Guernsey Incorporated Cell Companies

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This briefing note describes the key features of the incorporated cell company ("ICC") and summarises the formation, structure and liquidation procedures particular to this type of company.

Key features

The Companies (Guernsey) Law, 2008 (the "Law") provides for the creation of the incorporated cell company. An ICC is a company which has the power to establish incorporated cells as part of its corporate structure. Like a protected cell company ("PCC"), an ICC may comprise any number of incorporated cells ("Cells"). However, unlike a protected cell of a PCC an incorporated cell has many of the attributes of a non-cellular company. Each incorporated cell has its own board of directors, its own memorandum and articles of incorporation and each is a separate legal entity which must be registered at the Guernsey registry and can sue and be sued in its own name.

Because each incorporated cell is a separate legal entity one incorporated cell can enter into a transaction with another incorporated cell. This is in marked contrast to the cells of a PCC. However, although each Cell has its own board of directors, the Law requires that the identity of the board of directors of an ICC is the same as the directors of each Cell of that ICC. Similarly the secretary of an ICC must also be the secretary of each of its Cells.

ICC's are appealing for two main reasons. They enable a form of corporate group structure to be created but with lower administration costs than a traditional group of stand-alone non-cellular companies. They may also be regarded as providing even more robust segregation of assets and liabilities than a PCC because the creation of incorporated cells is a more formal process than the creation of protected cells and segregation of the assets of an incorporated cell is slightly less dependent upon the actions of management.

Categories of ICC

The following types of company can be formed as or converted into an ICC:

- any fund authorised or registered under the Protection of Investors Law, 1987, as amended (the "POI Law");
- any insurer licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 as amended (the "Insurance Law");
- any other type of company administered by a person licensed under the POI Law, the Insurance Law, The Banking Supervision (Bailiwick of Guernsey) Law, 1994 (as amended), The Regulation of Fiduciaries, Administration Business and Company Directors etc (Bailiwick of Guernsey) Law, 2000 (as amended) or The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (as amended).
- Companies licensed to carry on controlled investment business within the meaning of the POI Law.

Banks, insurance managers, insurance intermediaries, licensed fiduciaries cannot be formed as or converted into ICCs.

GFSC consent

The written consent of the Guernsey Financial Services Commission ("GFSC") must be obtained prior to the:

- incorporation of an ICC;
- conversion of an existing company or PCC into an ICC; or
- conversion of an ICC into a non-cellular company.

Names

The letters "ICC" or "Incorporated Cell Company" must be included in the ICC's name and the words "Incorporated Cell" or the letters "IC" must be included in the incorporated cell's name immediately before the word "Limited".

Incorporation of a Cell

The members of an ICC may, by special resolution, authorise the incorporation of one or more incorporated cells. The resolution must specify the memorandum and articles of incorporation in respect of each Cell and an application to the Registry for the incorporation of the Cell(s) must be made within three months of the date on which the special resolution was passed.

Status of a Cell

A Cell is a company governed by the provisions of the Law. However, a Cell may not itself be an incorporated cell company or a protected cell company.

A Cell is not a subsidiary of its ICC. Whilst an ICC can own shares in its own Cells and one Cell may own shares in another Cell of the same ICC (unless prohibited by the Cell's memorandum and articles of incorporation), a Cell cannot own shares in its ICC.

Separation of Assets and Liabilities

The directors of an ICC and its Cells must keep the assets and liabilities of the ICC separate and separately identifiable from the assets and liabilities of each of its Cells and the assets and liabilities of each Cell must be kept separate and separately identifiable from other Cells. However, the Law allows the assets of the ICC or its Cells to be collectively invested or managed, provided that they remain separately identifiable.

Transactions

An ICC cannot enter into transactions on behalf of its Cells and the Cells cannot enter into transactions on behalf of the ICC or other Cells. The directors and officers of an ICC and its Cells must clearly identify the ICC or Cell, as appropriate, in respect of every transaction that the ICC or its Cell enters into.

Administration of the Cells

The ICC is responsible for keeping a register of the members or index of members (if necessary) of each of its Cells at its registered office. Each Cell of an ICC must have the same registered office as its ICC. The register of directors and register of secretaries of an ICC are deemed to constitute the register of directors and register of secretaries (as appropriate) for each of its Cells. The ICC is also responsible for the completion and filing not only its own annual validation, but that of each of its Cells with the Registrar of Companies. It follows that the ICC should maintain all the minute books and records of its Cells in addition to those of its own.

Accounts and auditors

The directors of the ICC are responsible for preparing accounts in respect of the ICC and its Cells in accordance with the Law and the ICC is responsible for keeping its accounting records and those in respect of each of its Cells. The ICC may prepare consolidated accounts and a combined directors' report in respect of the ICC and its Cells.

Like a non-cellular company, a Cell must appoint an auditor for each financial year unless it has passed a waiver resolution or the directors reasonably resolve that audited accounts are unlikely to be required.

Like a company, an ICC and its Cells must send a copy of its directors' report, accounts and auditors' report to each of its members within twelve months after the end of each financial year. If a member requests a copy of those documents, the company must send them out within seven days after the date of the request (provided that he has not previously made such a request within that financial year). The ICC is responsible for ensuring that the ICC and its Cells comply with these requirements.

Annual general meetings

An ICC must hold general meetings of its members unless the members waive the requirement to do so. In the absence of any requirement in its memorandum and articles of incorporation or by a special resolution, a Cell is not obliged to hold an annual general meeting.

Amendment of constitution of Cells

A Cell may alter its memorandum or its articles of incorporation in accordance with the Law provided that the ICC itself has also passed a special resolution in favour of the alteration (unless the memorandum or articles of the Cell state that ICC approval is not required).

Conversions

A non-cellular company and a PCC can each be converted into an ICC and an ICC can be converted into a non-cellular company. An incorporated cell may transfer from one ICC to another and a non-cellular company may convert into an incorporated cell and transfer to an ICC.

Conversions require approval by special resolution of the shareholders of the affected companies and cells. The process of transferring an incorporated cell from one ICC to another also requires a written agreement between the two ICCs. Conversions are not subject to court or creditor approval, although regulatory consents will be required for licensed entities.

Continued

Because incorporated cells are separately registered legal entities they can migrate and become registered in other countries and amalgamate with companies and other entities inside and outside of Guernsey. Cells of a PCC cannot do so directly because they are not separately registered legal entities. However, a PCC and its cells can convert into an ICC with incorporated cells to take advantage of these provisions.

Winding up an ICC

The principles applicable to the compulsory or voluntary winding up of a non-cellular company apply equally to ICCs and their Cells. However, the winding up of an ICC must be carried out so as not to prejudice the affairs, business and property of any of its Cells. As a result, during the winding up an ICC may continue to carry on business to the extent necessary for its Cells to continue business. An ICC that is being wound up cannot be dissolved until each of its Cells has ceased to exist as a cell of that ICC and the court may stay dissolution of the ICC on that basis. The appointment of a liquidator in respect of an ICC will not affect the position of the directors of a Cell of the ICC unless the liquidator, the members of the Cell concerned, or the court so resolves in the course of the winding up.

Administration of an ICC

An application to the court for an administration order in respect of a company may be made by the company, its directors, any creditor (including a contingent or prospective creditor), or member of the company, the GFSC (if it is a supervised company or one engaged in financial services business) or the liquidator, in the case of a company which is in the process of winding up. This applies equally to ICCs and their Cells except that in the case of an ICC, any Cell may also make an application for the administration of its ICC, and in the case of a Cell of an ICC, the ICC may make such an application.

The court may make an administration order in respect of an ICC or one of its Cells if it:

- is satisfied that the ICC or Cell in respect of which the order is being made does not satisfy or is likely to become unable to satisfy the solvency test (as set out in the Law and essentially constituting a cash flow and a net assets test); and
- considers that the making of an administration order may either: achieve the survival of the ICC or Cell in respect of which the order is being made and the whole or any part of its undertaking, as a going concern; or achieve a more advantageous realisation of the ICC or Cell's (as appropriate) assets than would be effected on a winding up.

Administration prevents a company from being wound up and prevents proceedings from being commenced or continued without the leave of the court.

Tax

Since each Cell of an ICC is a separate legal person, each is treated as a separate entity for tax purposes. It is possible for an ICC to have Cells that are resident in Guernsey for tax purposes as well as Cells which are non-resident and exempt.

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