Types of fund vehicles in Guernsey

Service area / Investment Funds
Location / Guernsey
Date / January 2019

Guernsey funds are invariably structured as companies, unit trusts or limited partnerships.

Companies

Companies are incorporated under the provisions of the Companies (Guernsey) Law, 2008 (the "Companies Law").

All companies formed under the Companies Law have a separate legal personality. They are therefore capable of suing, and being sued, in their own names. A board of directors controls the company; however, the investment management function will often be delegated to a management company.

Companies may make distributions to shareholders provided that they are solvent and comply with any other provision of its constitutional documents.

Protected Cell Companies

The protected cell company ("PCC") was introduced over 20 years ago, when Guernsey passed the first such legislation of its kind anywhere in the world. Now widely replicated internationally, the PCC continues to be a hugely successful concept.

A Guernsey PCC is a single legal entity: one company with one board of directors, one memorandum and articles of incorporation and one company registration number.

A PCC is comprises of a "core" and any number of "cells". Assets which are not comprised in a cell are deemed to be comprised in the core. No regulatory or filing processes are required to create a cell of a PCC: cells can be created simply by a resolution of the board of directors of the PCC (although if the PCC is regulated other considerations may apply).

The key issue which differentiates a PCC from a traditional (non-cellular) Guernsey company is the segregation (compartmentalisation) of its assets. A PCC is able to limit its liability in respect of a particular contract to a specified pool of assets rather than exposing all of the assets of the PCC to liability in respect of every contract, as would be the case with a non-cellular company. The PCC contracts in respect of a particular cell, meaning that recourse against the PCC in respect of that contract is limited to the assets of the cell in respect of which the contract was entered into.

Incorporated Cell Companies

Like the PCC, a Guernsey incorporated cell company ("ICC") is a Guernsey company. The ICC is based on the same principles as the PCC: segregation of assets and limited recourse of creditors to specified pools of assets rather than to all of the assets of the company. Like a PCC, an ICC may establish any number of incorporated cells.

Unlike protected cells in a PCC, each incorporated cell of an ICC is a separately registered legal entity with its own memorandum and articles of incorporation, its own company registration number and its own board of directors, albeit that pursuant to the Companies Law the composition of the board of each incorporated cell must be identical to the composition of the board of the ICC (although this is expected to change in the near future).

The fact that each incorporated cell is a separately registered legal entity provides greater flexibility in relation to the ability to convert, migrate and amalgamate incorporated cells and may be regarded as strengthening the segregation of each incorporated cell's assets and liabilities.

Contracts are made with an ICC itself or with the relevant incorporated cell. The ICC cannot bind any of its incorporated cells. It is possible for the ICC to own shares in one of its incorporated cells, but an incorporated cell is prohibited by the Companies Law from owning shares in the ICC.

Unit trusts

A unit trust is not a separate legal entity but is constituted by an agreement in writing, commonly known as a "trust instrument", between a manager and a trustee. The concept of a trust is long recognised in Guernsey. Trusts are governed by the provisions of The Trusts (Guernsey) Law, 2007.

The assets of a unit trust are held by its trustee on trust for the benefit of the beneficiaries (the unit holders (investors)) and are managed by the manager, who may appoint one or more investment managers or advisers to assist it.

Contracts in relation to the management and administration of the trust fund will be entered into by the manager, whereas the trustee will enter into contracts in relation to the assets themselves, such as bank deposits, borrowings and security agreements.

Limited Partnerships

Limited partnerships are formed, registered and operated under the provisions of the Limited Partnerships (Guernsey) Law, 1995. A limited partnership comes into existence following the execution of a written limited partnership agreement (the "LPA") and registration on the register of Limited Partnerships. The general partner may make an election – at the time of registration only – as to whether or not the partnership is to have separate legal personality.

A limited partnership is comprised of:

- one or more general partners who are jointly and severally liable for all debts of the limited partnership without limitation; and
- one or more limited partners who contribute (or agree to contribute) a specified sum to the capital of the limited partnership, and who are not liable for any debts of the limited partnership beyond the amounts contributed (or agreed to be contributed).
- The property of the limited partnership is held on trust by the general partners jointly as assets of the limited partnership in accordance with the terms of the LPA.

Guernsey limited partnerships are attractive as fund vehicles due to the following features:

- There is no limit to the number of limited partners of a Guernsey limited partnership.
- A person may be both a general partner and a limited partner.
- A body corporate or a partnership may be a general partner or a limited partner.
- The general partner is not required to be resident in Guernsey.
- Neither the names of the limited partners nor their contributions to the limited partnership nor the terms of the LPA appear on the public register.
- There is no requirement to file an annual return or annual accounts of the limited partnership or the general partner.
- A limited partnership can return capital and distribute profit without any prescribed formality (subject to certain solvency requirements).
- The Limited Partnerships (Guernsey) Law, 1995 provides specific "safe harbour" provisions, setting out specific circumstances which will not result in a limited partner being deemed to have participated in the conduct or management of the business of a limited partnership (which would result in a loss of limited liability status).

Guernsey limited partnerships are used extensively by the private equity industry and have also been used successfully for a number of innovative listed investment structures.

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