



Cell Companies



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On 1 February 2006 various amendments to the Companies (Jersey) Law 1991 ("Companies Law") were introduced into Jersey. The changes were welcomed and the most eye-catching was the introduction of Cell Company Legislation (Article 127).

Cell Companies

The legislators had with consultation with the finance industry, devised two types of Cell Company that appear currently to offer greater flexibility than those that can be found in any other jurisdiction, opening up the Protected Cell Company ("PCC") and Incorporated Cell Company ("ICC") to the world.

What are they?

The main difference between your "ordinary" Limited Company and a Cell Company is that a Cell Company can create one or more segregated cells within its own corporate being, with each cell having its own assets and liabilities that are distinct and ringfenced from those other cells and the Cell Company is let. This means that whilst all of the assets of an "ordinary" Limited Company are susceptible to "attack" from a creditor, with a Cell Company the creditor can only have their debt met from the assets (if any) of the cell with which they have contracted without recourse to the other cells, however burgeoning their assets.

What is their use?

Cell Companies are of particular benefit in complex corporate finance transactions and also, in securitisation, insurance and collective investment fund structures where new cells can be added to the structure with relative ease. Each new cell could, for example, constitute a new sector of business with its own investors.

Whilst legislation does not expressly limit the use of Cell Companies, it is not thought that as a matter of policy consent will be granted by the Jersey Registrar of Companies to those seeking to undertake ordinary trading activities through a Cell Company set-up. A trading business will need to continue to use or think about creating a corporate group structure if it is looking to ring-fence liabilities with each company within the group structure functioning, in essence, as a separate cell.

This is not to say that a Cell Company structure can simply be viewed as a quasi-corporate group structure given that whilst a Cell Company will have some degree of control over its various cells, the cells may not necessarily be owned by the Cell Company. It would be wrong then simply to equate a Cell Company as the parent and the various cells as its subsidiaries.

ICC or PCC?

The key difference between these two types of Cell Company is that each cell of an ICC is a separate legal entity. Each cell can, therefore, hold assets, enter into contracts and sue (and be sued) in its own name etc.

A PCC, by contrast, contains cells that are treated by the Companies Law as if each were a distinct company, by being able to ring-fence assets and to contract etc. even though each is not a distinct legal entity. The PCC and its cells together form one separate legal entity.

Why the distinction?

Simply put, lawyers, academics and the like have for many years been questioning the effectiveness of ring-fencing with PCC structures given that jurisdictions that do not have a PCC regime appear opposed to supporting the somewhat alien concept that assets can be segregated within various cells when each of the cells is not a separate legal entity.

The ICC, of course is made up of cells that have their own separate legal capacity and so it would be hoped that foreign courts will feel more comfortable in recognising the ringfencing capabilities of each Incorporated Cell.

Setting up Cell Companies

As with an "ordinary" Limited Company, a Cell Company is set up by making an application to the Jersey Registrar of Companies. A Cell Company will have its own Memorandum and Articles of Association and the name of the Cell Company must conclude with the words (or initials) "Incorporated Cell Company" or "ICC" (if an ICC) or "Protected Cell Company" or "PCC" (if a PCC).

Creating Cells

As stated above, once a Cell Company has been established it is able to create specific cells as and when it chooses; this is achieved by the Cell Company using a special resolution. Each cell will have its own distinct name and will conclude with the words (or initials) "Incorporated Cell" or "IC" (if the cell is an Incorporated Cell) or "Protected Cell" or "PC" (if the cell is a Protected Cell). The cells are only created once the relevant special resolution has been filed with the Jersey Registrar of Companies and the Registrar has, in turn, issued a Certificate of Incorporation (for an Incorporated Cell) and a Certificate of Recognition (for a Protected Cell).

Other provisions

Briefly, a few other provisions that may be of interest are:

1. All cells must share the same directors, company secretary and registered office as the Cell Company;
2. The Cell Company is responsible for filing an annual return which will contain relevant information in respect of both itself and of each cell;
3. The Cell Company shall keep accounting records and prepare accounts that show a true and fair view of both itself and of each cell;
4. A cell can be incorporated specifically as a Cell Company;
5. A Cell Company can transfer its cells to another Cell Company Structure;
6. A Cell Company can have either Protected Cells or Incorporated Cells but not both;
7. Non-Cell Companies can become Cell Companies and vice versa;
8. ICCs can become PCCs and vice versa;
9. A Company incorporated outside Jersey can be continued (i.e. redomiciled) into Jersey as either an ICC or a PCC;
10. Whilst each cell within an ICC should be treated for the purposes of Jersey income tax as a separate entity with its own tax treatment, this is not the case with a PCC which would need only to file the one single tax return on behalf of itself and each Protected Cell;
11. The general provisions of the Companies Law pertaining to redemptions, repurchases of shares, dividend payments and capital reductions apply to each Cell as if it were a stand alone Company. This provides certainty in the application of the Companies Law to each individual Cell; and
12. Jersey has a standard rate of corporate income tax of 0% applicable to all companies (other than financial services companies and utilities).

Transacting with other parties

The directors of a Cell Company have a duty to ensure that when transacting with other parties, they have made the other party aware that the Cell Company is acting on behalf of a particular Cell. Failure to do so, renders the director guilty of an offence, prosecutable under the Companies Law.

Insolvency

The legislation provides that creditors of a particular Cell only have a right of recourse from the assets of the relevant Cell. The creditor is not able to seek recovery from the Cell Company itself. This is worthy of mention given that in other jurisdictions the creditors for a Cell are usually also entitled to have recourse against the non-cellular assets of the Cell Company itself. This means that creditors tend to seek recourse both against the relevant Cell and the Cell Company itself and in doing so, it often leads to the Cell Company becoming insolvent even though unaffected Cells within it are still solvent.

Directors

It will be apparent that the directors within a Jersey Cell Company structure need to be meticulous so as to ensure that the correct Cell is contracting with third parties in each and every instance, so as to ensure that a particular Cell (or the Cell Company itself) does not inadvertently have obligations and liabilities which it had not intended.

The directors need to ensure too that all assets received are then properly retained within the appropriate Cell. The inappropriate allocation of an asset could clearly cause unwanted complications.

Conclusion

Jersey has done more than simply introduce “copycat” Cell Company legislation into the Island. It has, instead considered the existing Protected Cell Company legislation found in other jurisdictions and produced a refined Jersey model that removes many perceived weaknesses contained within the foreign legislation; the best example of this being the introduction of the highly original ICC.

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