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## Corporate Services

### Jersey Cell Companies - A Guide

#### The basics

A cell company is simply a company that has the ability to create one or more cells that contain assets and liabilities that are distinct from its own assets and liabilities and from those of any other cells that it may create. There are two types of cell company available in Jersey; the protected cell company ("PCC") and the incorporated cell company ("ICC").

#### The history

PCCs were first developed in Guernsey in the late 1990s and were soon introduced by other jurisdictions once their benefits and advantages became apparent. In 2006, Jersey enhanced the cellular concept and became the first jurisdiction to introduce ICCs. Jersey's innovative ICC regime has now been emulated by several other jurisdictions.

#### The benefits

The core benefit is the statutory 'ring-fencing' of corporate assets. Under the Companies (Jersey) Law 1991 (the "Law"), the assets and liabilities of a company can be segregated into different cells and, where one of those cells enters into a transaction, a claim by any person in connection with that transaction will only be applicable to that particular cell's assets. In short (unless the articles provide otherwise), a creditor of a cell will have no right of recourse to the cell company's other assets or to the assets of any other cell that may exist.

Correspondingly, investor returns of one cell are not affected by any negative returns that may exist within any other cell. Each cell pays its own dividends based on its own assets, liabilities and profitability – and there are no special provisions restricting distributions of cell companies or cells over and above those that apply to all companies under the Law.

#### The uses

Traditionally, cell companies were used for captive insurance structures, and then for collective investment fund structures and securitisation structures. Indeed, many jurisdictions limited the use of cell companies to these specific industries. Jersey imposes no such limitation and although, as a matter of policy, cell companies should not be used for

ordinary trading activities, a Jersey cell company may be established for any lawful purpose. This flexibility has seen cell companies used in Jersey for increasingly varied structures such as very private funds, umbrella funds, property holding structures, Sharia compliant structures, financial guarantee vehicles, SPVs and joint ventures. At Fiduchi, we have managed cell companies for pension scheme arrangements, group holding structures, structures designed to segregate different group projects and to manage multiple asset classes.

It is expected that we will see an increased use of cell company structures within the Jersey Private Fund Regime (link to JPF guide), where the ability of the cell company to efficiently manage the segregated assets of different investors through clearly segregated cells may be considered especially attractive.

#### The difference between ICCs and PCCs

The difference is straightforward, but important. The cells of a PCC are not bodies corporate and do not have legal personality separate to the PCC. However, under the Law, a protected cell is required to be treated as though it is a separate legal entity insofar as special provisions allow a protected cell to contract with its PCC or with any other cell. In this way the assets of any one cell and the non-cellular assets of the cell company itself are protected against the liabilities of other individual cells. The PCC attributes assets either to itself or to different cells and anything so attributed is ring-fenced from the PCC's own assets and those of other individual cells.

The ICC takes a fundamentally different approach in that each cell is incorporated as a company in its own right, meaning of course that each cell has separate legal personality from the ICC and from any other cell. A cell therefore can hold assets in its own name, incur liabilities in its own name and indeed can do largely anything that any other Jersey company can do. It is expected that this status will be more beneficial in situations where a Jersey cell company with assets in a foreign jurisdiction is asking a foreign court to recognise the segregated status of its assets (in other words whereas some jurisdictions may find the concept of a PCC alien, it is anticipated that foreign courts will be more comfortable recognising the fact that each cell of an ICC has its own legal personality).

## The key features

The Law is drafted to make cell companies as flexible as possible whilst providing robust investor protection. At the same time, Jersey structures are transparent – with each cell and its constitution registered at the Companies Registry, and with the rights and interests of cellular owners set out in the articles of each cell. This provides a level of certainty for all parties, including creditors, which reinforces the certainty of cellular segregation and, again, is expected to assist foreign jurisdictions in recognising the cellular divisions.

The Law makes clear that cells are not subsidiaries of their cell companies and that each cell may form with its own constitution and with different share structuring. This means that cell companies can establish cells that issue par value shares at the same time as having cells with no par value or unlimited shares etc. The cell company does not need to hold shares in a cell (and usually does not). However, despite this lack of an ownership relationship between the cell company and its cells, a cell may only change its constitution by way of a special resolution of its own members and of the cell company.

Each cell can have different shareholders and will have its own directors who will manage the cell, and who may be different to those of the cell company. Each cell has the same secretary and registered office as its cell company, but will have its own constitutional documents and its own registers.

Each cell must prepare a set of accounts in the same manner as any ordinary Jersey company. As such, the cell company and each cell are free to choose their own basis of preparation and acceptable accounting principles. ICCs can convert to PCCs or to general companies. PCCs can convert to ICCs or to general companies. Ordinary companies can convert to cell companies and individual cells can convert into ordinary companies.

## Formation

Cell company – as with any other Jersey company, cell companies are formed by way of a simple application to the Registrar of Companies. A cell company must state in its memorandum whether it is a protected cell company or an incorporated cell company and its name must end in either those words or the initials PCC or ICC.

Cells – are formed by way of a special resolution of the cell company. Each cell must have its own memorandum and articles and a distinct name ending in either protected cell/PC or incorporated cell/IC. The Registrar will issue a certificate of incorporation for any incorporated cell properly formed, and a certificate of recognition for any protected cell properly formed. The cell is created as from the date of this certificate.

## Termination

The Law as to winding up applies to cell companies and cells in the same manner as to ordinary companies. One key difference is that a cell company will not be taken to have no assets or liabilities for so long as it continues to have any cells. Therefore, before winding up a cell company it is necessary to first transfer or wind up the individual cells (or for those cells to incorporate independently).

## Conclusion

The Jersey cell company is an innovative and now well-established corporate vehicle. The Jersey regime is designed to provide maximum flexibility for investors and managers, whilst also providing strong ring fencing and creditor protection arrangements within a transparent and respected legal framework.

This guide has set out the main features and benefits of cell companies in Jersey, but it is a general overview of relevant matters only and should not to be taken as any form of tax or legal advice. Specific tax and legal advice should always be obtained before incorporating any structure.

If you require any further information on how to incorporate a cell company in Jersey, please contact us for a chat by using the details below.

For further information on Jersey Cell Companies please contact:



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