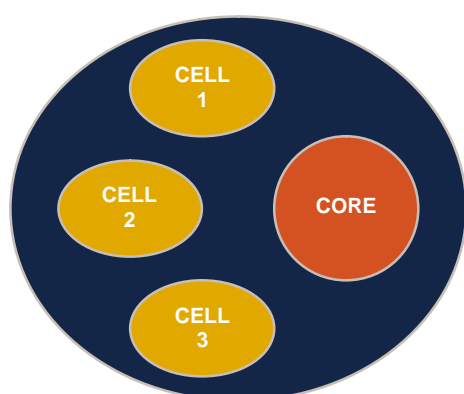


INCORPORATED CELL COMPANIES

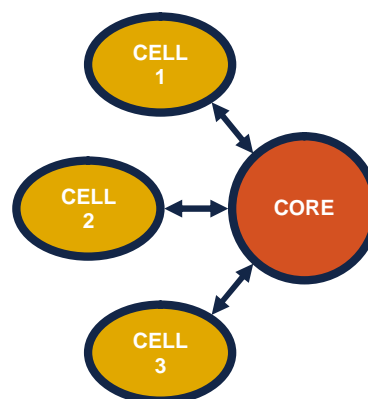
The Incorporated Cell Companies Ordinance, 2006, came into force on 1st May 2006. The legislation represents a progression in captive/cell company legislation with the Incorporated Cell Company being a development on Protected Cell Companies.

The difference between an Incorporated Cell Company (ICC) and an Incorporated Cell (IC) of an ICC, with that of a Protected Cell Company (PCC) and a Cell within that PCC, is perhaps best shown by means of a diagram as follows:

PCC Structure



ICC Structure



From the diagram, and for the purposes of the PCC Ordinance, a PCC is a single legal entity. The creation of a Cell within a PCC does not create a separate legal entity in respect of that Cell. This effectively means the Cell transacts its business under its own designation, but under the corporate capacity of the PCC.

Whereas within the ICC Ordinance, the ICC and the IC are limited companies in their own right and as such it is possible for ICs to contract with one another and/or the IC to contract with the ICC. The ICC itself has no power to enter into transactions on behalf of any of its ICs. By the same token, the ICs cannot enter into transactions on behalf of the ICC.

As with both structures, the Directors are under a statutory obligation to keep the assets and liabilities separately identifiable. In the case of a PCC the Directors are required to keep cellular assets separate and separately identifiable from non-cellular assets and to keep cellular assets attributable to each Cell separate and separately identifiable from cellular assets attributable to other Cells. Within an ICC structure the Directors have a similar duty to keep the assets and liabilities of the ICC separate and separately identifiable from the assets and liabilities of its ICs, and to keep the assets and liabilities of each IC separate and separately identifiable from the assets and liabilities of the other ICs of the ICC.

As a limited company by guarantee, the IC is required to maintain its own corporate records and will have its own Memorandum and Articles of Incorporation. An IC can issue shares with a par value or no par value and purchase its own shares or give financial assistance for the acquisition of shares.

Because of the ICs legal independence and scope to transact business, the insurance regulator will in almost all situations require the individual IC to hold the minimum capital requirement to underwrite the business proposed. This differs markedly from a Cell within a PCC where access to Core Capital can be attained subject to Cell agreement and regulatory approval. Circumstances where capital may be negotiated in the ICC structure are limited to areas such as transformer ICs where no retention is being held within the IC and again is subject to regulatory presentation for approval.

An insurance licence is issued to both the ICC and IC, unlike the single licence issued in a PCC structure.

Historically it has been suggested that once a Cell within a PCC had reached a certain point in its lifespan, perhaps by size, it could effectively 'float' to become a captive entity in its own right. In fact the process by which this is achieved invariably involves novation contracts to a newly formed entity and the subsequent closure of the original Cell. This situation is remedied within the ICC Ordinance with the ability of an IC being able to convert into a company independent of its ICC, subject to the IC changing its name. Equally, subject to certain criteria being satisfied, it is possible for an IC to be transferred from one ICC to another ICC.

Whilst the legal structure of PCCs remains to some extent untested and perhaps its complexity viewed by some as a limitation in generating the level of enquiries and business first anticipated, the introduction of the ICC structure as a more robust legal structure will provide certainty to those seeking segregation of liabilities and can provide a solution to areas such as consolidation within parent accounts relative to the assets and liabilities of the IC.

If you would like to know more about this latest development in captive technology please do not hesitate to contact:

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