Client Memo

JERSEY | CELL COMPANIES

Introduction

The Companies (Jersey) Law 1991 (the "**Law**") permits the creation of cell companies and sets out the legal requirements relating to cell companies in Jersey.

In essence, cell companies are companies whose assets and liabilities may be attributed to a particular separate cell of the cell company, or to the cell company itself.

In this short note we examine the different types of cell companies available in Jersey, their purpose, features, transactional uses and advantages.

PCCs and ICCs

In Jersey there are two types of cell company provided for in the Law, protected cell companies ("**PCCs**") and incorporated cell companies ("**ICCs**").

A PCC is a separate legal entity, but its cells are not bodies corporate and do not have a legal identity separate from the PCC of which they form part. As such, the PCC and its cells together form one legal entity.

ICCs are similar in many respects to PCCs. The key difference is that each incorporated cell of an ICC is a company in its own right (albeit also as a cell of the ICC).

The purpose of cell companies

Although there are many advantages to incorporating ICCs and PCCs (see below), their principal purpose is to enable the segregation of assets and liabilities within separate cells.

Whilst it is possible for an ordinary company to seek to create separate pools of assets through the use of contractual "ring-fencing" and non-petition provisions, there can be a risk of cross-contamination of assets where, for example, certain creditors are not party to such provisions or where claims are presented in breach of contractual provisions.

In contrast, since each cell of an ICC is a separate company in its own right, the assets and liabilities of each cell are in a separate legal entity and so it is easy to create a robust separation of assets and liabilities.

Whilst each cell of a protected cell company does not have a separate legal identity from the PCC, the Law steps in to create a statutory framework for the "ring-fencing" of assets. The Law provides that where a creditor enters into a transaction with a particular cell of a cell company, any claim in connection with the transaction extends **only** to the cellular assets of the relevant cell. **No** recourse is available to the assets of any other cell or to the cell company's non-cellular assets (unless (i) the constitutional documents provide otherwise, or (ii) the directors are able to make a prescribed solvency statement).

Other features of cell companies

Names

The name of an ICC must end with the words "**ICC**" or "Incorporated Cell Company". The name of a PCC must end with the words "**PCC**" or "Protected Cell Company".

Memorandum and Articles of Association

Each cell of a PCC/ICC will have its own memorandum and articles of association separate to that of its cell company.

Directors, secretary and registered office

There is no requirement for commonality of directors across the cell of a cell company and the cell company itself. However, a cell of a cell company must have the same secretary and registered office as its cell company.

Structuring/restructuring

The availability of wide-ranging structuring and restructuring provisions is a key benefit of the Jersey cell company. Subject to the Law:

1. a company can convert into a cell company (and vice-versa);
2. a PCC can convert into an ICC (and vice-versa);
3. a company can convert into a cell of a PCC/ICC;
4. a cell can convert into a separate company;
5. a cell can be transferred from one cell company to another;
6. a cell company can be merged with another cell company; and
7. (subject to suitable reciprocal arrangements) a non-Jersey cell company or company can be migrated into Jersey as a cell company.

Application of general principles of the Law

The provisions of the Law in relation to redemption and repurchase of shares, winding up and bankruptcy proceedings apply to PCCs and ICCs cell companies as they do to non-cell companies. It is possible to wind up or declare bankrupt a cell or (providing there are no remaining cells) the cell company itself.

Transactional uses

The concept of statutory ring-fencing lends itself well to the following structures:

1. secured note programmes;
2. umbrella funds;
3. Sharia compliant structures;
4. joint ventures; and
5. property holding structures.

Other advantages of Jersey cell companies

In addition to the provisions set out above in relation to segregation of assets, cell companies also have the following additional benefits:

1. **speed** - once the cell company has been established it is quick and easy to create subsequent cells. Further, if an ICC or PCC structure is regulated, then obtaining regulatory permission for each new cell is usually more streamlined. This can be particularly useful for investment structures;
2. **clear accounting treatment** - for example, each cell has a separate profit and loss account;
3. **bespoke terms** - ability to set different thresholds for amending the articles of association and to tailor the terms of the articles of association for different cells;
4. **flexible structuring options** - in addition to the points listed under structuring/restructuring above:
   (a) cells of a cell company can contract with each other;
   (b) cells of a cell company can own shares in each other;
   (c) there is no requirement for an ICC or PCC to hold shares in any IC or PC which is incorporated/established; and
   (d) cells can create shares without reference to the members or shares of the cell company.
5. **administrative fee savings** - once the cell company and first cell have been established, there can be cost savings for each subsequent cell. Note that a PCC will be required to file a single tax return for itself and each of its PC's, whereas ICC's and each IC will be assed for tax separately and will therefore file individual returns, and so administration costs need to be discussed carefully with a local corporate services provider;
6. **no administration/receivership provisions**;

7. **no automatic stay on the enforcement of security** (which has been problematic for rating agencies in other jurisdictions);

8. **familiarity with rating agencies** - the various rating agencies have rated a number of deals involving Jersey PCCs and ICCs; and

9. **the failure of directors to act appropriately does not prejudice "ring-fencing"**.

Updated: October 2023

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