

MEMORANDUM ON THE ESTABLISHMENT AND MAINTENANCE OF CELL COMPANIES IN JERSEY, CHANNEL ISLANDS

R&H Fund Services (Jersey) Limited

R&H Fund Services (Jersey) Limited was incorporated in Jersey in 1988 and has a staff of more than fifty-five, many of whom are qualified accountants and have been with the firm for many years. It is owned by the Partners of Rawlinson & Hunter Jersey. Further details can be found on the R&H Fund Services website: www.fundadministrators.com or on the Rawlinson & Hunter website: www.rawlinson-hunter.com.

Government and Legal Structure

The Bailiwick of Jersey is a dependent territory of the English Crown; it has its own elected assembly, The States, and therefore has no direct link with the United Kingdom parliament. Accordingly the Island enjoys complete autonomy in domestic and fiscal matters. The Island is not part of the European Union. The legal system is based on Norman Law and is practised by qualified advocates before the Royal Court.

Cell Companies in Jersey

With effect from 1 February 2006, the Companies (Jersey) Law 1991, as amended, permits the establishment of cell companies in Jersey.

What is a Cell Company

A cell company is a corporate vehicle that is permitted to segregate its assets and liabilities between different cells of itself, for different purposes, with the result that a creditor's recourse against the cell company is limited to whichever cell was transacted with.

Where a cell becomes insolvent, the remaining cells of the structure are not affected and continue to operate as normal.

Incorporation

There are two forms of Jersey cell company:

- i) the protected cell company ("PCC"); and
- ii) the incorporated cell company ("ICC").

A cell company is created by application to the Registrar of Companies (the "Registrar"). The Memorandum of the cell company must detail whether it is to be a PCC or an ICC.

Once established, a cell company may create cells, which must have the same secretary and registered office as itself. However, individual cells may take any form that a conventional company may take pursuant to the Law. It may, therefore, be a public or private cell, a par value or no par value cell or a guarantee cell and it may be a limited liability or unlimited liability cell.

Cells are created by way of special resolution, which must assign the cell a name and set out the terms of that cell's Memorandum & Articles.

Advantages of Cell Companies

Administration and Structuring

The administrative benefits of a cell company are significant. Once a cell company structure is in place, repeat transactions can be established in a much reduced timescale. This is particularly attractive in projects such as collective investment funds and securitisations, where negotiating transaction documents can be a complex and lengthy process, and where a successful initial structure will often lead to a demand for further, similar structures using the same key participants.

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Regulated by the Jersey Financial Services Commission under the Collective Investment Funds (Jersey) Law 1988 and the Financial Services (Jersey) Law 1998.

A framework can be established which includes all of the participants in the structure – such as administrators, managers, investment managers and custodians – and model agreements entered into governing the contractual roles of those participants. Regulatory consents can be obtained in advance for the structure, and then, as new cells are added, the level of regulatory scrutiny that will be required is much reduced, as the fundamental structure has already been agreed.

When particular transactions are envisaged – for example, adding a fund to invest in a specific country or sector, or a new vehicle to acquire receivables in the course of a securitisation – a cell can be created specifically to act in that defined role.

As the functionary agreements and regulatory consents have already been agreed with respect to the form of the transaction, a new cell can be added at a fraction of the cost and time that would be required were the structure to be established from scratch.

Change of Domicile

It is possible with the Registrar's permission, for a foreign body corporate to change its status to a Jersey cell company as part of the process of redomiciliation to Jersey.

Greater Certainty and Flexibility

The ICC creates each cell as a separately incorporated Jersey Company. This is a substantive provision of the Law which should be recognised by foreign courts in the same way as the limited liability of traditional stand-alone companies. In this way, an umbrella structure can still offer the full range of limited liability protections available under the Law at the level of the cell.

Feeder Funds

The cell of a PCC can invest in another cell of a PCC thus allowing the creation of further funds within an umbrella structure.

Solvency

Reduced risk of a cell company itself becoming insolvent.

Clarity

Clear distinction between the cell company and the cells it creates (and as a result, clarification of the duties of the directors of cell companies).

Choice of share structure

Ability to have cells which create shares in no par value without reference to the shares of the cell company.

No limitations on use

There is no statutory limitation upon the uses of cell companies. However, the Commission/Registrar will monitor their uses and issue guidance as to their preferred use if such is thought necessary.

Uses of Cell Companies

- ◆ Investment or mutual funds, where each cell can hold a separate class of assets
- ◆ Property development companies, with individual properties held within separate cells
- ◆ Asset financing
- ◆ Special purpose vehicles for captive insurance
- ◆ Group financing vehicles
- ◆ Securitisation issues