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GUIDE

Jersey cell companies

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This guide sets out the main features of Jersey cell companies and highlights the benefits offered by this highly flexible type of company.

Executive summary

- There are two types of Jersey cell company:
  - protected cell companies (**PCCs**) are similar in structure to those offered in other jurisdictions, but potentially more flexible;
  - incorporated cell companies (**ICCs**) are a type of company where each cell has separate legal identity.
- Benefits of PCCs and ICCs include:
  - flexibility due to wide restructuring provisions;
  - ease of conversion from normal company to PCC or ICC and vice versa;
  - no limitations on uses;
  - ability to transfer cells between cell companies;
  - cells may contract with other cells in the same cell company;
  - no Jersey administration or receivership provisions or stays on execution of security on insolvency.

What is a cell company?

A cell company is a form of corporate body with separate legal personality, available in Jersey, that permits the assets and liabilities of a company to be segregated into different 'cells'.

This segregation of assets means that a creditor of a cell company who deals with the cell company in respect of a particular cell, only has a right of recourse to the assets of that cell and (unless the constitutional documents provide otherwise) has no right of recourse to the assets of any other cell or the cell company's other assets.

A number of other jurisdictions offer similar structures, which have proved popular in areas such as funds, where they enable class funds to be created without the cross contamination risks that would exist in a normal corporate fund. Whilst the Jersey cell company shares a number of similarities with cell company structures offered in other jurisdictions, it has a number of fundamental advantages, some of which are described here.

PCCs and ICCs

The primary advantage is that anyone wishing to incorporate a Jersey cell company has a choice of two different types of entity: a protected cell company (a PCC) and an incorporated cell company (an ICC).

The key distinction between PCCs and ICCs is that the 'protected cells' of a PCC, like PCCs in other jurisdictions, do not have a legal identity separate from the cell company of which they form part.

However, the 'incorporated cells' of an ICC are each a company in their own right and therefore have separate legal identity, albeit those cells also form part of the ICC.

While an ICC clearly has similarities to an ordinary corporate group structure, it is different in the following respects:

- each incorporated cell automatically has the same secretary and registered office as its ICC;
- an incorporated cell is expressly stated not to be a subsidiary of the ICC;
- various secretarial functions required by statute must be carried out by the ICC; and
- the shares in each incorporated cell will not generally be held by the ICC but by the intended 'owner' of the assets to be held in that incorporated cell.

The ICC is not therefore intended to be the parent of the incorporated cell.

Although what can and cannot be done with an ICC is on the whole the same as with a PCC, the ICC may provide a more robust structure where the segregation of assets and liabilities is in question, for example, in insolvency situations in jurisdictions outside Jersey. It is hoped that the two different types of cell company will appeal to a wider market than the current more orthodox protected cell company structure. As far as we are aware, Jersey was among the first jurisdictions to introduce ICC legislation.

Key features of a cell company

The Companies Law is drafted to make cell companies as flexible as possible while providing the required level of investor protection. Key features include:

Incorporation

Each cell is able to have a different type of capital eg cells are able to have par value limited or unlimited shares, no par value limited or unlimited shares or have guarantee members (or, in some cases, combinations of these). Cells are also able to own shares in other cells.

Cells have their own constitutional documents (although these will generally be largely identical to those of the cell company), have the same secretary and registered office as the cell company and have their own register of members.

Names

The name of a PCC must end with 'Protected Cell Company' or 'PCC', and the name of each cell must end with 'Protected Cell' or 'PC'.

The name of an ICC must end with 'Incorporated Cell Company' or 'ICC', and the name of each cell must end with 'Incorporated Cell' or 'IC'.

Cells treated like companies

For the purposes of the Companies Law, protected cells are treated as if they are companies, and incorporated cells are actually companies. This has the advantage of giving certainty in the application of the Companies Law to each cell, and consequent flexibility, in that virtually everything that can be done with or by a company is available to each individual cell.

Accounts

Cells must prepare their own accounts.

Restructuring provisions

It is perhaps in these provisions that the flexibility of the cell company is most apparent. The principal options available are set out below, and particularly if used in combination with each other, offer a high degree of potential flexibility, even for cell companies already established in other jurisdictions:

- a company can convert into a cell company, and vice versa;
- a PCC can convert into an ICC, and vice-versa;
- a company can convert into a cell of a PCC or an ICC;
- a cell can convert into a separate company;

- a cell can be transferred from one cell company to another; and
- subject to suitable reciprocal arrangements in the other jurisdiction, a cell company can be migrated out of Jersey, and a non Jersey cell company or company can be migrated into Jersey as a cell company.

The above is, of course, subject to meeting the particular requirements of the Companies Law.

Other general provisions

The general provisions of the Companies Law relating to matters such as redemptions and repurchases of shares, payment of dividends and capital reductions apply to each cell as if it were a company. This helps to provide certainty in the application of the Companies Law to each individual cell.

Dealings with third parties

When dealing with third parties, the directors of a PCC have to ensure that the third party knows or ought reasonably to know that the PCC is acting in respect of a particular cell, and if they fail to do so they will be guilty of an offence (although this will not affect the validity of the transaction with the third party).

Unless the constitutional documents provide otherwise, creditors of a particular cell of a PCC only have a right of recourse to the assets of that cell, and non-cellular creditors of the PCC only have a right of recourse to the PCC's non-cellular assets.

In addition, the Companies Law provides that if a creditor manages to make available any assets of a PCC that are not assets of the relevant cell to meet its claim, such creditor will be liable to pay to the PCC an amount equal to the benefit so obtained. If a creditor manages to seize, attach or otherwise levy execution against any such assets then it will hold such assets on trust for the PCC and must pay or return them on demand to the PCC. Cells of a PCC are able to contract with other cells in the same PCC or with the PCC itself.

As a cell of an ICC is a company, each cell deals with third parties in the same manner as a normal company.

Winding up

The same winding up and bankruptcy provisions apply to a cell company as to a company. It is therefore possible to wind up a particular cell or declare it bankrupt, to wind up or declare bankrupt the whole cell company or, so long as there are no remaining cells of the company, to wind up or declare bankrupt the 'non-cellular' parts of the cell company.

Jersey tax

Jersey has a standard rate of corporate income tax of zero per cent which is applicable to most companies (with the exception of, amongst others, financial services companies (as defined in the Income Tax (Jersey) Law 1961) and certain specified Jersey utility companies).

Limits on the business of cell companies

Jersey cell companies may be established or utilised for the same purposes as any other Jersey company. There are therefore currently no statutory or other restrictions as such on the uses to which cell companies may be put; there are in a number of other jurisdictions.

Cell companies are ordinarily required to appoint a Jersey regulated entity to administer and/or provide secretarial services to the company.

Key differences between Jersey cell companies and cell companies in other jurisdictions

A number of these have been highlighted elsewhere in this guide. Key differences include:

- the availability of the ICC, which enhances the appeal of the statutory ring-fencing provisions in jurisdictions unfamiliar with PCCs;
- the availability of wide restructuring provisions;
- permitted uses set out in policy rather than legislation, which may be considered on a case by case basis;

- no provisions for administration or receivership orders;
- the Companies Law applies to each individual cell, as well as the cell company, which gives certainty and a wider range of options for each cell;
- if the directors of a PCC fail to inform third parties that they are dealing with a protected cell, they will be guilty of an offence but will not be personally liable for the transaction and the segregation of assets and liabilities will not be compromised; and
- a cellular creditor has no right of recourse to non-cellular assets or the assets of another cell unless the constitutional documents provide otherwise.

Contacts

A full list of contacts specialising in corporate law can be found here.