might be interested in just one of its business lines without having to carry out a spin-off because it sanctions carving-out specific business lines' assets and liabilities from the company's overall assets and liabilities[7] .

1.2 PROBLEM STATEMENT

The protected cell company is a legal form of a company that was introduced in Rwandan company law to promote investment in a country and harmonize the business sector across the country. The protected cell company is referred to as a business with a single legal entity made up of a core connected to several cells, each with their own assets and liabilities, has emerged. For a brief time, a protected cell company's individual cells may also be established. A protected cell company must be a single legal entity, even though it may create one or more cells; the creation of a cell by a protected cell company does not result in the creation of a legal entity distinct from the protected cell company in respect of that cell[8] .

The law n° 007/2021 of 05/02/2021 governing companies establishes the concept of PCCs. The law stipulates that: "*A protected cell company may, in respect of any of its cells, create and issue cell shares the proceeds of which is comprised in the cellular assets attributable to the cell in respect of which the cell shares were issued*[9] ". Therefore, it is clear that the Rwandan legislator had the same goal in mind when they included this type of company in

[7] N. Dieudonne, N. Elie, (ENSafrica), "A glance at the new corporate forms and compliance obligations under the new Companies Act" https://www.lexology.com/library/detail.aspx?g=3bf2d494-1607-4ac6-927c-d063d23900ff " published on 11/5/2021.
[8] M. N. Bruce, " Corporate Governance 2022" https://practiceguides.chambers.com/practice-guides/corporate-governance-2022/rwanda/trends-and-developments , Published on 21/6/2022
[9] Article 216 par 1, law n° 007/2021 of 05/02/2021 governing companies O.G n° 04 ter of 08/02/2021

the law. This means that they are used for investment funds in the activities regulated by the Capital Market Authority. Investors in one cell will be protected from risk and liabilities from the activities of another cell.

Furthermore, despite the fact that the law states that "*A protected cell company must notwithstanding that it may create one or more cells, be a single legal person and the creation by a protected cell company of a cell does not create, with respect to that cell, a legal person separate from the protected cell company*[10]". This assertion makes it clear that while a cell produced by a protected cell company has a legal personality, it does not exist as a separate legal entity. The assets and liabilities of a cell, however, are distinct from those of the core and other cells and must always be kept that way.

Further, The law n° 007/2021 of 05/02/2021 governing companies demonstrates that a company satisfies the solvency test when: *"it is able to pay its debts as they fall due in the normal course of business; the realizable value of the company's assets is greater than the aggregate of the present value of its liabilities, whether contingent or otherwise*"[11]. However, it doesn't set forth ways to go through if the core company becomes insolvent while the cells are still solvent as per the solvency test. This means that in the event that a PCC becomes insolvent, its creditors may not have a claim over the assets of a particular cell, and vice versa[12]. Since the core and its cells are mutually independent of one another, it is unclear how a PCC can carry out legal acts or obligations against them. This raises a problem with uncertainty regarding the legal status of the entity and property ownership; this should go hand in hand with liability in case of a payment default.

[10] Article 211 par.2, law n° 007/2021 of 05/02/2021 governing companies *O.G* n° 04 *ter* of 08/02/2021
[11] Article 2 al 35°, law n° 007/2021 of 05/02/2021 governing companies *O.G* n° 04 *ter* of 08/02/2021
[12] Art. 215, law n° 007/2021 of 05/02/2021 governing companies *O.G* n° 04 *ter* of 08/02/2021

However, the Rwandan company law of 2021 also leaves a number of questions unanswered with regard to this new legal form of a company, including the Protected Cell Company structure, generally the issue of the legal nature of PCC with its Cells in the performance of legal obligations, and in particular the issue of how a PCC would be treated for tax purposes, as it is yet to be determined whether cells of a PCC would be taxable persons on their own or a PCC would be taxable for. The new problem that might arise in the event that protected cell companies operate is that the legal framework for PCCs provided by the same law does not take into account how the concept is enforced in Rwanda.

Since the entire entity is a single legal person, it is not defined how the liability will be limited to only a cell that is unable to pay, which can have an impact on the shareholders in one way or another. This is where the legal frontier area is found, for example, in the case of insolvency proceedings over such a type of company.

1.3 RESEARCH QUESTIONS

It follows from the foregoing that the proposed research questions are as follows:

(1) What is a protected cell company under the Rwandan corporate legal context?

(2) How does the Rwandan law defines insolvency in PCC?

(3) To what extent are the cells in general and their shareholders in particular protected in case of insolvency under the PCC structure in Rwanda?

1.4 OBJECTIVES OF THE STUDY

Protected cell companies are a new type of business that involves a single legal entity that is linked to multiple cells, each of which has its own assets and liabilities. For a brief time, a protected cell company may also establish individual cells. Despite the fact that it may create one or more cells, a protected cell company must be a single legal entity, and the creation of a cell by a protected cell company does not result in the creation of a separate legal entity in respect of that cell.

From the above background, this research has the following general objectives:

1. *To explore the insolvency of protected cell companies (PCCs) as to gain a comprehensive understanding of the potential risks and implications associated with the insolvency of this specific type of business structure.*
2. *By examining relevant legal concepts under different jurisdictions, this research seeks to provide an understanding of how insolvency proceedings for PCCs are initiated, conducted, and resolved.*

As specific objectives, the following will be tackled on to respond to the research questions stated above:

1. This research helps in identifying the key factors that contribute to the insolvency of PCCs By helping the PCC regulatory bodies understand the potential risks in the PCC sector.

2. To inform the development of regulations and guidelines to strengthen the stability and resilience of PCC structures, thereby protecting both the companies and their stakeholders. Having in mind that protected cell companies have not been the subject of many inquiries, particularly under Rwandan corporate law, where the idea is still relatively untested.

This type of company has already been adopted by at least some foreign nations in the recently published company law of 2021, whether in separate PCC acts or in companies' acts as a whole[13] . Particularly, the recently published law n° 019/2023 of 30/03/2023 amending law n°007/2021 of 05/02/2021 governing companies in Rwanda, doesn't provide the insolvency procedures in regard to protected cell companies as a special type of company; neither the law n° 007/2021 of 05/02/2021 governing companies.

[13] Art. 11 (5°), law n° 007/2021 of 05/02/2021 governing companies O.G n° 04 ter of 08/02/2021

3. Further, By analyzing past cases and conducting empirical studies, identify the common characteristics and trends associated with insolvency in PCCs. This knowledge can be used to develop risk assessment frameworks and improve risk management practices. This means that it will focus on evaluating the effectiveness and efficiency of existing insolvency resolution mechanisms for PCCs. This includes examining the legal frameworks, court procedures, and alternative approaches that can be used to address insolvency issues in PCCs. The aim is to develop feasible and practical solutions to minimize the negative impact of insolvency on PCC stakeholders.

4. To enhance the understanding of the unique challenges and risks associated with PCC insolvency and develop strategies to mitigate these risks, protect stakeholders, and ensure the stability of the financial system.

5. To contribute to the development of best practices and guidelines for managing insolvency in PCCs. These guidelines will serve as a reference for regulators and industry practitioners to ensure a consistent and effective approach to handling PCC insolvency cases.

6. To inform policymakers about potential areas of improvement in the regulatory and legal framework for PCCs, leading to policy recommendations that enhance the stability and resilience of PCCs during insolvency situations.

1.5 RESEARCH METHODS

The methodology of this research proposal is based on the literature reviews relevant to the study. These will primarily be drawn from legislation, government policy documents, and reports. Within this study the use of the exegetic method and the interpretation of various text laws, and international corporate principles relevant to the topic. They will be used so as to explain more about the protection of either the cells or the core in the case of insolvency. With aim of addressing the legal issues discussed in the problem statement and accomplishing the objectives of this research, different techniques and methods will be used.

Equally, this study there will also be based on an analytical method where it will look at different data collected from surveys. Finally, in a coherent manner, the regrouping of collected information will be done through the synthetic method. The comparative approach of how different jurisdictions use different protected cell company laws to sort out PCC insolvency where the cells in general and their shareholders, in particular, are protected in case of insolvency under the PCC structure.

1.6. THE SCOPE OF THE RESEARCH

This research primarily examined Rwandan laws, but because the Rwandan legal system cannot be isolated from external influences, a comparative study of other systems was conducted. However, the researcher kept in mind that the Protected Cell companies must always be contextualized within a given system; in this case, the Rwandan context. Indeed, the terms 'company,' 'firm,' and 'corporation' are used interchangeably throughout this work, as are company law and corporate law. It should also be noted that the provisions of company law are used without precision in one way or another, so the law governing companies n° 007/2021 of 05/02/2021, which was published in Official Gazette n° 04 ter of 08/02/2021, shall apply.

However, foreign laws and case laws, as well as Rwandan repealed laws, were used for are still binding in Rwanda. Apart from Rwandan jurisdiction, the following foreign laws were referred to for comparative purposes throughout this study: Mauritius Protected Cell Companies Act 37 of 1999-1 January 2000; Gibraltarian Protected Cell Companies Act 2001; Indian Companies Act 2013; Companies (Amendment No. 8) (Jersey) Law 2005; and Guernsey Protected Cell Companies Ordinance of 1997. It is undeniable that the legal systems of the aforementioned jurisdictions can bring something new to the Rwandan corporate legal framework, particularly in relation to protected cell companies. It is surely that the legal systems from the above Jurisdictions can bring something new to adhere to Rwandan corporate legal framework especially in relation to protected cell companies as a matter of a fact.

1.7. STRUCTURE OF RESEARCH

This research study is divided into Five (5) chapters. Chapter One is about the General Introduction, which encompasses the introduction of the topic, background and significance of the study, problem statement, research questions, objectives of the study, research methodology, and the scope and structure of the study. Chapter Two then discusses the Conceptual Review of Protected Cell Companies details the definition of key concepts used in the work, the nature of PCC, and the background of PCC in various legal systems. Chapter Three elaborates on the legal status of protected cell companies under Rwandan company law, which it was discussed the legal personality of a company, particularly a Protected cell company vis-a-vis its cells, the legality of transactions conducted by cells, and the performance of any legal acts or/and obligations.

Chapter Four describes the insolvency of protected cell companies in Rwanda Vis à Vis other jurisdictions. Chapter Five describes best Practices to be adopted from other jurisdictions. This study ends with a general conclusion scrutinizing the major issues contained in the research, and recommendations were drawn.

CHAPTER II: CONCEPTUAL REVIEW OF PROTECTED CELL COMPANIES

The Word Bank Group's 2020 annual report provides a summary of the World Bank's comprehensive annual data and key indicators for business and economic conditions. also, following the change made to the law overseeing companies[14]. Rwanda is one of the most secure venture areas in sub-Saharan Africa, with higher development and more straightforward organization arrangement than most of the nations in the district. It very well may be the ideal decision for any business visionary searching for protected access to African business sectors. This is confirmed by the way that Rwanda is emphatically positioned as the 38th least demanding country to carry on with work in. The country is also ranked as one of the easiest countries to start a business by the International Finance Corporation study, with the ease of getting credit and paying taxes also listed as strengths[15].

This chapter will now concentrate on the theoretical and general aspects of protected cell companies as defined by Rwandan and international company law. It is done with the intention of clarifying the legal issues associated with protected cell companies and making some key concepts about companies in general and protected cell companies in particular more understandable. In the same vein as the definitions of the terms covered in this chapter, the historical context of the corporate legal framework is discussed.

[14] World Bank, "The World Bank Annual Report 2020: Supporting Countries in Unprecedented Times, Washington, DC" (2020). Accessed at https://openknowledge.worldbank.org/handle/10986/34406License:CCBY-NC-ND3.0IGO , accessed on 1/5/2023

[15] Healy Consultants, https://www.healyconsultants.com/rwanda-company-registration/ accessed on 28/4/2023

2. Background of the corporate legal framework in Rwanda

Since 1988, there has been an explicit national law governing all company-related matters in Rwanda[16]. However, prior to the colonial era, this law was substantially dominated by the company laws of France and Belgium. Starting around 2000, in Rwanda, there was a wide legitimate changes in different areas for best practices, and hence the organization law of 1988 was cancelled by the Law no 07/2009 of 27/04/2009 connecting with Companies[17]. Albeit the last option was likewise following a year altered and supplemented by regulation n° 14/2010 of 07/05/2010[18]. Besides, the Law n° 27/2017 of 31/05/2017 overseeing organizations was embraced to nullify the Law no 07/2009 of 27/04/2009 connecting with Organizations as adjusted and supplemented to date[19]; which was subsequently revoked by the law n°17/2018 of 13/04/2018 administering companies. Presently, the last option was canceled by the law n° 007/2021 of 05/02/2021 overseeing companies[20], which is currently in power to control all matters connected with organizations in Rwanda.

As a result of this cycle of legal reform in business matters, some crucial aspects were not altered but rather enhanced to meet industry standards and best practices. Among the most important aspects found in all laws are, but are not limited to; incorporation, company classification and types, company dissolution, and other matters As mentioned in the preceding chapter, this study will not cover all aspects of the company.

As a result, the researcher is particularly interested in changes to the types of businesses under the current reform of 2021, which saw the introduction of a new type of protected cell company in Rwanda.

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[16] *Loi No. 06/1988 du 12 Février 1988 portant sur l'Organisation des Sociétés Commerciales (Journal Officiel No. 7, 1988-04-01, pp.437-497).*

[17] Art. 386 of the Law N°. 07/2009 of 27/04/2009 relating to companies provides that "All previous legal provisions inconsistent with this Law are hereby repealed"; Official Gazette N°17bis of 27/04/2009

[18] *Law N° 14/2010 of 07/05/2010 modifying and complementing Law N° 07/2009 of 27/04/2009 relating to companies, Official Gazette n° special of 14/05/2010.*

[19] art. 312 of the Law n° 27/2017 of 31/05/2017 governing companies, *Official Gazette n° Special* of 31/05/2017, states that "Law N°07/2009 of 27/04/2009 relating to companies as modified and complemented to date and all prior legal provisions inconsistent with this Law are hereby repealed".

[20] art. 360 of law n° 007/2021 of 05/02/2021 governing companies, in *O.G. n° 04 ter* of 08/02/2021, provides that "The Law n° 17/2018 of 13/04/2018 governing companies and all prior legal provisions inconsistent with this Law are hereby repealed".

2.1. Definitions of key concepts

2.1.1. A company

A more comprehensive definition of a company has been provided by Prof. L.H. Haney[21], who defined a company as an incorporated association that is created by law, having a separate entity with a perpetual succession and a common seal[22]. In the opinion of Lord Justice Lindley, a company is a voluntary organization of many individuals who contribute money or money's worth to common stock and employs it in some trade or business and who share the profit or loss arising as a result.

In addition, it is essential to examine how Rwandan law defines the term "company." Be that as it may, the 2021 regulation overseeing organizations doesn't characterize this idea, the law n°07/2009 of 27/04/2009 connecting with organizations, characterized an organization as "a corporate body made out of at least one people for making profit". the LAW N° 007/2021 OF 05/02/2021 governing companies in Rwanda doesn't provide specific definition of a company. According to various theories and the Companies Acts of various nations, the term "company" refers to a natural legal entity created by an association or group of people working together to achieve a common goal[23]. Justice John Marshall, the former Chief Justice of the United States, defined a company as an artificial being that is invisible, intangible, and only exists in the mind's eye[24]. Additionally, by investigating unfamiliar point of view, the Indian Organizations Act characterized an organization as "an organization shaped and enlisted under this demonstration or any past organization law," in any case, this definition illuminates the highlights of an organization[25].

[21] Prof. L.H. Haney lectured at New York University in 1908, afterwards teaching at the universities of Iowa and Michigan, and was a professor of economics at the University of Texas.
[22] Sherawat Y., "Definition of a company" https://www.owlgen.in/define-a-company-explain-its-characteristics/ accessed on 3/5/2023
[23] Ahsan A.S., 'What is a company?', available at https://www.marketingtutor.net/what-is-a-company/ , accessed 26/4/2023
[24] The fourth chief justice of the United States and principal founder of the U.S. system of constitutional law.
[25] Section 2 (20) of Indian Companies Act 2013.

2.1.2. Legal personality

Generally, to have legal personality means to be capable of having legal rights and duties within a certain legal system, such as to enter into contracts, sue, and be sued. The company have lawful character means to be fit for including legitimate freedoms and obligations inside a specific overall set of laws, for example, to go into agreements, sue, and be sued. Legal capacity—the capacity of any legal person to modify rights and responsibilities—requires legal personality.

Lawful people are of two sorts: The law treats natural persons, which are individuals, and judicial persons, which are groups of individuals, like corporations. While individuals obtain legitimate personhood when they are conceived, legal people do so when they are consolidated as per the law[26]. In addition, it is trusted that to be legitimate individual is to be the subject of freedoms and obligations. Therefore, conferring legal personality is to impose legal obligations or rights[27].

2.1.3. Incorporation

As per the new Rwandan company law, the concept of incorporation means a legal process used for a company to be formed and have legal personality separate from that of its owners. Various theories define the company incorporation as the legal process that is used to form a corporate entity or a company, and this process makes the a corporate legal entity completely separate from its owners[28].

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[26] Anon, "legal personality" https://www.definitions.net/definition/legal+personality ,accessed on 2/5/2023
[27] Gray, *the nature and sources of the law*, 2nd ed (1921), p.27 cited in Smith B, "legal personality" 37 *Yale Law Journal* (1928), p.283. Accessed at https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3259&context=yl , accessed 26/4/2023
[28] Anon, "Steps in incorporation of a company" https://www.toppr.com/guides/business-laws-cs/elements-of-company-323sdds/steps-in-incorporation-of-a-company/ , accessed on 29/4/2023

Section 26 U.S. Code § 7701 - Definitions (2019). In this section, "corporation" is defined as "a company or group of persons authorized to act as a single entity (legally a person) and recognized as such in law." This definition is given in the context of the Internal Revenue Code, which sets out provisions for the taxation of businesses, including corporations. The definition of a company as a legal entity with the power to act and be recognized as a person reflects the basic characteristics of corporate law, which provide a legal framework for businesses to operate in the economy.

In a nutshell, a company is a legal entity that is formed by individuals or other companies to conduct business activities. The definition of a company may vary depending on the jurisdiction, but generally, it is an organization that has legal personality separate from its owners and is authorized to engage in commercial activities.

2.2. Evolution of types of companies in Rwanda

The law n° 06/1988 of 12 February 1988 provided four types of companies; *la société en nom collectif* (general partnership), *la société en commandite* (limited partnership), *la société à responsabilité limitée* (limited liability company), *la société anonyme* (limited company)[29].Following the modification of 2009, the company law adopted, provided four types of companies as well, however this law has made a big change as it stipulated the following types; a company limited by shares; a company limited by guarantee; a company limited by both shares and guarantee; unlimited company. It is obvious that these types were reviewed and modified significantly in the law of 2009 to adopt best practices to the time.

Moreover, in the correction made both in 2017 and 2018 on the law connecting with organizations, the sorts gave under similar regulations were a remarkable same as of the law of 2009[30]. The ongoing change made to organization regulation, presented a kind of organization that is called safeguarded cell organization, notwithstanding the past four

[29] Ibid

[30] art.9 of the law governing companies of 2017 and art.9 of the law governing companies of 2018.

kinds gave under past regulation. This indicates that the newly adopted company law now provides five types; referred to as a corporation with shares; a guarantee-based company; a limited liability company with shares and a guarantee; a limitless organization and a safeguarded cell company[31]. The equivalent didn't just add one more sort of organization, however, it likewise adds greater lucidity to some sort of organization, for example, an organization restricted by guarantee[32].

There is also a different type of corporation known as a community benefit company, which was not permitted by the prior laws[33]. Instead of being motivated by the need to maximize profit for its shareholders or owners, this business's surpluses are reinvested, for that purpose, in the company or in the community[34]. In light of the aforementioned expansion of the types of companies under Rwandan corporate law, it is important to note that the legislator and policymakers decided to add a new type of company, called a protected cell company, in order to encourage investment and standardize best practices. Although this type is new under Rwandan territory, it is not new in the majority of other jurisdictions.

2.3. Origin and background of protected cell company in the corporate legal framework

A Protected Cell Company (PCC) is a legally recognized entity that offers a means of segregating assets and liabilities between different pools (cells) within the same company. The concept of segregating assets emerged in the 1940s in the United States of America and was initially utilized in the insurance industry in the 1970s. The PCC structure has since expanded beyond the insurance industry and into a wide range of other business

[31] ibid
[32] art. 20 (2) of the law governing companies of 2021; under this article it is provided that "*A memorandum of association for a company limited by guarantee must indicate that the company's liability is limited. A memorandum of association for a company limited by guarantee must also state that every member undertakes to contribute to the assets of the company in the amount specified in the memorandum in the event of its being wound up*".
[33] art. 269-272 of the law governing companies of 2021.
[34] art. 2 (31o) of the law governing companies of 2021.

sectors. The protected cell company (hereinafter referred to as PCC) is a new form of a company started right back in Guernsey in 1997[35].

The latter is the first country in the world that introduced legislation permitting the formation of cell companies through protected cell companies ordinance in 1997. Its original purpose was to provide a simpler way for their insurance companies to segregate their different type of policies (*i.e*: health, life, fire, auto, etc.) from each other and their policyholders. Each type of insurance policy has its own cell and every policyholder has his or her own separate cell within the type of insurance policy. In some jurisdictions, the protected cell company is a type of a company called a cell company. The latter is also defined as a form of corporate body with separate legal personality, that permits the assets and liabilities of a company to be segregated into different cells[36].

Additionally, other countries adopted their own versions of the PCC Structure so other industries besides insurance could use them. This brought about the Guernsey Companies law of 2008 establishing PCC's for all industries with regulations on how they form, interact, and dissolve. In this country, the most popular use for a PCC is an umbrella for investment funds where each type of investment has its own cell along with each investor having his/her own cell. However, a PCC is not limited to just insurance and investment management. A PCC can be used for asset protection by separating assets into cells pertaining to type and location.

In a few, a Guernsey Protected Cell Company (PCC) can take advantage of the following benefits: Total foreign ownership, no taxation, privacy, one shareholder/director, lower risks of investments into separate cells, no required share capital. Around 1999, Protected Cell Companies were introduced in Mauritius by the Protected Cell Companies Act No. 137 of 1999.

[35] Anon, "Cell companies in Guernsey" https://www.careyolsen.com/briefings/cell-companies-in-guernsey, accessed on 1/5/2023

[36] Mourant, "Incorporated cell companies" https://www.mourant.com/file-library/2018---media/2018---guides/incorporated-cell-companies-(apr-20).pdf , accessed on 1/5/2023

Initially, it was thought to be a suitable structure for the business of insurance, it was also worked out to become a versatile vehicle for collective investment funds and for asset holding in Mauritius[37].

In Mauritius, there are different sectors in which PCCs are used such as; insurance and captive insurance, this is where each cell of a PCC can be used to write different risks so that upon the insolvency of one cell, the creditors can only have access to the assets of that cell, and to a certain extent, to the core, but not to the other cells. In this regard, the PCC will hold the insurance license and it will then offer cells to his clients, to operate as captives, without the need to set up another company.

A "rent-a-captive" arrangement is similar to this one[38]. Collective investment fund structures are another area where PCC in Mauritius can benefit more. The advantage of a PCC in terms of administration is that repeat transactions can be completed more quickly. It likewise permits a system of chairmen, directors, venture supervisors and overseers to be set up so speedy speculation choices can be made by the expansion of new cells under a structure which has previously been concurred.

As a result, the PCC structure enables investors to switch between sub-funds or spread the risks of their investments across a number of sub-funds with different investment strategies within the same umbrella structure. the area of resource holding, in which PCC can be valuable as it permits the holding and overseeing of resources ring-closed in deferent cells for such people as high total assets people and institutional financial backers. Along these lines, it permits the spreading of dangers and gives unmistakable managerial expense benefits.

[37] Ludovic C V, *Protected Cell Companies in Mauritius*, (Port Louis, 2007) accessed at https://www.mondaq.com/offshore-financial-centres/54902/protected-cell-companies-in-mauritius , accessed on 1/5/2023
[38] ibid

Consequently, every cell will have resources and liabilities credited to it, and its resources can't be utilized to meet the liabilities of some other cell, the non-cell (center) resources conceivably being accessible to meet the liabilities that can't be ascribed to any individual cell[39].

The House of Assembly approved a bill for a Protected Cell Companies Ordinance on July 3, 2001, following the adoption of an Act to support protected cell companies in Gibraltar in the early part of that year. A PCC in Gibraltar is viewed as equivalent to an ordinary insurance agency authorized by the Monetary Administrations Commission (FSC) and in this manner approaches the Single European Market for protection, following notice in a typical way into the important EEA domains. Gibraltar's position in the Single European Market makes it a strong proposition for combining the use of a PCC to write into European territories from a well-regulated domicile with a low tax base because the Gibraltar legislation is based on the similar Guernsey law[40].

It is important to note that a PCC is a flexible structure that works well for some kinds of insurance needs. It also has the advantages of being relatively inexpensive, using less capital, and requiring less management involvement. Care must be taken to be completely educated regarding the particular dangers implied in partaking in a PCC, and the potential plans that can be set up to relieve that risk[41].

Protected Cell Companies were introduced in Rwanda by the law n° 007/2021 of 05/02/2021 governing companies, which was gazetted on 08/02/2021, similar to the predecessors and other countries not mentioned above[42].A protected cell company is a new type of company created by this law, in addition to the other existing types of companies defined by the repealed company law.

[39] Ludovic C V, *Protected Cell Companies in Mauritius*, (Port Louis, 2007) accessed at https://www.mondaq.com/offshore-financial-centres/54902/protected-cell-companies-in-mauritius , accessed on 1/5/2023
[40] Feetham N, "Protected cell companies II" https://www.gia.gi/insurance-entities/protected-cell-companies/protected-cell-companies-ii , accessed on 1/5/2023
[41] ibid
[42] Supranote 40

This new corporate form was introduced under Rwanda's corporate legal framework to promote investment by attracting more investors, as some may be interested in only one of the business lines within a single legal entity. It also reduces business risks due to the separation of assets and liabilities within the cells and in relation to the core within PCC.

It is understood that, in Rwandan jurisdiction, protected cell companies are provided under the law governing companies, as opposed to some other jurisdictions where this corporate form is more elaborated in a separate act; however, under the same law governing companies in Rwanda, it is also stipulated that an Order of the Minister determines the procedure and conditions subject to which an existing company may be converted into a protected cell company[43], but it is no longer in effect. As of now, the various parts of this law that are demonstrated are detailed in the sections below of the same chapter.

In light of the above, it can be concluded that the common characteristic from all the above-mentioned jurisdictions to recognize the protected cell company in their legal systems, relates to the promotion and facilitation of investment in their jurisdictions. It is actually undoubted that the benefit of the cellular structure of the Protected Cell Companies is the segregation of assets and liabilities both between different cells and between cells and the core corporate structure. Hence, this gives the protected cell company a distinct advantage over the normal company structure as it attracts more investors to invest their money into different classes of business even if they can be unconformable with the main business, as this structure allows the cells to have different types of business not even similar to that of the main company.

[43] art. 211 of law governing companies of 2021

Some jurisdictions which have legislated for protected cell companies include but are not limited to; Delaware (USA), Bermuda, British Virgin Islands, Cayman Islands, Anguilla, Ireland, Jersey, Isle of Man, Malta, Qatar, and among others[44]. The concept of PCC consists of a Core which is an administrative body for the companies and it can comprise as many cells as possible. The advantage of having a PCC is that the assets are ring-fenced to only pay claims from that cell. It is an effective and alternative way of protecting your company assets. The core ensures that each cell has enough capital to run the business of the cell. Hence, protected cell companies are not legislated only in the abovementioned countries, but there are a number of other countries that have legislated to permit such companies to exist.

To Sump up, The goal of Rwanda's government is unmistakably to encourage and facilitate foreign investment in the country. The explanatory note to the draft of the law governing companies, which was later adopted in February 2021, stated that the government of Rwanda continuously initiates various reforms, including the drafting of new laws and amendments to existing laws, to further enhance Rwanda's position as a favorable and appealing jurisdiction for businesses and investment in order to achieve the goals set forth in Visions 2035 and 2050. Protected cell companies are a new business structure that was adopted to meet investment funds in the activities regulated by the Capital Market Authority and protect the investors in one cell from the risk and liabilities of the activities of another cell.

[44] Hartley T, "Protected cell companies" https://www.mcw.com.au/page/Publications/Professionals/2014/protected-cell-companies/ , accessed on 2/5/2023

2.4. Protected cell company

The Rwandan law governing companies of 2021 defines protected cell companies; as a company in which a single legal entity consists of a core linked to several cells, each with separate assets and liabilities[45].This concept of protected cell company is not only defined by Rwandan law of companies, but it is also explained by various foreign acts. As an instance, the protected cell companies act in Gibraltar also defines the term "protected cell company" as a company incorporated as, or converted into, a protected cell company in accordance with the provisions of this Act[46].

In addition, the central core organization is linked to individual cells and each cell is independent of each other and the company's core, but the entire unit is still a single legal entity. A PCC is sometimes referred to as a segregated portfolio company[47]. A protected cell company can be also referred to as a limited liability company that has a board of directors and may create one or more cells, the assets and liabilities of which are segregated from the assets of the PCC itself (referred to as the "core") and from the assets and liabilities of other cells. Reference to the "core" is to the non-cellular assets of a PCC[48].

In light of the foregoing, a protected cell company is a legal entity composed of a core linked to several cells. A PCC's cells have separate assets and liabilities and are unrelated to one another. It is also governed by a single board of directors, which is responsible for overseeing the entire legal entity. Each cell is managed by a board-approved committee or group. A PCC requires only one annual return, which includes the core and cells.

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[45] art. 2 (24o) of law governing companies of 2021.
[46] Section 2 (1) of Protected Cell Companies Act of 2001 for Gibraltar.
[47] Anon, "Protected cell company" https://www.investopedia.com/terms/p/protected-cell-company-pcc.asp , accessed on 1/5/2023

[48] Jupiter Trustees Limited "A guide to Guernsey protected cell companies" https://www.jupiter.gg/site/wp-content/uploads/2021/01/Jupiter-Guide-Guernsey-Protected-Cell-Companies-1.pdf , accessed on 1/5/2023

Finally, in the event of bankruptcy, the cells are treated as separate legal entities, so creditors cannot pursue the assets of other cells[49].

2.4.1. Cell

The law of 2021 governing companies in Rwanda defines a cell of PCC as a cell created by a protected cell company for the purpose of segregating and protecting cellular assets[50]. However, this definition is provided similarly provided under the foreign acts being, Gibraltarian protected cell companies Act of 2001, the Protected Cell Companies Act of Mauritius, and even under the Guernsey Protected Cell Companies Ordinance of 1997[51].

2.4.2. Core

Generally, the concept of core means, in ordinary language, a central and often foundational part usually distinct from the enveloping part by a difference in nature. Under the corporate legal framework, Core is another important concept defined by Rwandan law governing companies of 2021, as the protected cell company excluding its cells[52].

2.5. The purpose and advantages of protected cell companies

A protected cell company's goal is to provide a vehicle for creating cells, which are separate parts that can be used to separate assets and liabilities. Cell phone companies are fundamentally based on the idea of ring-fencing. As a result, the main idea is that a cell's creditors and shareholders should only be able to access its assets[53]. In light of this, repeat transactions can be established much more quickly once a cell company structure is in place.

[49] art. 269 of Law n° 007/2021 of 05/02/2021 governing companies
[50] art. 2 (6o) of law governing companies of 2021.
[51] Section 2 of Protected Cell Companies Act (Act 37 of 1999-1 January 2000) of Mauritius. Accessed at https://www.fscmauritius.org/media/1146/protected-cell-companies-act.pdf , accessed on 30/4/2023
[52] art. 2 (29o) of law governing companies of 2021.
[53] art. 211 of law governing companies of 2021.

This is especially appealing for projects like collective investment funds, where negotiating transaction documents can be a complicated and time-consuming process and where a successful initial structure frequently prompts demand for additional structures with similar key participants[54].General principles of Jersey companies law as to, for example, redemption and re-purchase of shares should also apply to cells, providing the comfort of an established regime[55].

Additionally, a framework that incorporates all structure participants, such as administrators, managers, investment managers, and custodians, as well as sample agreements that define the contractual obligations of the participants, may be established. Since the basic structure has already been approved, obtaining regulatory approval for the structure beforehand will significantly reduce the amount of regulatory scrutiny needed for the addition of new cells.

When specific transactions are planned, a cell can also be set up to carry out a specific task, such as adding a fund to invest in a particular region or sector or a new vehicle to buy receivables during a securitization. A new cell can be added in this manner at a fraction of the cost and time required if the structure were to be established from scratch because the functionary agreements and regulatory consents have already been agreed upon with regard to the form of transaction[56]

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[54] Hayder K S, et al, "A Review of a Basic Concept of Cellular Manufacturing"8 *International Journal of Design and Manufacturing Technology*, (2017), pp. 30–37. Accessed at http://www.iaeme.com/IJDMT/issues.asp?JType=IJDMT&VType=8&IType=1

[55] ibid

[56] Anon, "Jersey Cell Companies" https://www.careyolsen.com/briefings/jersey-cell-companies

2.6. Legal status of protected cell companies

2.6.1. Entity theory of protected cell company

The legal status of a business can depend on the type and scale of business that you are going to set up, this will also need to consider the tax implications, and other different legal transactions to be performed. In general, protected cell company is a corporate structure in which a single legal entity consists of a core linked to several cells that have separate assets and liabilities. The central core organization is linked to individual cells and each cell is independent of each other and the company's core, but the entire unit is still a single legal entity. It is sometimes referred to as a segregated portfolio company[57].

In the light of the above, protected cell company is a legal person as any company considered. By referring to its definition provided under different laws from varied jurisdictions, it is a company in which a single legal entity consists of a core linked to several cells, each with separate assets and liabilities[58]. It is a company like others, for instance the current Rwandan law governing companies added the protected cell company among the types of companies formerly recognized under Rwandan jurisdiction. However, its operation can differ from other existing types of companies depending on its unique character of having cells under the same company.

2.6.2. Operation of Protected Cell Company

Normally, a protected cell company operates with two distinct groups namely; a single core company and unlimited number of cells. It is governed by a single board of directors, which is responsible for the management of the PCC as a whole. Each cell is managed by a committee or similar group, with authority to the committee granted by the PCC board of

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[57] Kagan J, Protected cell companies (PCC), https://www.investopedia.com/terms/p/protected-cell-company-pcc.asp [5/5/2023]. Various laws related to company laws or protected cell company laws or acts, define PCC in the above definition, it looks as if the legislature from different jurisdiction copied the initiator to define the concept.

[58] ibid

directors. Cells within a PCC are formed under the authority of the board of directors, who are typically able to create new cells as business needs arise[59].

2.6.3. The difference between Protected Cell Company and group of companies or holding companies

In order to understand well the legal status of a protected cell company, it is also better to understand the distinction between this type of company and group of companies (or named as holding company). This is because, it may bring some confusion once understanding the definition and nature of protected cell company by first time; and that one can think of it as holding company. Therefore, making a clarification on this corporate form will bring the reader of this dissertation to be aware of the legal status and real nature of protected cell company. Actually as mentioned in the above sections, protected cell company means a company in which a single legal entity consists of a core linked to several cells, each with separate assets and liabilities[60].

By this definition, it is understood that the PCC is composed of a core (that can be referred to as a main company) and several segregated cells under its control. These cells have their own assets and liabilities, distinct and ring fenced from those of other cells and the core itself. This is under the principle that the assets of each individual cell cannot be available to the creditors of any other cell[61]. Despite having this segregation of assets between cells and towards the core, but cells have no legal existence in their nature, this means that they are not distinct legal persons.

[59] Kagan J, *supra* note
[60] Vision Law, "Protected Cell Companies And Incorporated Cell Companies" https://www.voisinlaw.com/resources/protected-cell-companies-incorporated-cell-companies/
[61] ibid

In contrast, a holding company is generally defined as a company that does not conduct any operations, ventures, or other active tasks for itself. Instead, it exists for the purpose of owning assets. In other words, the company does not engage in the buying and selling of any products and services. Instead, it was formed so that it gains control over one or more companies[62].Under this type of company, there are two main ways through which corporations can become holding companies. One is by acquiring enough voting stock or shares in another company; hence giving it the power to control its activities.The second way is by creating a new corporation from the ground up, and then retaining all or part of the new corporation's shares[63].

Even though, owning more than 50% of the voting stock of another firm guarantees greater control, a parent company can control the decision making process even if it owns only 10% of its stock. Here the relationship between the mother company and that of the corporations they control is called a parent-subsidiary relationship. In such a case, the mother company is known as the parent company while the organization being acquired is called a subsidiary. If the parent company controls all the voting stock of other firm, that organization is called a wholly owned subsidiary of the parent company.

Below, are some characteristics of a holding company;

1.Greater control for a smaller investment: This means that it gives the holding company owner a controlling interest in an another without having to invest much. When the parent company purchases 51% or more of the subsidiary, it automatically gains control of the acquired firm. By not purchasing 100% of each subsidiary, a small business owner gains control of multiple entities using a very small investment.

[62] 86CFI, "Holding company" https://corporatefinanceinstitute.com/resources/knowledge/strategy/holding-company/ [26/4/2023].
[63] ibid

2. Independent entities: If a holding company exercises control over several companies, each of the subsidiaries is considered an independent legal entity. To mean that if one of the subsidiaries were to face a lawsuit, the plaintiffs have no right to claim the assets of the other subsidiaries. In fact, if the subsidiary being sued acted independently, then it is highly unlikely that the parent company will be held liable.

3. Management continuity: this character refers to the fact that whenever a parent company acquires other subsidiaries, it almost always retains the management. This is an important factor for many owners of subsidiaries to be who are deciding whether to agree to the acquisition or not. The holding company can choose not to be involved in the activities of the subsidiary except when it comes to strategic decisions and monitoring the subsidiary's performance.

4. Tax effects: Holding companies can reap tax benefits by filling consolidated tax returns. A consolidated tax return is one that combines the financial records of all the acquired firms together with that of the company. In such a case, should one of the subsidiaries encounter losses, they will be offset by the profits of the other subsidiaries. In addition, the net effect of filling a consolidated return is a reduced tax liability.

The aforementioned demonstrates the nature of the holding company, it is clear that it is distinct from a protected cell company, as the latter aims only at asset and liability segregation because the cells attached to PCC have no legal personality, but the cells are distinct from each other and against the core in terms of asset and liability ownership. The Rwandan company law defines a group of companies as a holding company and all its subsidiaries[64]; a holding company is a company that is another company's holding company if that other company is its subsidiary. Furthermore, this law specifies the characteristics of a holding company, stating that a company is another company's subsidiary. This law

[64] art. 2 (34o) of law governing companies of 2021.

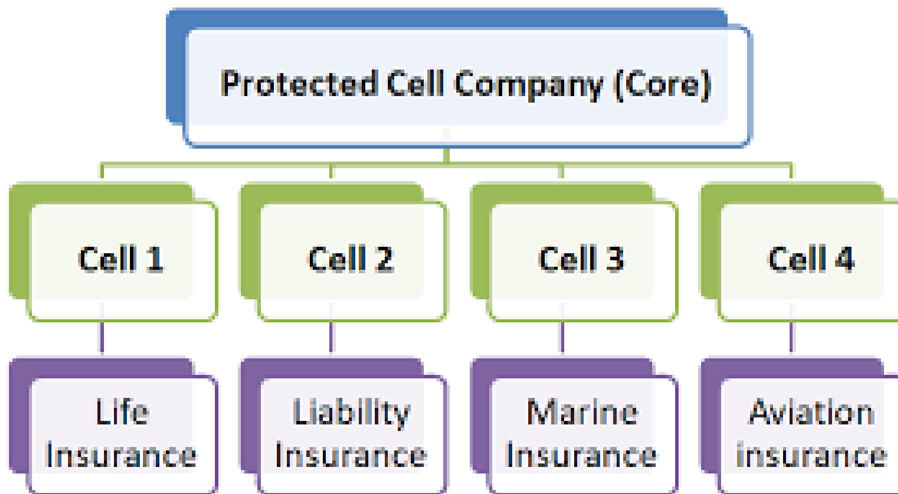
further stipulates that the holding company in Rwanda is a holding company which is not a subsidiary of a company registered in Rwanda.

2.6.4. The structure of share capital of protected cell companies

The Rwandan law governing companies, a cell share capital means the proceeds of issue of cell shares. Hence, cell shares refer to shares created and issued by a protected cell company in respect of one of its cells, the proceeds of the issue of which (the cell share capital) are comprised in the cellular assets attributable to that cell[65]. With regard to cell shares and cell share capital, the law further states that a protected cell company may, in respect of any of its cells, create and issue cell shares the proceeds of which is comprised in the cellular assets attributable to the cell in respect of which the cell shares were issued. The proceeds of the issue of shares other than cell shares created and issued by a protected cell company are comprised in the company' s non cellular assets.

A protected cell company may pay a dividend in respect of cell shares. In addition, cellular dividends may be paid in respect of cell shares by reference only to the cellular assets and liabilities attributable to the cell in respect of which the cell shares were issued. It is also stated that in determining the cellular dividend payment, no account needs to be taken of: (1) the profits and losses, or the assets and liabilities, attributable to any other cell of the company; (2) non-cellular profits and losses, or assets and liabilities. Furthermore, the law also allows the reduction of cell share capital, where it stipulates that a protected cell company or a holder of cell shares in a cell of a protected cell company may apply to the Registrar General to authorize the company to reduce the cell share capital for the determined reasons[66].

[65] See Art. 2 (12o and 13o) of law governing companies of 2021.
[66] Art. 217 of law governing companies of 2021. This article provides the conditions in which cell share capital can be reduced: (1o) where the applicant is the company, or any of the company's cells; (2°) where the applicant is the holder of cell shares of the cell in which the cell shares are held.
The reduction of the share capital is authorized;



By interpreting this chart, the core is main business of this protected cell company, that is insurance in general. However, by creating different cells, the company opted to have various classes of business insurance; thus to make a cell conducting life insurance, other for liability insurance, Maine insurance, last as a cell conducting a business of an aviation insurance. The instances cannot be exhausted as they correspond to the investors' needs.

3. The relationship between protected cell company and its cells

Mainly, the relationship between a protected cell company and the cell it creates is unlike any other corporate relationship. The key point of note is that a person is not a shareholder in the protected cell company merely by virtue of being a shareholder in a cell created by that PCC. When considering ownership, there is no link between the protected cell company and each of the cells it creates; they each have their own constitution and members and hence should be considered independent entities[67].

[67] "Jersey cell companies" https://www.careyolsen.com/briefings/jersey-cell-companies , accessed on 2/5/2023

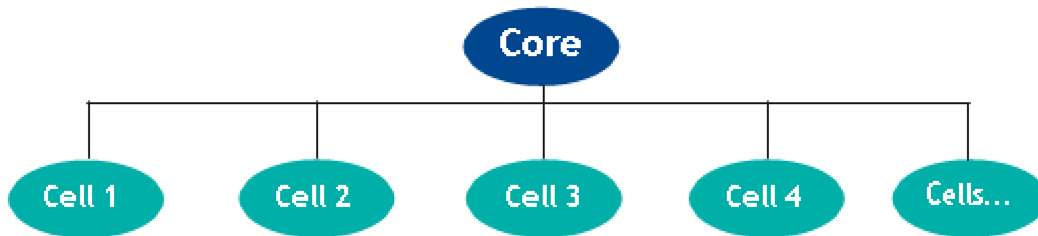
Obviously, the protected cell company is an entity that provides a structure that offers opportunities for investors, and cells are the vehicles that provide the investment opportunities.

Under this structure, the interests of the members of the protected cell company and the members of each cell are not necessarily the same, and so it makes little sense to treat them as if they were members of a common enterprise. However, cells are not wholly independent of the cell company that created them, and it is here that a sharp distinction is apparent between PCC and ordinary group structures. The PCC laws require cells to have the same secretary and registered office as the Cell company[68].

In addition, under the Jersey law for instance, the directors of a protected cell company are not required to be the same as for its cells and each cell is responsible for preparing its own accounts. It is important to emphasize that although the cell company and the cell may have common directors, the duties of the directors will vary according to whether they are acting for the protected cell company or in respect of an individual cell. It is crucial to note that unless there is a provision in the constitution of a cell to the contrary, a cell may only change its constitution by special resolution of both the cell members and of the cell company.In this way a cell company retains a degree of control over the cells it creates, without there being any ownership relationship between the company and the cells. This is essential to ensure that the cells all retain a common infrastructure.

[68] Ibid

In some jurisdictions, company law prohibits a company from owning shares in itself. This has caused difficulties in other jurisdictions with PCC legislation, where the approach has not been to treat members of cells and members of the cell company as being members of the same single corporate entity. As a result, cells have not been able to directly hold shares in other cells issued by the same company. This prohibition has led to cells in other jurisdictions using wholly owned subsidiaries which in turn acquire shares in other cells.



- The Core maintains and controls all the activities of the PCC.
- The Core has to maintain a minimum capital requirement at all times for regulatory purposes.
- The two most common types of PCC structures that currently exist are:
  - Type 1: The Core does not write any insurance or reinsurance business.
  - Type 2: The Core and the cells write insurance and/or reinsurance business. The cell shall write all or a subset of the classes of insurance business that the PCC is authorised to underwrite.
- For regulatory purposes:
  - The cellular assets of a cell will be primarily used to meet the liability of that cell;
  - The non-cellular assets (also known as the Core assets) can be utilised to meet the liability of the cell, only when the cellular assets of the cell have been exhausted and when there is recourse to the Core assets;
  - Cellular assets from other cells cannot be used to meet the liability of the cell.

For instance, Unless there is a provision in the constitution of a Cell to the contrary, a Cell may only change its constitution by special resolution of both the Cell and the Cell Company. In this way, a Cell Company can retain a degree of control over the Cells that it creates, without there necessarily being any ownership relationship between the Company and the Cells. This reflects the reality that Cells may be branded products created by financial institutions or for investors generally[69].

However, this approach has not been followed in Jersey. Each cell is a separate investment opportunity, and there is no reason why a cell should not be able to invest in another cell in the same way that a collective investment fund may invest in any other collective investment vehicle. The companies law therefore provides that the articles of a cell shall be taken to include a provision that the cell may not own shares in its cell company, and unless a provision to the contrary is included, a provision permitting a cell to own shares in any other cell of the cell company[70].

[69] Voisin Law LLP, 37 Esplanade, https://www.voisinlaw.com/resources/protected-cell-companies-incorporated-cell-companies/ , Accessed 24/6/2023

[70] B. Jean Marie Vianney, "*The legal analysis of protected cell company under Rwandan law: a cross-country comparison*"page 45-46

CHAPTER III. LEGAL OBLIGATIONS OF PROTECTED CELL COMPANY

This chapter provides a thorough introduction to the topic of this dissertation, which discusses the most crucial aspect of protected cell companies. It examines the nature of PCCs in the context of corporate law, how they operate in the course of business, and how this type of company is viewed in relation to corporate legal personality. It also discusses taxation, the issue of legal existence, and the possibility of winding up in the event of insolvency or through other means. More specifically, the relationship between the protected cell company (also known as the core) and its cells is covered in the same chapter. In this regard, it is important to stress the legality of cell activities in light of their nature as business transactions.

3.1 Investment incentives under the Protected Cell Company structure

The Government of Rwanda is primarily focused on promoting and facilitating investment in the country as well as positioning the country as a gateway to the rest of Africa. In this regard, with the recent adopted investment law, Rwanda has an array of investment incentives for investors ready to invest in the key priority sectors indicated within the law. Investment incentives are defined as tax or non-tax inducement extended to a registered investor following his or her contribution to the national development in order to facilitate and support his or her investment[71].

Normally, in a bid to improve Rwanda's competitiveness as an investment destination, this trend has been further encouraged by the series of reforms implemented in Rwanda in relation to the companies' law framework.

A series of new laws and amendments to existing laws have been implemented recently with the principal aim of promoting business in Rwanda and encouraging investors choose Rwanda as their destination of choice when doing business. As mentioned above, the recent changes include the company law which has adopted new corporate form of protected cell company, and the investment code which has also elaborated on the investment incentives provided to registered investors in the key priority sectors.

[71] art. 2 (51°) of Law n° 006/2021 of 05/02/2021 on investment promotion and facilitation, O.G, n° 04 bis of 08/02/2021

Moreover, the investment incentives provided to investors include but not limited to:

For example:

▪ Preferential corporate income tax rate of zero per cent (0%)

A preferential corporate income tax rate of zero per cent (0%) is granted to the following registered investors based on the following: That the investor invests the equivalent of at least ten million United States Dollars (USD 20,000,000) in both tangible or intangible assets in Rwanda; provide employment and training to Rwandans; conducts international financial transactions equivalent to at least five million United States Dollars (USD 10,000,000) a year for commercial operations through a licensed commercial bank in Rwanda; is well experienced in the sector within which it operates; is willing to spend the equivalent of at least two million United States Dollars (USD 2,000,000) per year in Rwanda; and also set up actual and effective administration and effective administration and coordination of operations in Rwanda and perform at least three (3) of the following services in Rwanda[72].

- Preferential corporate income tax rate of fifteen (15%) percent

This preferential corporate income tax rate of fifteen percent (15%) is granted to registered investors. The registered investor must be operating in either energy generation, transmission, or distribution from peat, solar, geothermal, hydro, biomass, methane, and wind. This incentive excludes an investor having an engineering procurement contract executed on behalf of the Government of Rwanda. Also in both laws, the registered investor in the sector of transport of goods and related activities whose business is operating a fleet of at least five (5) trucks registered in the investor's name, each with a capacity of at least twenty (20) ton, among others[73].

[72] See annex of Law n° 006/2021 of 05/02/2021 on investment promotion and facilitation
[73] Rwanda gazettes new Investment Promotion and Facilitation Law, online at <https://www.ey.com/en_gl/tax-alerts/rwanda-gazettes-new-investment-promotion-and-facilitation-law>, accessed on 23/5/2023

In view of the above, as there is not yet a tax regulatory framework specific to protected cell companies in Rwanda, there is a risk of the PCC players losing this opportunity of investment incentives due to such nature of segregated portfolios company. Legal segregation is often described as ring fencing and is the main attraction of PCCs. Thus, given this ring-fencing, a Protected cell company is very useful for any investment entity with various investment portfolios, where each has its own investment strategy and risk profile, and is even more attractive where investors are not common for each portfolio[74]. But, this separation of assets and liabilities within the cells and with the core, may cause the company to be unqualified for certain incentives.

3.1.1 Investment of protected cell company in other jurisdictions

A PCC may issue cell shares in respect of different cells for the purpose of segregating and protecting different assets, referred to as cellular assets. The cellular assets attributed to a cell will only be affected by the liability of the company arising from transactions attributable to that cell.

Further, a PCC may pay a dividend, cellular dividend, in respect of which the cell shares by reference only to the cellular assets and liabilities attributable to the cell in respect of which the cell shares were issued[75].

Under the Mauritius act, The assets of a protected cell company may comprise cellular assets or non-cellular assets, or a combination of both. (2) The directors of a protected cell company shall (a) keep cellular assets separate and separately identifiable from non-cellular assets, and (b) keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells. Hence The assets attributable to a cell shall comprise assets represented by the proceeds of cell share capital and reserves attributable to the cell; and all other assets attributable to the cell[76].

[74] Ganessen S, "protected cell companies are superior to normal investment vehicles" https://www.mondaq.com/offshore-financial-centres/50582/protected-cell-companies-are-superior-to-normal-investment-vehicles , accessed on 22/6/2023

[75] X, the protected cell company, https://www.alliance-mauritius.com/products/the-protected-cell-company-pcc/ , accessed on 23/7/2023

[76] Art 8, of Mauritius PROTECTED CELL COMPANIES ACT. Act 37 of 1999 – 1 January 2000

This means that investment management is usually passed on to another person or entity having specialised knowledge in the field. The Investment Manager will normally hold the core shares of the PCC for effective investment decision-making. Indeed, as these shares carry all of the PCC's voting rights, the investors consent to grant the actual running of the Fund to that person/entity and its designated directors and administrator.

The investment of protected cells in Malta is regulated by the Maltese Companies Act which provides that PCCs are generally required to adhere to the prudent investor rule, which expects investment decisions to be made in a sound and responsible manner, taking into account the risk appetite and investment objectives of the cells. Henceforth PCCs are allowed to invest in various types of assets, including stocks, bonds, securities, real estate, and other financial instruments.

However, PCCs may be subject to certain investment restrictions, such as limitations on the types of investments that can be made or maximum exposure to certain asset classes. These restrictions are typically imposed to safeguard the interests of cell shareholders and protect the stability of the PCC[77].

In Gibraltar, There is specific legislation governing collective investment schemes, including certain notification requirements. Under section 18 (1) of the Companies Act, a company that is a collective investment scheme licensed, authorized, or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2011 needs to notify the Registrar in writing. The notification must confirm whether the company is a "private scheme" (as defined in section 2(1) of the Financial Services (Collective Investment Schemes) Act 2011); or any other type of collective investment scheme[78]. Nevertheless, a framework has to be established which includes all of the participants in the structure- such as administrators, managers, investment managers, and custodians, and model agreements entered into governing the contractual roles of those participants.

[77] Chapter 386 of the Laws of Malta

[78] the Protected Cell Companies Act 2001 and the Financial Services Act 2019.

Guernsey's Protected Cell Companies Ordinance: Guernsey introduced the protected cell company framework in 1997. The legislation allowed both cellular and non-cellular assets to be held within a PCC. This law outlines the segregation of assets between the different cells and the main PCC, ensuring that the liabilities of one cell are separated from the others.

Isle of Man's Protected Cell Companies Act 2004: The Isle of Man enacted the PCC Act in 2004, providing a framework for the establishment and operation of PCCs. This law enforces the segregation of assets and liabilities between cells and requires clear identification of which cell owns specific assets.

Cayman Islands' Protected Cell Companies Act 1998: The Cayman Islands introduced the PCC Act in 1998, providing a legal framework for PCCs. This act effectively separates the assets and liabilities of each cell from other cells and the PCC itself. It also sets out the rights and liabilities of shareholders in each cell.

British Virgin Islands' Segregated Portfolio Companies (SPCs) Regulations 2018: While not specifically a protected cell company, the SPC regulations in the BVI provide a framework for the segregation of assets and liabilities within a company. This regulation allows for the creation of separate segregated portfolios within a company, similar to the concept of cells in a PCC.

In some jurisdictions, the separation of liabilities is achieved by different mechanisms. For example, Barbados allows the formation of both "Protected Cell Companies" and "Companies with a Separate Account Structure." The latter separates liabilities by allowing a company to allocate assets and liabilities to any number of separate accounts. These legal entities and practices enable tax optimization techniques, and allow for better outcomes in case of bankruptcy, liquidation, and various restructuring situations[79]. For the purpose of protecting distinct assets, or cellular assets, a PCC may issue cell shares in respect of various cells.

[79] Supranote 76

It is important to note that case laws specific to PCCs may be limited due to the relatively recent development of this corporate structure. However, these investment laws outline the legal framework for the operation and protection of PCCs in their respective jurisdictions. The only thing that will have an effect on a cell's assets is the company's liability for a transaction attributable to that cell. In addition, a PCC may pay a dividend, cellular dividend, based solely on the cellular assets and liabilities that are attributed to the cell for which the shares were issued.

3.2. Tax liability for protected cell company structure in Rwanda

3.2.1. Taxation of PCC and its cells

A cursory examination of PCC taxation does not imply that Rwanda does not have laws governing corporate taxation issues. Without a doubt, as it has been resolved that PCC is another construction presented under the Rwandan corporate structure, subsequently there ought to be resolved its particular expense guide relies upon its tendency. This opinion is based on the administration of a protected cell company governed by the ring-fencing principle, which provides a vehicle for creating cells, separate parts within which assets and liabilities are separated[80]. Because a protected cell company maintains the legal status of a single company, it should be treated as such during taxation. according to the Rwandan law establishing income taxes[81], which specifies the taxpayers and even the corporate income tax base. It further explains that businesses pay the corporate income tax on profits they receive from their businesses[82]. companies established in accordance with Rwandan or foreign law are among the taxpayers who are subject to this kind of tax[83].

[80] Al Tamimi & Company, "Why the introduction of protected cell companies and investment limited partnerships is good news for Bahrain's banking and finance sector" https://www.lexology.com/library/detail.aspx?g=a85e969d-20f8-4bb6-be9b-008fb18a2af6 , accessed on 25/7/2023

[81] Koepfer D, "Protected cell companies" http://nmg-group.com/wp-content/uploads/2014/07/NMG-PCC-Solutions.pdf ,accessed on 15/6/2023

[82]X, "Rwanda gazettes new Investment Promotion and Facilitation Law"https://www.ey.com/en_gl/tax-alerts/rwanda-gazettes-new-investment-promotion-and-facilitation-law , accessed on 21/6/2023

[83] art. 45 (1o) of law no 016/2018 of 13/04/2018 establishing taxes on income

In the light of the above, it is understood that protected cell company can be taxed as whole entity with legal personality. However, given that PCC structure involves a relatively complicated concept of segregation assets and liabilities among cells and with the core; this brings up an issue of how the tax can be levied on the entire PCC while the company law says that the cells in-between and vis a vis the core are independent from one another in regard to assets and liabilities. Even by referring to the way of calculating the corporate income tax[84], would be another critical issue by taking into consideration of the principle of ring-fencing. On the other hand, one cannot say that cells have to be taxed by their own while they are not legal entity by their own.

3.2.2 Taxation of protected cell companies and its cells in other jurisdictions

In relation to taxes, it is alleged that governments may become an additional creditor of a PCC. The central concern that is fundamentally examined under this review, is about the conceivable assessment treatment by charge specialists inside the locale where the PCC is integrated. As a result, in any tax case brought against the company, the protected cells would naturally be bound by PCC legislation; for the motivations behind isolating the resources and liabilities of cells, implying that 'liabilities' would obviously incorporate any tax[85].

In this way, the legitimate position would be that pay owing to individual cells would be charged to burden independently in regard of every cell for the reasons for the pertinent neighbourhood charge regulation. Be that as it may, without a trace of regulative direction, it can't be sure on how locales would treat a PCC; whether the cells can be treated as separate entities for tax purposes, or whether the latter would be treated as a single taxpayer given that the cells do not have separate legal existences. PCC is required to submit a single tax return for each cell under the previous treatment[86].

[84] art. 51 of law no 016/2018 of 13/04/2018 establishing taxes on income; which provides the corporate income taxation, where it describes how and to what extent the corporate income is taxable.
[85] Feetham N, Jones G., Protected Cell Companies: A Guide to Their Implementation and Use, 2nd ed., (London, 2008), p.293.
[86] Feetham N, Jones G., Protected Cell Companies: A Guide to Their Implementation and Use, 2nd ed., (London, 2008), p.293.

In India, the Income Tax Appellate Tribunal, took a decision where the Tribunal was supposed to consider the tax treatment of a Mauritian PCC[87]. Under this case the taxpayer was a Mauritian investment company, divided under Mauritian legislation into four protected cells, each of which engaged in share dealing in India. The company filed four tax returns in respect of the four cells. The returns were filed simultaneously with the same assessing officer by the date required. Subsequently the company realized that it should file a single return and filed a return which consolidate the four cell returns, coming to the same total figures and claiming losses and exemptions. The assessing officer declared the cell returns invalid, refused to accept the late consolidated return and disallowed the claims. The taxpayer appealed arguing that it was entitled to the benefit of the Income Tax Act which provided that errors did not invalidate a return provided the substance and purpose of the Act was complied with[88].

The issue in the case was whether the obligation to file the tax return had been satisfied if each cell of a Mauritian PCC submitted a separate return, or whether the PCC had to file a single consolidated return. The conclusion of the Tribunal was that the separate returns disclosed the required information, satisfied the statutory obligation. Hence, the Indian tax authorities considered the legal status of a PCC and argued that (1) persons could file the tax return.

A company was one of the persons mentioned in the section, which has to file the return. (2) The cells could not be considered to be a company and therefore these cells could neither file the returns independently, nor could returns filed by them be revised by applicable statute. It was also added that (3) since the loss was incurred by the assessee company, the return could be filed only by the assessee company. (4) Consequently, four returns filed by these cells could not be considered as valid. It was then argued that the PCC had mistakenly

[87] Nicholas Applegate South East Asia Fund Ltd V Assistant Director of Income Tax 11 I.T.L. Rep. 630
[88] section 292 B of the Income Tax Act 1961 of India

argued that its four cells had separate legal existence while they did not[89].Then the Tribunal held that this was a very narrow view of statutory provisions.

There was a proposed guidance that would treat a cell of a PCC as a separate entity for tax purposes if:

(a) “The assets and liabilities of the cell are segregated from the assets and liabilities of any other cell and from the assets and liabilities of the protected cell company such that no creditor of any other cell or of the protected cell company may look to the assets of the cell for the satisfaction of any liabilities, including insurance claims, and

(b) Based on all the facts and circumstances, the arrangements and other activities of the cell, if conducted by a corporation, would result in its being classified as an insurance company[90].

According to Jersey jurisdiction, one significant consequence of the difference between protected cell companies and other types of companies lies to the regulatory and tax treatment that is afforded to each structure in Jersey. In the case of PCC, a single regulatory consent is issued to the PCC itself in respect of all of cells it creates, thus as new cells are added or existing cells amended or removed, the regulatory consent will be amended. Hence, a single tax return is filed in respect of the entire PCC structure[91].

In addition, a PCC's Guernsey tax treatment is meant to show that the PCC is a single entity while shielding investors and creditors in a single cell from taxes on profits from other cells. The PCC as a whole can choose to be tax exempt if it is eligible, and the fee that must be paid is not affected by the number of cells that make up the company. The PCC will see a single tax assessment increase. Nonetheless, the responsibility will be allotted between the various cells and the center as per their privilege to profit[92].

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[89] art. 51 of law no 016/2018 of 13/04/2018 establishing taxes on income; which provides the corporate income taxation, where it describes how and to what extent the corporate income is taxable.
[90] Feetham N. & Jones G., Protected Cell Companies: A Guide to Their Implementation and Use (2d ed. Spiramus Press 2010). pp.297.
[91] Anon, “Jersey cell companies” https://www.careyolsen.com/briefings/jersey-cell-companies accessed on 10/5/2023
[92]C. Olsen, “Protected cell companies” https://www.careyolsen.com/briefings/protected-cell-companies-in-guernsey , accessed on 17/6/2023

Against this foundation, regarding every cell as a different substance seems reasonable and jam the uprightness of the cell structure and furthermore has the advantage of facilitating the duty organization. The methodology appears to be steady with the well-established IRS treatment[93] of series trusts by which every series in a series trust is treated as a different and particular element. Tax collection treatment of PCC is a tough spot under various locales where this specific construction was consolidated, taking into account the idea of this type of an organization. To this end some locale like UK, have embraced an approach to regarding cells as isolated element for the motivations behind tax collection, and then again, a few different wards decide to consider the center; Since the PCC itself is regarded as a legal entity, tax laws stipulate that only legal individuals must pay taxes.

3.3. Contracting with third parties under protected cell company's framework

The capacity to contract is one of the general requirements for forming a contract [94]. In such manner, a party will not be limited by an agreement on the off chance that that party doesn't have legitimate ability to contract[95]. In addition to binding the natural person, this condition must also be observed by the moral person. An incorporated company has full capacity and rights to engage in any business or activity, perform any act, or enter into any transaction, both inside and outside of Rwanda, subject to the provisions of this law or any other special law, and has full rights, powers, and privileges to do so.

According to article 24 of the same law, a company incorporated under this law has its own legal personality distinct from that of its shareholders, which results in these privileges. It likewise adds that an organization consolidated under the very regulation is a body corporate and a legitimate element in its own freedoms and commitments separate from its investors or individuals[96].

[93] Feetham N. & Jones G., Protected Cell Companies: A Guide to Their Implementation and Use (2d ed. Spiramus Press 2010). pp.296-297.
[94] art. 26 of law N°45/2011 OF 25/11/2011 governing contract in Rwanda.
[95] art. 24 law N°45/2011 OF 25/11/2011governing contract in Rwanda.
[96] art. 24 law N°45/2011 OF 25/11/2011 governing contract in Rwanda.

Additionally, various doctrines define contractual capacity as a company's legal ability to engage in an agreement with another party and be held liable to the terms of the contract. It is known that a company has a separate legal personality and is therefore capable of entering into contracts with other parties for consideration. A distinctive characteristic of corporate status is that the legal rights and obligations of a registered company are entirely separate from the duties and entitlements of its owners. The general rule relating to the capacity of a company is that a company registered under the acts is an artificial legal entity separate and distinct from the members of which it is composed[97].

Despite a company's contractual capacity, the PCC Structure's principle differs from that of the corporate legal framework. This design implies, as seen previously, that it is a solitary lawful element which is made out of the center and a few cells made by safeguarded cell organization. Consequently these cells don't have legitimate presence be that as it may, they own their resources and liabilities autonomous from one another and from the center, and in the event of any case they will look by their own; hence, this brings an issue connecting with limit of cells for playing out any movement by their own while they fall under an organization with lawful character. The contractual capacity established by contract laws and even company law conflicts with the independence of protected cell company cells granted by company law.

Under the jersey jurisdiction, the law is designed to ensure that third parties dealing with a PCC are put on notice of this fact. This includes requiring references be made to the PCC structure in the name, memorandum of incorporation, cell name and also notification to any party it transacts with. Thus the board ensures that it identifies to a counterparty that it is acting on behalf of a PCC, and identifies the cell in respect of which the PCC is transacting. Some theories suggest that the language that should be usually used is "X PCC acting for and on behalf of Y cell"[98].

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[97] Anon, "a company and its contractual capacity" https://www.lawyersnjurists.com/article/a-company-and-its-contractual-capacity/ accessed 15/6/2023

[98] Anon, "What is a protected cell company" https://www.corlettbolton.com/assets/Uploads/What-is-a-Protected-Cell-Company.pdf, accessed 10/7/2023

Every cell can go into isolated agreements with outsiders as any lawful element. In reality, while managing outsiders, the heads of a PCC need to guarantee that the outsider knows or should sensibly to realize that the PCC is acting in regard of a specific cell, and assuming they neglect to do so they will be at fault for an offense, but this won't influence the legitimacy of the exchange with the outsider. From now on, except if gave in any case under the constitution, banks of a specific cell of a PCC just have a right of response to the resources of that cell, and non-cell lenders of the PCC just have a right of plan of action to the PCC's non-cell resources[99].

In the same jurisdiction, company law states that a creditor is obligated to compensate a PCC for the benefit it receives from making available any PCC assets that are not the relevant cell's assets to satisfy its claim. If a creditor is successful in seizing, attaching, or otherwise levying execution against any of these assets, it will hold them in trust for the PCC and be obligated to either pay for them or return them to the PCC upon request. A PCC's cells can contract with other cells in the PCC or with the PCC itself to accomplish this[100].

[99] See art. 127 YU of the Companies (Amendment No. 8) (Jersey) Law 2005
[100] Ibidem

CHAPTER IV: INSOLVENCY PROCEDURE UNDER THE PROTECTED CELL COMPANIES STRUCTURE IN RWANDA VIS A VIS OTHER JURISDICTIONS.

Insolvency is defined as the state of being unable to pay debts as they fall due or having liabilities greater than assets. In Protected Cell Companies, insolvency can affect the overall entity or a specific cell. General insolvency in Protected Cell Companies can occur when the PCCs fail the solvency test. This means that the company as a whole becomes insolvent and is unable to meet its obligations as they fall due, rendering it unable to pay creditors[101]. Insolvency in a cell can occur when a specific cell becomes insolvent, leaving the other cells unaffected. law governing companies in Rwanda, stipulates that where a liability of a protected cell company to a person arises from a transaction or is otherwise imposed, in respect of a particular cell; that liability of the company is extended only to the following[102]:

- The cellular assets attributable to that cell which is primarily liable,
- Subject to an express recourse agreement so providing, to the extent that the cellular assets attributable to that cell may be insufficient, the company's non-cellular assets, which are secondarily liable,

4.1 Insolvency Regulations in Rwanda

The recently published law n° 019/2023 of 30/03/2023 amending law n°007/2021 of 05/02/2021 governing companies in Rwanda, doesn’t provide the insolvency procedures in regard to protected cell companies as a special type of company; neither the law n° 007/2021 of 05/02/2021 governing companies Rwandan corporate legal framework provides that Nevertheless, the existence of law n° 23/2018 of 29/04/2018 relating to insolvency and bankruptcy provides a glance provides for the general application of insolvency proceedings. However, this law doesn’t demonstrate the insolvency of the PCC.

[101] Article 2 (35°), law n° 007/2021 of 05/02/2021 governing companies *O.G.* n° 04 ter of 08/02/2021
[102] Article 218 par 1 , law n° 007/2021 of 05/02/2021 governing companies *O.G.* n° 04 ter of 08/02/2021

Certainly, it would be a problem in case a cell or a core becomes insolvent. the Rwandan law is silent on this issue if a core can be wound up while the cells are still in existence hence they are dependent on it.

The lack of specific legislation regarding the insolvency of PCCs in Rwanda leaves a significant gap in the legal framework governing these structures. The insolvency of PCCs in Rwanda would require an innovative approach that considers the cell structure's unique features. Therefore, PCCs' insolvency in Rwanda would benefit from specific legislation prescribing the applicable rules for resolving the insolvency of such structures.

Some other foreign PCC Acts and legislations have provided that the general insolvency provisions under the Company's Laws apply equally to PCCs. For example, Guernsey has some of the most sophisticated PCC-specific insolvency frameworks that take into account the separate cell structure within PCCs. According to section 62 (1) of the Guernsey Companies (Protected Cell Companies) Regulations 1998, where an individual cell becomes insolvent, the liquidator's role is to manage that cell's winding-up process without interfering with the other cells' operations or property. The regulations also provide for the establishment of the Determination of Disputed Claims Tribunal (DDCT) which oversees the adjudication of claims from creditors and other parties in any given PCC insolvency case[103].

Similarly, Bermuda has specific protection for PCC creditors in the event of insolvency. The protected cell provisions in Bermuda's Segregated Accounts Companies Act 2000 protect secure creditors of a cell from other creditors of the company or other cells in the same company. In the event of insolvency, a cell is liquidated independently of the other cells' liquidation process.

[103] Section 62 (1) of the Guernsey Companies (Protected Cell Companies) Regulations 1998

The Cayman Islands have also developed specific legislation and court precedents to deal with the insolvency of PCCs. The Companies (Winding Up) Rules provide for separate compulsory liquidation procedures for each cell within a PCC. In re Toisa Limited (in Official Liquidation) [2020] (CICA), the Cayman Islands Court of Appeal confirmed the benefits of using PCC structures as they limit the insolvency exposure to assets held within the respective cells.

It is important to note that case laws specific to PCCs may be limited due to the relatively recent development of this corporate structure. However, these laws outline the legal framework for the operation and protection of PCCs in their respective jurisdictions.

4.1.1 Insolvency of cells

The Law N° 23/2018 of 29/04/2018 relating to insolvency and bankruptcy states that business insolvency proceedings commence when the debtor;

- Is unable to pay the debts when they are due; or
- Is over-indebted and is not in a position to pay the debts by the due date[104].

Since each cell of the PCC is not a separate company it cannot be independently wound up. Consequently, there are two other insolvency procedures applicable to cells of a PCC[105]:

- **Administration:** administration is available to non-cellular companies, PCCs, cells of PCCs, ICCs and incorporated cells. This process is only available if the company or cell is insolvent and the court considers that the making of an administration order may achieve the survival of the company or cell or the more advantageous realization of its assets.

[104] art. 7 of Law n° 23/2018 of 29/04/2018 relating to insolvency and bankruptcy, in O.G. nº Special bis of 29/04/2018.
[105] Carely O, ''Cell companies in Guernsey" https://www.careyolsen.com/briefings/cell-companies-in-guernsey , accessed on 1/7/2023

- **Receivership:** receivership is only available to cells of a PCC and only where the assets of the cell are likely to be insufficient to discharge the claims of creditors of the cell and the making of a receivership order by the court will result in the more orderly winding-up of the business of the cell and the making of a distribution of its assets to those entitled to have recourse thereto.

Notably, both of these processes are only available where the body in question is or is likely to become insolvent. A solvent cell or other entity cannot avail itself of those processes. It is for this reason that most cells of a PCC issue redeemable shares so that, upon the conclusion of the business written by the cell, the affairs of the (solvent) cell can be wound up through the redemption or repurchase of the issued redeemable shares[106].

If any cell of a PCC is unable to pay its debts, technically the PCC as a whole is unable to pay its debts because the PCC is a single legal entity and a creditor of that cell could apply to wind up the entire PCC. However, on any application to the Guernsey court to wind up a PCC on the basis that one of its cells is unable to pay its debts the Guernsey court would be expected to refuse to order the winding up of the PCC as a whole in recognition of the nature of a PCC. Nonetheless, it is common for contractual documentation relating to PCCs to provide that in the event that the assets of a particular cell become exhausted any rights of the creditors against that cell are extinguished and any right of that creditor to petition for the winding up of the PCC is excluded[107].

The end result is an insolvent PCC with solvent cells and no clear guidance as to how the solvent cells can be placed within a solvent framework. Some jurisdictions allow the court to appoint an administrator and this will be tasked with establishing a new structure within which the solvent cells can operate.

[106] ibid

[107] Supranote 103

However, it is argued that the procedure is complex, costly and uncertain. The Jersey legislation minimizes the risk of the cell company becoming insolvent by providing that creditors of a cell are only entitled to have their debt met from the assets of that cell. There is no right recourse to the protected cell company's non-cellular assets, which are, in any event, unlikely to be sufficient to meaningfully satisfy any creditor. Individual cells can be made insolvent in the same manner as individual companies, but this will not affect the position of solvent cells or of the protected cell company itself[108].

Additionally, the Jersey legislation takes further steps to minimize the risk that the protected cell company itself is left with unintended obligations. However, in the case of PCCs, the position is not so clear. This is because the PCC itself will hold assets in respect of the cells it creates and will enter into contracts in respect of individual cells. It is therefore incumbent upon the directors of a PCC to ensure that the assets of individual cells are identified as such and kept segregated from each other at all times.

When the company enters into a contract in respect of a cell it is important that the other party knows that this is the case and is recorded in the company's minutes. A director who fails in this regard will be guilty of an offence. However, even if the fact that the PCC is acting on behalf of an individual cell is not disclosed, the creditor will still only be able to bring an action against the undisclosed cell in respect of which the company was acting.

The reason for this, is simply that the company itself is almost certain to have significantly less assets than the cell, and so here is little benefit in allowing the PCC to be made bankrupt as a result of a failure of thee directors to disclose that they were representing a particular cell[109].

[108] Anon, "Jersey cell companies" https://www.careyolsen.com/briefings/jersey-cell-companies ,accessed on 29/6/2023
[109] ibid

- **Recourse agreement**: A recourse agreement is a written agreement between a PCC and a creditor which provides that "protected assets" may be subject to a liability owed to a creditor. Prior to entering into a recourse agreement, each director of the PCC who authorized entry into the recourse agreement must make a declaration that he believes on reasonable grounds that no creditor of the PCC will be unfairly prejudiced by the agreement. Where the assets in question are either cell or core-protected assets, the declaration must also state that a resolution has been passed by the core members or the members of the relevant cell (as appropriate) approving the recourse agreement, unless the Memorandum and Articles of Incorporation provide otherwise[110].

Under Rwandan law, a recourse agreement is a written agreement in relation to a cell of a protected cell company entered into between a protected cell company and a third party which provides that, pursuant to an arrangement effected by the protected cell company, core assets or assets of another cell may, notwithstanding the other provisions of this law, be subject to a liability owed to that third party.

The law further provides the conditions followed before entering into a recourse agreement, that each director of the protected cell company who authorizes it must make a declaration that he believes, on reasonable grounds; that no creditor of the company will be unfairly prejudiced by the recourse agreement; and that where shareholders of the company have passed a resolution approving the recourse agreement unless otherwise provided for by the memorandum or the articles of association[111].

[110] O.Carey, Protected Cell Companies in Guernsey , https://www.careyolsen.com/sites/default/files/CO_GSY_IL_Protected%20Cell%20Companies%20in%20Guernsey_12.18_0.pdf#:~:text=recourse%20agreement%20is%20a%20written%20agreement%20between%20a,subject%20to%20a%20liability%20owed%20to%20a%20creditor, accessed on 20/6/2023

[111] Idem

4.2. Liability of cellular assets under the PCC framework

In the absence of a recourse agreement, creditors of a cell of a PCC only have recourse against the cellular assets attributable to that cell and those cellular assets are "absolutely protected" from the creditors of the company who are not creditors in respect of that cell. The law governing companies in Rwanda does also provide that unless the company agreed that a liability is a liability solely of the company's non-cellular assets, where any liability which is attributable to a particular cell; the cellular assets attributable to that cell are primarily liable; the assets of the core is secondarily liable where an express recourse agreement so provides. Then, it is stated that the liability is not a liability of any cellular assets not attributable to the relevant cell[112].

The same provision brings up an exception that in case of loss or damage which is attributable to a particular cell of a protected cell company and which is caused by fraud, the loss or damage is the liability solely of the assets of the core, provided that the fraud referred to in this paragraph does not include the fraud of any person making a claim against the cell, his or servants, employees, officers or agents. On the other hand, it is also provided that any liability not attributable to a particular cell of a protected cell company is the liability solely of the core assets. Unless the terms of a recourse agreement provide otherwise, the liabilities of the cellular assets cannot surpass the total value of the assets of the concerned cell.

Similarly, the liabilities of the assets of the core cannot surpass the total value of its assets; however, this does not apply in case any of the liabilities of the core assets arise from fraud or by reason of a recourse agreement between the core and its cell[113].

In a nutshell, each cell is considered as a separate legal entity from each other, liabilities of one cell cannot affect the assets of another cell. Creditors of one cell cannot seek reimbursement from the core cell company or any of the other cells.

[112] art. 219 of law governing companies of 2021.
[113] Ibid

4.2.1 Liabilities of PCC which has foreign cells

The Rwandan law N° 007/2021 OF 05/02/2021 governing companies has huge lacune on matter concerning the protected cell companies which have cells in other jurisdictions. Hence This is a special statutory provision for judicial assistance by UK courts for other parts of the UK, offshore islands and certain colonies and Commonwealth countries. Bermuda, Cayman Islands, Gibraltar and Guernsey are all included[114].

The exact extra-territorial effect of PCC legislation is unclear and in many ways this is a 'frontier' question. Obviously, a foreign jurisdiction will not regard the legislation of as applying in a direct way in its territory: eg *Banque Indosuez v Ferromet [1993] BCLC 112*, where it was stated that the statutory provisions of US Chapter 11 proceedings had no direct application in England. However, much is now being done on the fronts of EU legislation and statutory and non-statutory judicial assistance for foreign insolvency proceedings.

Section 14 of the Insolvency Act 2000 (UK) enables delegated legislation to be made to give effect, with or without modifications, to the UNCITRAL Model Law on cross-border insolvency[115]. It is not known when such legislation will be passed. For example, in the case *Banque Indosuez v Ferromet [1993] BCLC 112* it was said that the English courts would assist US Chapter 11 reorganisation proceedings, even in the absence of any insolvency proceedings in England. Both Bermuda and the Cayman Islands, each with PCC legislation, were recently involved in a massive global reorganisation of ICO Holdings companies, one of which was incorporated in Bermuda and the other in the Cayman Islands. The judges of the Delaware Bankruptcy Court and the Bermuda and Cayman courts successfully co-ordinated this complex rescue, involving close judicial co-operation across all three jurisdictions. An application objecting to this co-operation was soundly rejected in Bermuda[116].

The significance of this distinction is that English law will sometimes accept the effect of a foreign law if it goes to the 'substance' of some issue but not if it goes to 'procedure', since procedure is always a question for the court hearing a matter.

[114] Moss, G. Protected cell companies — Legal issues1. Pensions Int J 7, 14–22 (2001). Page 15
[115] Fletcher, 'Making a Better World', (1999) 12 Insolvency Intelligence, page 20–22
[116] Re ICO Global Communications (Holdings) Ltd (Unrep., Ward C.J., 10th November 1999).

Thus, for example, if the Utopian PCC legislation simply provides that creditors whose debts relate to cell: 1 shall have no remedy against cells 2-n, English law might well see that as a procedural direction to the Utopian courts rather than a provision of substantive Utopian law[117].

In the case *Melan v The Duke de Fitzjames (1797) 1 Bos & Pul 142*, the Duke entered into a document governed by French law under which he made a promise of payment and under which he mortgaged his property. Uncontested evidence of French law was given to the court that there was no personal liability on the Duke under this document and that it only bound the mortgaged property for repayment of the debt. The uncontested evidence was accepted by the English court and, as a result, it held that the Duke was not liable for imprisonment as a debtor in England. Had there been a personal debt, English law at that time would have made him liable to be imprisoned in relation to the debt. Heath J distinguished between the substantive provisions of the contract as interpreted under French law on the one hand, and the remedies available in the respective courts of France and England on the other[118]. He held that one would look to French law as governing the contract to see what the nature of the obligation was, but that one would look to the court where the proceedings were taking place to see what the means of enforcement of the contract were.

More recently, in *England v Smith [2000] 2 WLR 1141 (CA),* the Court of Appeal applied South Australian case-law which allowed an examination on oath of a witness in insolvency proceedings in the middle of massive Australian litigation on the same subject matter, in which the witness was alleged to be a defendant. The English case-law regarded such an examination as being oppressive, but the Court of Appeal allowed the examination to take place in England under South Australian law with the safeguards applied in that jurisdiction.

[117] Moss, G. Protected cell companies — Legal issues1. Pensions Int J 7, 14–22 (2001). Page 17-18
[118] Supranote 117

From the above case If a creditor's debt is governed by Utopian law, and if the legislation is drafted in such a way that it is accepted courts would ever accept a limit or restriction to the liability of a foreign corporate entity, in view of the Frankenstein-like possibilities that that would open up. Thus the legislation, while recognising that there is only one legal person, will legislate the effect of the contract between the parties by providing for the matching of cell assets and liabilities, and restricting creditor enforcement to the 'appropriate' cell assets. The aim of PCC legislation is to reinforce the usual types of contractual provision and give the cellular concepts statutory force, so as to avoid the limitations of a purely contractual approach.

4.3. Protected cell companies and their creditors

In the event of any cellular assets attributable to a cell of a protected cell company or to the core being taken in execution in respect of liability not attributable to that cell or to the core, as the case may be, and insofar as such assets or compensation in respect thereof cannot otherwise be restored to the cell affected or core, as the case may be the company; causes its auditor to certify the value of the assets lost to the cell affected or core, as the case maybe; and transfers or pays, from the cellular or non-cellular assets to which the liability was attributable to the cell or core, as the case may be, affected by the value of the assets lost[119].

4.3.1. The rights of creditors of PCC under Rwandan law

The rights of creditors of PCC in Rwanda correspond with the liabilities provided under the very law governing companies, as illustrated above. Under Rwandan law, it is mentioned that unless where is expressly provided in writing, there is implied that in every transaction entered into by a protected cell company the following terms that;

> "*….no party shall seek, whether in any proceedings or by any other means whatsoever or wherever to make or attempt to make liable any cellular assets attributable to any cell of the company in respect of liability not attributable to that cell; and even that if any party shall succeed by any means whatsoever or wherever in making liable any cellular assets attributable to any cell of the company in respect of liability not*

[119] art. 221 of law governing companies of 2021.

attributable to that cell, that party is liable to the company to pay a sum equal to the value of the benefit thereby, obtained by him. Lastly, if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any cellular assets attributable to any cell of the company in respect of liability not attributable to that cell, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property[120]."

Additionally, it described on how the recourse to cellular assets by creditors is made. Subject to the above provisions, the cellular assets are only available to the creditors of the company who are creditors, in respect of that cell and who shall thereby be entitled, in conformity with the provisions of this law, to have recourse to the cellular assets attributable to that cell. They are also, subject to the terms of a recourse agreement, absolutely protected from the creditors of the company who are not creditors of the company who are creditors in respect of that cell and who accordingly shall not be entitled to have recourse to the cellular assets attributable to that cell[121].

The law provides the duty of information in the course of protection of creditors whereby it obliges a protected cell company to inform any person with whom it transacts that it is a protected cell company; and for the purposes of that transaction, identify or specify the cell or cells, or the core, as the case may be, in respect of which that person is transacting. In view of the foregoing, failure to disclose such information and there would not be established that the concerned person has got the information, notwithstanding any provision to the contrary in the company's articles, or in any contract with the company, the core is liable to any inconvenience caused by non-provision of such information. However, after compensation of the core for the inconvenience caused by the lack of this information, it may take legal action against directors where it is established that failure to provide such information was a result of their recklessness, carelessness, or deceitfulness[122].

[120] Art. 221 of law governing companies of 2021.
[121] art. 222 of law governing companies of 2021.
[122] art. 225 of law governing companies of 2021.

CHAPTER V. BEST PRACTICES OF PROTECTED CELL COMPANIES TO BE LEARNT FROM DIFFERENT JURISDICTIONS

Rwandan laws don't provide enough on how insolvency should be carried out with Protected Cell Companies. The lack of specific legislation regarding the insolvency of PCCs in Rwanda leaves a significant gap in the legal framework governing these structures. The insolvency of PCCs in Rwanda would require an innovative approach that considers the cell structure's unique features. This chapter will enshrine more light on the practices done to insolvent PCC in different Jurisdictions.

5.1. Protected Cell Company in Gibraltar

Contrary to the Rwandan context, the protected cell company in Gibraltar is provided in a separate act of 2001[123]. Apart from the commencement and definitions of some concepts, this act consists of four main parts; namely formation and attributes of PCC, receivership orders in relation to cells, and administration orders in relation to PCC or cells. These parts are subdivided into several parts and various articles among which some are similar to Rwandan ones, however, we find other new items in this act as it provides more elaboration than Rwandan law. The law of Gibraltar provides that a company may be; incorporated as a protected cell company; or converted, if so authorized by its articles, into a protected cell company. It also states that a protected cell company is a single legal person; and the creation by a protected cell company of a cell does not create, in respect of that cell, a legal person separate from the company[124]. Hence, a protected cell company may create one or more cells for the purpose of segregating and protecting cellular assets in the manner provided by this act[125].

[123] Jones G., "Protected cell companies ("PPCs"): a limited liability too far?" Nottingham University, 2009 online at https://gmjones.org/pdfs/NottinghamUniversityPCCSeminar.pdf , accessed on 11/7/2023
[124] art. 3 of Gibraltarian Protected cell companies Act 2001
[125] art. 4 of Gibraltarian Protected cell companies Act 2001

The assets of a protected cell company, like Rwandan law provides, shall be either cellular assets or non-cellular assets. The Directors are obliged to keep cellular assets separate and separately identifiable from non-cellular assets, and to keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells[126].

5.1.1. Position of creditors and Liability of cellular assets

It is provided that the rights of creditors of a protected cell company shall correspond with the liabilities provided under this act. This therefore implies that there in every transaction entered into by a protected cell company;

"*.... that no party shall seek, whether in any proceedings or by any other means whatsoever or wherever, to make or attempt to use any cellular assets attributable to any cell of the company to satisfy a liability not attributable to that cell; (b) that if any party succeeds by any means whatsoever or wherever in using any cellular assets attributable to any cell of the company to satisfy a liability not attributable to that cell, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him; and (c) that if any party succeeds in seizing or attaching by any means or otherwise levying execution against any cellular assets attributable to any cell of the company to satisfy a liability not attributable to that cell, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property*[127]."

[126] art. 6 of Gibraltarian Protected cell companies Act 2001
[127] art. 6 of Gibraltarian Protected cell companies Act 2001

Subject to other provisions under this act, and save to the extent that the company may have agreed that a liability shall be the liability solely of the company's non-cellular assets, or of the cellular assets attributable to a particular cell of the company, where any liability arises which is attributable to a particular cell of a protected cell company; the cellular assets attributable to that cell shall be primarily used to satisfy the liability; the company's non-cellular assets shall be secondarily used to satisfy the liability, provided that the cellular assets attributable to the relevant cell have been exhausted; and any cellular assets not attributable to the relevant cell shall not be used to satisfy the liability.

Moreover, in the case of loss or damage which is attributable to a particular cell of a protected cell company and which is caused by fraud, the loss or damage shall be the liability solely of the company's non-cellular assets, without prejudice to any liability of any person other than the company. Thus, any liability not attributable to a particular cell of a protected cell company shall be the liability solely of the company's non-cellular assets[128].

5.1.2. Disputes as to liability attributable to cells

This section was not recalled under Rwandan law; hence it is more significant. In Gibraltar, the act provides that in the event of any dispute as to whether any right is or is not in respect of a particular cell; whether any creditor is or is not a creditor in respect of a particular cell; whether any liability is or is not attributable to a particular cell; or the amount to which any liability is limited; the Court may, on the application of the protected cell company, and without prejudice to any other right or remedy of any person, may issue a declaration in respect of the matter in dispute[129].

[128] See art. 13 of Gibraltarian protected cell companies Act 2001
[129] See art. 14 of Gibraltarian protected cell companies Act 2001

- **Receivership orders in relation to cells**

This section that is provided under the Gibraltarian act is not found in Rwandan Companies law. Under this act, it is provided that if the court is satisfied that the cellular assets attributable to a particular cell of the company are or are likely to be sufficient to discharge the claims of creditors in respect of that cell. Or when the court is satisfied that the making of an administration order under section 24[130] in respect of that cell would not be appropriate; and that the making of an order under this section would achieve the purposes set out in subsection (3)[131] then the court may make an order under this section (a receivership order) in respect of that cell[132].

- **Administration orders in relation to PCC or cells**

This is another section that is provided under Gibraltarian legislation, but not in Rwanda. It stipulates that if the court is satisfied that the cellular assets attributable to a particular cell of the company are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; or in case the company's cellular assets and non-cellular assets are or are likely to be insufficient to discharge the liabilities of the company; and the court considers that the making of an order under this section may achieve one of the purposes set out in subsection (4), the court may make an order (administration order) under this section in respect of that cell or in respect of that company[133].

[130] See art. 24 of Gibraltarian protected cell companies Act 2001
[131] A receivership order is an order directing that the business and cellular assets of or attributable to a cell shall be managed by a person specified in the order ("the receiver") for the purposes of (a) the orderly winding up of the business of or attributable to the cell; and (b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.
[132] See art. 19 of Gibraltarian protected cell companies Act 2001
[133] See art. 24 of Gibraltarian protected cell companies Act 2001

5.2 Insolvency of a protected cell company in Mauritius

In Mauritius, A PCC is a suitable vehicle for investment funds, insurance business and asset holding. For example, an investment fund can comprise different cells to invest in different countries or different sectors such as pharmaceuticals, IT, Energy and Power sector, or captive insurance. PCC may prove beneficial for a single investment entity to have several investment portfolios, each portfolio having its own investment strategy and risk profile. In brief, the key interesting feature of a PCC is that the liability of each cell should not impact any other cell of the PCC entity[134].

- **Administration order**

Administration orders act as a rescue mechanism for an insolvent PCC, or its cells. It also allows them to continue their operations and doing business despite the fact that they are insolvent. An administration order is a better option in the realization of the business and assets of the PCC, or a particular cell, than receivership or liquidation[135].

The parties that can make an application for an administration order are the directors, shareholders, creditors, the FSC, the Registrar of Companies of Mauritius, shareholders, or creditors of any cell of the Protected Cell Company.

In general, if the assets of a cell are not sufficient to settle the liabilities (of that cell), the Court may have to issue an administration order. In the same way, the Court can issue such an order if the cellular and non-cellular assets are insufficient to honor the liabilities of the PCC (as a single legal entity). Assets pertaining to a particular cell of a PCC are accessible to the creditors of that cell only[136].

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[134] V. Seesunkur Protected Cell Companies: "https://www.ykjlegal.com/data/uploads/pdf/ykjlegal-pcc.pdf" accessed 4/7/2023

[135] Art 20 of Mauritius PROTECTED CELL COMPANIES ACT. Act 37 of 1999 – 1 January 2000

[136] Ibid

- **Receivership order in relation to a cell**

The cellular assets attributable to a particular cell, when the account is taken of the company's non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets, are, or are likely to be, insufficient to discharge the claims of creditors in respect of that cell[137].

In case an administration order is not appropriate, the same parties can ask for the issue of a receivership order to any cell. If the assets of a cell are not sufficient to settle its liabilities, and for the proper winding up of the activity of the cell, the court orders that a receiver manages the business and assets of that cell. The receiver is granted to take all actions he deems necessary for the purpose of the receivership. Subsequent to the winding up of a cell, the receiver will distribute its assets to the creditors or the persons who are entitled to have recourse to such assets[138].

- **Liquidation**

In the liquidation of a PCC, the liquidator's responsibility is to keep: Cellular assets distinctly and easily identifiable from non-cellular assets, and Cellular assets independently and easily identifiable from cellular assets attributable to other cells. In other words, in the discharge of the claims of creditors of the company, shall apply the company's assets to those entitled to have recourse in conformity with the Act.

The Insolvency Act 2011 and Part X of the Companies Act 2014 apply to the liquidation or voluntary liquidation of a PCC and so a PCC is wound up in very much the same way as a company subject to any modifications necessary to give effect to its attributes as a PCC. However in the event of any conflict between the provisions contained in the Insolvency Act or the Companies Act and the PCC Act, the provisions in the PCC Act are to prevail. The above applies when the whole PCC is wound up, and not to individual cell liquidations.

[137] Art 25 of Mauritius protected cell companies Act 37 of 1999 – 1 January 2000
[138] ibid

Individual cells may also be wound up. This occurs by making an application to Court for an order (called a cell liquidation order) that can be made in respect of one or more cells. An application for a cell liquidation order can be made by the company, the directors of the company, any creditor(s) of the cell, any holder of cell shares of that cell, the administrator of that cell or the Chief Executive of the FSC in respect of a licensed PCC.

During the period of operation of a cell liquidation order the functions and powers of the directors shall cease in respect of the business and cellular assets of that particular cell and the cell liquidator appointed pursuant to the order shall be deemed a director of the protected cell company in respect of the non-cellular assets of the company unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets[139].

The PCC Act specifies that the Insolvency Act 2011 applies to cell liquidations as if the cell were a company in liquidation under that Act, and that for the purposes of the cell liquidation, the cell is to be treated as if it were a separate legal person. Therefore in relation to cell liquidations, Part 6 of the Insolvency Act would be applicable, and any reference to a company therein should be construed as a reference to a cell. These provisions are to be read in conjunction with those contained in the PCC Act in relation to cell liquidations.

[139] Art 29, of Mauritius protected cell companies Act 37 of 1999 – 1 January 2000

5.3. Insolvency of protected cell companies in Jersey

In other jurisdictions, the creditors of a cell are entitled to the assets of that cell and to the non-cellular assets of the cell company: the assets of the cell company that are not attributable to any particular cell. Typically, these non-cellular assets are fairly limited in value: little more than the paid-up share capital of the PCC. The overall effect is simple and stark: if a cell becomes insolvent then, as the creditors can pursue the non-cellular assets of the PCC, it is almost certain that the PCC itself becomes insolvent[140].

The Jersey legislation minimizes the risk of the cell company becoming insolvent by providing that creditors of a cell are only entitled to have their debt met from the assets of that cell. There is no right of recourse to the cell company's non-cellular assets, which are, in any event, unlikely to be sufficient to meaningfully satisfy any creditor. Individual cells can be made insolvent in the same manner as individual companies, but this will not affect the position of solvent cells or of the cell company itself[141]. In addition, the Jersey legislation takes further steps to minimise the risk that the cell company itself is left with unintended obligations. In the case of ICCs, creditors will clearly be creditors of the individual cell or the cell company with which they contract (each having a separate legal identity).

In the case of PCCs, the position is not so clear. The PCC itself will hold assets in respect of the cells it creates and will enter into contracts in respect of individual cells. It is therefore incumbent upon the directors of a PCC to ensure that the assets of individual cells are identified as such and kept segregated from each other at all times. When the company enters into a contract in respect of a cell it is important that the other party knows that this is the case and that this is recorded in the company's minutes. A director who fails in this regard will be guilty of an offense[142].

[140]Anon, "Jersey Protected Cell Company (PCC)" https://www.offshorecompany.com/company/jersey-pcc/ [29/06/2023].
[141] Section 127 YW of Companies (amendment no 8) Jersey Law 2005.
[142] Supra 141

However, even if the fact that the PCC is acting on behalf of an individual cell is not disclosed, the creditor will still only be able to bring an action against the (undisclosed) cell in respect of which the company was acting. The reason for this is simply that the company itself is almost certain to have significantly less assets than the cell, and so here is little benefit in allowing the cell company to be made bankrupt as a result of a failure of the directors to disclose that they were representing a particular cell[143].

It has been found that PCC is a corporate structure that consists of a core (non-cellular part) and an indefinite number of cells (cellular part); whereby each cell is isolated from one another and operates separately. In this regard, it was discovered that PCC allows for the segregation of risks, as well as assets and liabilities, of individuals and/or corporate entities under a shared structure.

This therefore means that liability of the protected cell company arising from transaction attributable to one cell will affect its assets only, for instance in case of bankruptcy of a specific cell, creditors shall utilize the assets of that specific cell and not of the others with the structure to honor its liability. The end result is an insolvent PCC with solvent cells and no clear guidance as to how the solvent cells can be placed within a solvent framework. Other jurisdictions allow the court to appoint an administrator (which is not possible in Jersey), and he will be tasked with establishing a new structure within which the solvent cells can operate. This is undeniably complex, costly and uncertain.

[143] Anon, "Jersey Protected Cell Company (PCC)" https://www.offshorecompany.com/company/jersey-pcc/ [29/06/2023].

CHAPTER VI: GENERAL CONCLUSION AND RECOMMENDATIONS

A protected cell company's goal is to provide a vehicle for creating cells, which are separate parts that can be used to separate assets and liabilities. The idea of ring-fencing is essential to cell organizations. In this way, the primary guideline is that the resources of a cell ought to simply be accessible to the banks and investors of that cell. This concluding chapter consists of two subdivisions namely; the general conclusion and the recommendations as the possible way forward the author suggests to be put into consideration by relevant stakeholders, especially in Rwanda.

6.1 General conclusion

An incorporated cell of an incorporated cell company is a completely separate legal entity, with the ability to enter into arrangements or contracts and to hold assets and liabilities in its own name. The incorporated cell company is intended to act as an alternative to the PCC and, due to its conformity to normal corporate concepts, may be considered attractive in those jurisdictions which are not familiar with the concept of segregated cellular vehicles. In this regard, it was found that PCC permit the segregation of risks, along with assets and liabilities, of private or corporate entities under a shared structure. As a result, any transaction involving a protected cell company that results in liability will only affect that cell's assets. For example, in the event that a protected cell company declares bankruptcy, creditors will only be able to access the assets of that particular cell and not those of the others in order to satisfy their debts.

This study was seeking to answer the following questions :

- What is a protected cell company under the Rwandan corporate legal context?
- How the Rwandan law does defines insolvency in PCC?
- To what extent are the cells in general and their shareholders in particular protected in case of insolvency under the PCC structure in Rwanda?

The Rwandan corporate legal framework adopted the Protected cell company structure within the newly adopted law governing companies gazetted on 08/02/2021. Like other jurisdictions, this law defines protected cell company as a company in which a single legal entity consists of a core linked to several cells, each with separate assets and liabilities; from this meaning the law provides for the incorporation, continuation of protected cell company, it also stipulates that PCC must have a creation of cells and segregation of respective assets of the core and of the cells within the structure.

Protected Cell Companies are commonly used in the insurance and investment sectors to enable multiple entities or individuals to share risks while maintaining the separation and protection of their respective assets. This structure provides a level of asset protection, as the liabilities of one cell are restricted to the assets held within that specific cell. In Rwanda, a protected cell company (PCC) refers to a special type of legal entity that allows for the segregation of assets and liabilities into separate cells. Each cell operates as an independent entity, with its own distinct assets and liabilities[144].

The Rwandan law does not define insolvency in PCC in an implicit way. It states that company satisfies the solvency test when[145]: a) it is able to pay its debts as they fall due in the normal course of business. b) the realizable value of the company's assets is greater than the aggregate of the present value of its liabilities, whether contingent or otherwise. This means that when the company fails the solvency test it immediately shows that the protect cell company is insolvency. The law also determines essential aspects of its liability and recourse. Last but not least, it determines the treatment of creditors and how they are protected.

[144] Article 214, Law n° 007/2021 of 05/02/2021 governing companies, in O.G. n° 04 ter of 08/02/2021.
[145] Art 2 (35°), Law n° 007/2021 of 05/02/2021 governing companies, in O.G. n° 04 ter of 08/02/2021

The lack of a clear insolvency law of protected cells tasked me to make a legal analysis of the protected cell company on a cross country basis, so as to determine and study the foreign practice, and legal framework of protected cell companies in order to improve the Rwandan legal framework, as the law provides little information about the structure.

The extent to which the cells are in general and their shareholders in particular protected in case of insolvency under the PCC structure in Rwanda. The law provides the duty of information in the course of protection of creditors whereby it obliges a protected cell company to inform any person with whom it transacts that it is a protected cell company; and for the purposes of that transaction, identify or specify the cell or cells, or the core, as the case may be, in respect of which that person is transacting. In view of the foregoing, failure to disclose such information and there would not be established that the concerned person has got the information, notwithstanding any provision to the contrary in the company's articles, or in any contract with the company, the core is liable to any inconvenience caused by non-provision of such information.

Despite elaboration made by Rwandan company law on the protected cell company, there are some difficulties relating to the legality of activities performed by cells within their capacity and how they are treated under the corporate legal context. The insolvency of PCCs presents unique legal issues that require specialized legal attention. PCCs' structure that allows for cell-segregation of assets poses a challenge in their insolvency resolution. Rwanda's PCC regulatory framework currently lacks specific legislation.

We also note that the English courts have shown a willingness to co-operate with a foreign insolvency jurisdiction where such foreign jurisdiction is considered more appropriate than England for the purpose of dealing with outstanding questions in a winding up. In the case of *McGrath v. Riddell*, the House of Lords upheld the principle that, where a principal liquidator has been appointed in the home jurisdiction of the company or cell, UK courts should ensure that assets are remitted to such liquidator in order to be distributed under a

single system. Such approach should support the assertion that assets of cells held in the UK should be remitted to a Jersey appointed liquidator to be dealt with in accordance with the Companies Law[146].

This study covered mainly the jurisdiction of Rwanda and other jurisdictions namely Mauritius, Giblartar and Jersey. It is important to note that Once a cell company structure is in place, repeat transactions can be established in a much reduced timescale. This is particularly attractive in projects such as collective investment funds, where negotiating transaction documents can be complex and lengthy process, and where a successful initial structure will often lead to a demand for further, similar structures using the same key participants[147]. General principles of Jersey companies law as to, for example, redemption and re-purchase of shares should also apply to cells, providing the comfort of an established regime[148].

[146] C. Berell, "Cell companies: the segregation of assets and liabilities" https://www.bedellcristin.com/knowledge/briefings/cell-companies-the-segregation-of-assets-and-liabilities/ , published on 22/7/2021
[147] Hayder K S, et al, "A Review of a Basic Concept of Cellular Manufacturing" *International Journal of Design and Manufacturing Technology*, (2017), pp. 30–37. Accessed at http://www.iaeme.com/IJDMT/issues.asp?JType=IJDMT&VType=8&IType=1 [04/07/2023].
[148] Supranote 140

6.2 Recommendations

The below mentioned recommendations are made to academics and researchers in the field of corporate law and finance:

- Experts in corporate law and finance can provide valuable insights into the governance and legal framework surrounding protected cell companies and their insolvency. Insolvency practitioners and professionals.

- Regulatory authorities responsible for overseeing protected cell companies can provide insights into the existing regulations and guidelines governing their insolvency (the parliament of Rwanda, the Rwanda development boards, Rwanda Law Reform Commission, as well as any other institution that is in charge of the corporate governance). This because, they contribute to a holistic understanding of the insolvency issues specific to protected cell companies. Their expertise and perspectives will aid in identifying and addressing gaps in the existing framework and promote the development of robust and effective insolvency procedures for protected cell companies.

Ultimately, the protected cell company, as a single legal entity consisting of a core linked to several cells with separate assets and liabilities; was expected to help investors in one cell to be protected from the risks and liabilities of other cells. This new type of company in Rwanda was adopted to attract new investments to the country, it also enables the legal environment for best practices in corporate governance and business structures. In the light of the above findings, it is noted that protected cell company structure also known as a segregated portfolio company, allows for more security and flexibility for international investment structuring. This offers more options to investors in terms of the entities that they can form in Rwanda, and this will surely make the country an attractive place for business.

Despite the opportunities brought by the new corporate form; the researcher has addressed challenges found in the law; whereby some issues were not tackled by the law, so that it leaves some gaps its applicability. For example the process that applies when the protected cell company becomes insolvency.

The insolvency of PCCs in Rwanda would require an innovative approach that considers the cell structure's unique features. Therefore, PCCs' insolvency in Rwanda would benefit from specific legislation prescribing the applicable rules in resolving the insolvency of such structures. Such legislation may borrow from established PCC structures in other jurisdictions such as Guernsey, Bermuda, and Cayman Islands, among others. The Organisation for Economic Co-operation and Development (OECD) has developed a set of best practices for insolvency resolution that are targeted towards countries globally.

The United Nations Commission on International Trade Law (UNCITRAL) has similarly proposed the Model Law on Cross-Border Insolvency that outlines a framework for international cooperation in resolving cross-border insolvency cases. In addition, several countries have enacted cross-border insolvency laws, which include the ENACT (European Union Cross-Border Insolvency Regulations) and Chapter 15 of the United States Bankruptcy Code.

For example, The Jersey legislation minimises the risk of the cell company becoming insolvent by providing that creditors of a cell are only entitled to have their debt met from the assets of that cell. There is no right of recourse to the cell company's non-cellular assets, which are, in any event, unlikely to be sufficient to meaningfully satisfy any creditor. Individual cells can be made insolvent in the same manner as individual companies, but this will not affect the position of solvent cells or of the cell company itself[149].

[149] O.Carey, Protected Cell Companies in Guernsey , https://www.careyolsen.com/sites/default/files/CO_GSY_IL_Protected%20Cell%20Companies%20in%20Guernsey_12.18_0.pdf#:~:text=recourse%20agreement%20is%20a%20written%20agreement%20between%20a,subject%20to%20a%20liability%20owed%20to%20a%20creditor, accessed on 20/7/2023

In addition, the Jersey legislation takes further steps to minimise the risk that the cell company itself is left with unintended obligations. In the case of ICCs, creditors will clearly be creditors of the individual cell or the cell company with which they contract (each having separate legal identity).

Guernsey has some of the most sophisticated PCC-specific insolvency systems that consider the different cell structure inside PCCs. When a single cell becomes insolvent, the liquidator's job is to manage that cell's winding-up process in accordance with section 62 (1) of the Guernsey Companies (Protected Cell Companies) Regulations 1998 without interfering with the operations or property of the other cells. The Determination of Disputed Claims Tribunal (DDCT) oversees the adjudication of claims from creditors and other parties in any PCC insolvency case, as outlined in the regulations.

Similarly, Bermuda has a specific protection for PCC creditors in the event of insolvency. The protected cell provisions in Bermuda's Segregated Accounts Companies Act 2000 protect secure creditors of a cell from other creditors of the company or other cells in the same company. In the event of insolvency, a cell is liquidated independently of the other cells' liquidation process.

Cayman Islands have also developed specific legislation and court precedents to deal with the insolvency of PCCs. The Companies (Winding Up) Rules provide for separate compulsory liquidation procedures for each cell within a PCC. In re Toisa Limited (in Official Liquidation) [2020] (CICA), the Cayman Islands Court of Appeal confirmed the benefits of using PCC structures as they limit the insolvency exposure to assets held within the respective cells.

Despite the opportunities that the new corporate structure provides; the scientist has tended to difficulties tracked down in the law; by which a few issues were not handled by the law, with the goal that it leaves a few holes its pertinence. For the safeguarded cell organization's design legitimate complexities depicted above to be uncovered into speculation open doors (advancement and help) in Rwandan business area as a drive to revise the law overseeing organizations; the following is a collection of suggestions:

It is recommended that it should be adopted the unique act or law relating to protected cell companies, apart from the company law. This is because, this type of company has many issues to deal with, that cannot be elaborated similarly under the same law governing companies. If the case maybe, it would not be new for Rwanda, as many foreign jurisdictions adopted this view in their corporate legal framework.

For an instance; as mentioned above, the Government of Gibraltar has adopted a unique protected cell companies act[150], which elaborates more about the protected cell companies as it provides various items in details that is not the case in Rwanda. The other Jurisdiction that has legislated protected cell companies in a separate act, is Mauritius, whereby the protected cell companies act no 37 of 1999 was adopted on 01 January 2000 to provide more details about this type of company. There are also other different jurisdictions such as Guernsey, Jersey, to mention but a few[151].

[150] Gibraltar Protected cell companies act No. 2001-22, of 01/11/2001.
[151] The protected cell companies' ordinance no V of 1997. Act 37 of 1999 – 1 January 2000

Further, as each cell is a separate legal entity one cell can enter into a transaction with another cell. The cells of a protected cell company are quite the opposite. Because the process of creating incorporated cells is more formal than the process of creating protected cells, and the segregation of assets in an incorporated cell is slightly less dependent on the actions of management, the incorporated cells may also be regarded as providing even more robust segregation of assets and liabilities than a PCC. More significant, is that consolidated cell organizations are usually utilized as umbrella venture assets with every cell being utilized as a speculation vehicle for various resource classes.

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