

CELL COMPANIES IN JERSEY

AN OVERVIEW



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Cell Companies in Jersey

Introduction to Cell Companies under the Companies (Jersey) Law 1991

Two types of cell company are permitted to be created in Jersey under the Companies (Jersey) Law 1991 (the “Law”), the protected cell company (or PCC) and the incorporated cell company (or ICC). Cell companies are used to segregate assets and liabilities relating to different transactions or different parties into separate compartments of a corporate structure to ring-fence assets from risks of contagion or cross-liabilities between different asset pools or transactions.

The key features of the PCC are as follows. The PCC is a single legal entity that attributes its assets and liabilities either to the protected cell company itself or to the individual cells it creates. The individual cells do not have a separate legal personality but are segregated parts of the single legal entity which is represented by the cell company. The assets and liabilities of the protected cell company and those attributed to its cells are segregated and “ring fenced” from each other. The Jersey PCC legislation follows the model for cell companies established in a number of other jurisdictions but has added refinements to enhance the robustness of the segregation between cell company and the constituent cells and to control and limit rights of creditor recourse.

The ICC is a new vehicle and a further development of the PCC concept. Each cell of an ICC is itself an individual incorporated company which can hold assets and incur liabilities in its own name without contamination from the assets and liabilities of another cell.

Establishing a Cell Company

Cell companies are established in the same manner as traditional companies incorporated in Jersey. A company will be an ICC if its memorandum of association provides for this and similarly will be a PCC if the memorandum of association so provides.

Cell companies may be public or private companies, with limited or unlimited liability. A cell company may issue par value shares, no par value shares or have guarantee members. Unlike a conventional company with a share capital, which may issue only par value shares or no par value shares, but not both, a cell company may issue par value shares in respect of one cell and no par value shares in respect of another. However, individual cells may not issue both par and no par value shares. The name of a protected cell company must end in the words “Protected Cell Company” or “PCC” while the name of an incorporated cell company must end in the words “Incorporated Cell Company” or “ICC”.

Creation of Cells

A cell company can create a cell by special resolution which must give the cell a name and specify the terms of a memorandum and articles of association for the cell including all the information required by the Law in respect of the memorandum of a conventional company. The special resolution is required to be filed with the registrar of companies in Jersey and has effect as if it were a memorandum of association delivered to the registrar. The cell is created when the registrar has issued, in respect of a cell of an ICC, a certificate of incorporation of the cell and, in respect of a cell of a PCC, a certificate of recognition of the cell.

The Law implies into the articles of a cell (a) that the cell may not own shares in its cell company and (b) unless provided otherwise in the articles, that the cell may own shares in another cell of its cell company. Cross holdings between different cells of the same cell company are therefore permitted.

The articles of a cell may be amended by special resolution of both the cell and the cell company or otherwise in the manner set out in the articles of the cell. A cell company must assign a distinctive name to each of its cells that distinguishes the cell from any other cell of the company and, in the case of a cell of an ICC, the name must end with the words "Incorporated Cell" or "IC" and in the case of a cell of a PCC, the name must end with the words "Protected Cell" or "PC".

Status of Cells

The Law states that the cell of an ICC is a separate company within the meaning of the Law (but is not a subsidiary of its cell company) and the cell of a PCC is to be treated as a company for the purposes of applying the Law to it. A cell must have the same secretary and registered office as its cell company. Each cell must maintain a register of its members in addition to the register of members maintained by the cell company. Pursuant to a recent amendment to the Law it is possible for the cell company and its cell to have differently composed boards of directors.

Each cell and its related cell company must prepare separate accounts taking into account only the assets and liabilities solely attributable to the cell or the cell company as the case may be. Members of a cell company who are not members of a cell are entitled only to the accounts of the cell company and not the cell, and members of a cell who are not members of the cell company are entitled only to the accounts of the cell.

Liability of Protected Cell Company and its Cells

The Law makes special provision for the ring fencing of assets and liabilities attributable to the cells of a PCC and to the PCC itself. No such specific provision is necessary in respect of an ICC and its cells as each cell of an ICC is itself an incorporated company with its own legal personality. Accordingly

each cell of an ICC contracts duties and liabilities directly in its own name and there is no need for any mechanism to attribute assets or liabilities or allocate rights and duties between cells of an ICC and the ICC itself.

In the case of a PCC as its cells do not have separate legal personality the PCC represents its cells in relation to any transactions entered into for account of a particular cell. Accordingly any person transacting with a PCC should ensure that it is clear that the transaction is in respect of the PCC or a particular cell. Where a PCC enters into a transaction in respect of a cell or incurs a liability arising from an activity or assets of a particular cell, a claim by any person in connection with the transaction or liability extends only to the cellular assets of the relevant cell. Where the transaction, activity or asset is undertaken or held by the cell company in its own right and not in respect of any of its cells, the claim by any such person extends only to the non-cellular assets of the cell company.

A PCC has no power to apply its non-cellular assets to meet any liability attributable to a particular cell or to meet any liability (whether attributable to a cell or not) from cellular assets of another cell, unless permitted by its articles (or the articles of the other cell) and certain requirements of the Law as to solvency of the cell company (or the cell in question) are met.

To reinforce the ring fencing of the assets and liabilities of a PCC and its cells, the Law makes provision for the protection of cellular and non-cellular assets and sets out detailed rules concerning creditor recourse rights against the cell company and its cells.

Directors of PCCs – additional duties

The Law requires that directors of Jersey companies must act honestly and in good faith with a view to the best interests of the company and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In relation to PCCs, the Law imposes on directors certain additional duties to ensure that cellular assets of a PCC are kept separate and are separately identifiable from the non-cellular assets of the PCC and from the cellular assets attributable to other cells of the PCC. In addition the directors must ensure that when the PCC enters into an agreement in respect of a cell, the other party to the transaction knows or ought reasonably to know that the PCC is acting in respect of a particular cell and that the minutes of the relevant directors' meeting record the fact that the PCC is entering into the agreement in respect of the cell and that the obligation to ensure that the counterparty knows this was or will be complied with.

Spinning out cells by separate incorporation

The Law makes provision for a cell of a cell company, whether an ICC or a PCC, to be incorporated as a company independently of its cell company, by application to the registrar of companies. The application must be approved by a special resolution of each class of members of the cell, unless the

articles of the cell provide otherwise. If a member of the cell objects to the application, it may (within 30 days of the application) apply to the court for an order that the incorporation or the terms of the incorporation unfairly prejudice the member's interests under Article 143 of the Law.

The application for independent incorporation of a cell must contain all the information that would otherwise be required for the incorporation of a new company under the Law, and the cell will have to change its name by removing the words "IC" or "PC" as the case may be and including the words "Limited", or "Ltd", or any of the other permitted suffixes for non-cell companies.

Transfer of cells between companies

The Law allows transfers of cells between cell companies, by written agreement between the cell companies setting out the terms of the transfer. The transfer agreement must be approved by

- a) the directors of each cell company;
- b) a special resolution of the transferee cell company; and
- c) either:
 - i. a special resolution of the cell being transferred, with the sanction of the court as an arrangement under Article 125 of the Law;
 - ii. all the members and all the creditors (if any) of the cell being transferred; or
 - iii. a special resolution of the cell being transferred and the sanction of the court on it being satisfied that no creditor of the cell will be materially prejudiced by the transfer, if consent of all creditors cannot be obtained.

The transfer provisions also expressly permit a company that is not a cell company to become the cell of a cell company by agreement, and anticipate also the transfer of cells between PCCs and ICCs.

The directors of the transferring cell company are required to make a solvency statement in a form prescribed by the Law.

Cell Companies – winding up

The provisions of the Law as to winding up apply to each cell independently as they do to a conventional company. Where a cell of a PCC is being wound up, the cell company's powers in respect of the cell shall not be exercised except so far as may be required to realise assets attributable to the cell, discharge liabilities attributable to the cell and to distribute assets attributable

to the cell. However, where a cell is being wound up, this restriction on the exercise of the PCC's powers will not apply in respect of the cell company or any other cell. Similarly, where the PCC is being wound up, the restriction on the cell company's powers shall not apply in respect of any cell of the PCC.

Power of court to determine liability of PCC

The court may, on the application of a PCC, determine if a liability of the PCC is to be met by its non-cellular assets, by the cellular assets of a specified cell or by a combination of those assets, in accordance with the Law.

Further information

Should you wish to discuss any aspect of the above in more detail, please contact Simon Howard using the contact details set out below.

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This document is a brief guide to the subject matter covered, and is not intended to be a detailed or comprehensive statement of the law. It should not be treated as legal advice. Clients are urged to take professional legal and other appropriate advice before pursuing any particular course of action.

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