Jupiter
TRUSTEES LIMITED

A GUIDE TO

GUERNSEY PROTECTED CELL COMPANIES ("PCC")

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WHAT IS A PCC?

A PCC is a limited liability company that has a board of directors and may create one or more cells, the assets and liabilities of which are segregated from the assets of the PCC itself (referred to as the "core") and from the assets and liabilities of other cells. Reference to the "core" is to the non-cellular assets of a PCC.

Each cell is established by board resolution. A PCC may, in respect of its cells, create and issue cell shares, the proceeds of which will form part of the "cellular assets" attributable to that cell.

Cell shareholders have voting and other rights which are restricted to matters relating to the individual cell. Cell shareholders are unlikely to be able to vote on resolutions in respect of the PCC itself.

A primary advantage of a PCC is that a distinction is made between the core assets and the cellular assets. When a cell incurs liabilities in respect of the business it carries out, those liabilities will only be attributed to the assets of that cell. Creditors of a cell are not able to have recourse against the assets attributable to other cells or to the core assets and thus the assets of another cell or the core are referred to as protected assets.

It should be noted that the cells are not separate legal entities and cannot transact in their own right. In all cases it will be the PCC acting for and on behalf of the relevant cell that enters into a transaction. If it is not clear in respect of which cell a certain transaction is being entered into, the officer entering into the transaction on behalf of the PCC could be personally liable.

ADVANTAGES OF USING A PCC:

- Enables a number of portfolios to be established in the same company but with fewer risks attaching to contagion of claims between asset classes or lines of business;
- Less expensive to administer than would be the case in a company with multiple subsidiaries;
- A single board, a single company secretary and a single administrator are required;
- As the cells of a PCC do not require registration with the Guernsey Registrar of Companies, they can be formed quickly by a board resolution;
- Treated as a single legal entity for taxation purposes which may have tax benefits;
- Provides flexibility and protection if the core or a single cell of the PCC becomes insolvent;
- If a PCC enters into liquidation, the liquidator is required to recognise the rights of each individual cell and to protect the assets of each cell from the creditors of other cells.

IMPLIED TERMS AND CONDITIONS

To reinforce the cellular nature of liabilities, there is implied in every transaction entered into by a PCC the following terms:

- that no party shall seek to make liable any protected assets;
- that if any party succeeds in making liable any protected assets, that party must pay to the company a sum equal to the value of the benefit obtained; and
- that if any party succeeds in seizing, attaching or levying execution against any protected assets, that party must hold those assets or their proceeds on trust for the company and must keep those assets or proceeds separate and identifiable as such trust property.

Implied terms are subject to any recourse agreement in place.

EXPRESS TERMS

To reinforce the implied terms, ordinarily express non-recourse wording is included into any contractual arrangement.

RECOVERY OF ASSETS FOR BREACH OF IMPLIED TERMS

If any asset or sum is recovered by the PCC it must, after deducting or paying any costs of recovery, be applied so as to compensate the cell affected, or the core, in such a case. All sums recovered on account of property held on trust as a result of an implied term, will be credited against any concurrent liability against any protected assets. If the protected assets have been improperly taken in execution of a liability and cannot be restored to the cell affected or the core, as the case may be, the PCC must appoint an independent expert to certify the value of the assets lost. The PCC must then transfer or pay from the cellular assets or core assets to which the liability was attributable, assets or sums sufficient to restore to the cell affected or the core, the value of the assets lost. This obviously depends on there being sufficient assets available to do this.

EXTRA-TERRITORIAL EFFECT

In respect of the liability of cellular and core assets, the key aspects of the segregation of assets and liabilities are expressed to have extra-territorial application.

In insolvency proceedings in two jurisdictions, this raises issues of conflicts of law and whether another jurisdiction would accept the extra-territorial effect. The usual approach in the case of double insolvency is to treat the insolvency proceedings in the place of incorporation as the principal insolvency and to treat the additional insolvency proceedings as being ancillary. This would suggest that in any double insolvency affecting a PCC, the protected cell structure would be respected, i.e. the place of incorporation will ultimately determine the attribution of assets and liabilities.

However, where either significant assets of a cell are held in a jurisdiction other than Guernsey or liabilities are incurred under foreign laws, a foreign legal opinion should be obtained on whether a foreign court would accept the cellular integrity of the PCC in that jurisdiction.

TRANSFER OF CELLULAR ASSETS

It is not possible to transfer a cell (which has no legal personality) but it is possible, in certain cases, to transfer cellular assets. Generally the consent of the court is required for the transfer of the cellular assets attributable to any cell of a PCC (a cell transfer order). However, a cell transfer order is not required to invest, and change investment of, cellular assets or otherwise to make payments or transfers from cellular assets in the ordinary course of the PCC's business. It should be noted that it is not possible to transfer the core assets of a PCC.

No transfer of the cellular assets attributable to a cell of a PCC may be made except under the authority of and in accordance with the terms and conditions of a cell transfer order.

The court must not make a cell transfer order unless it is satisfied that the creditors of the PCC entitled to have recourse to the cellular assets attributable to that cell consent to the transfer or that those creditors would not be unfairly prejudiced by the transfer and the court must hear any representations of the Guernsey Financial Services Commission.

It will clearly be easier to facilitate the granting of a cell transfer order if the creditors' consent is obtained. The court may attach conditions to any cell transfer order, particularly with regard to discharging claims of creditors.

A cell transfer order is not required for a PCC to lawfully make payments or transfers from the cellular assets attributable to any cell of the Company to a person entitled to have recourse to cellular assets.

PROPERTY OWNERSHIP

A PCC holding an asset, including property, would do so in the same way as any limited liability company. For example, in respect of UK property, the PCC would be noted on the title deeds and registered at the Land Registry (if registered land) as the legal owner of the property for and on behalf of the relevant cell of the PCC.

The Land Registry accepts the confirmation from the solicitor registering the property on the register that the structure is capable of owning property.

OWNERSHIP OF A COMPANY

In relation to how shares held in a company by a cell of the PCC would be registered, the same principle applies as with property ownership addressed above. The PCC would be registered on the share register as the legal owner holding the shares for and on behalf of the cell of the PCC.

PRECAUTIONS WHEN MANAGING A PCC

Two important precautions which must be taken when managing a PCC:

First, there are a number of sections of the Companies (Guernsey) Law, 2008 as amended (the Law) designed to ensure that third parties dealing with a PCC are put on notice of that fact. These include requiring references be made to the PCC structure in the name, memorandum of incorporation, cell name and also notification to any party it transacts with. The directors of a PCC must therefore ensure that it identifies that it is acting on behalf of a PCC to a counter-party and it must identify the cell in respect of which the PCC is transacting. The language usually used is “XYZ” PCC Limited acting for and on behalf of “ABC” cell.

Second, the directors of a PCC have an obligation to:

- keep separate and separately identifiable the assets of the core from the assets of each cell; and
- keep separate and separately identifiable the assets of each cell from the assets of each other cell.

This means maintaining separate accounts for each cell in which the assets attributable to each cell are clearly identifiable.

Consolidated accounts of a PCC are often of little relevance to cell shareholders as investors in different cells have no financial interest in the assets and liabilities of other cells.

ANNUAL VALIDATION PROCEDURE

A PCC must adhere to the annual validation procedure which requires a filing to be made with the Company Registry once a year before 31 January together with a declaration of compliance signed by a director. The details required to be set-out in the annual validation are:

- the address of the registered office;
- particulars of the directors;
- the particulars of a resident agent (where required);
- the categories of its principle business activities;
- whether the PCC is exempt from audit;
- confirmation that the PCC’s register of members is up to date as at 31 December in the previous year;
- that the information contained in the validation was current as at 31 December in the previous year; and
- the number of issued shares and the aggregate value of those shares.

DISPUTES

If there is a dispute as to whether any right is in respect of a particular cell, whether any creditor is a creditor in respect of a particular cell or whether any liability is attributable to a particular cell or the amount to which any liability is limited, the PCC may refer the matter in dispute to the court which will make a declaration on the matter.

CRIMINAL PENALTIES AND FRAUD

Where a PCC is liable to any criminal penalty due to the act or default of a cell or an officer acting in relation to a cell, then the penalty may only be met from the cellular assets attributable to that cell. Similarly, where a PCC is liable to any criminal penalty due to an act or default of the core or any officer of the core, then the penalty may only be met from core assets. In the case of loss or damage which is suffered by a particular cell and which is caused by fraud perpetrated by or upon the core or another cell, the loss or damage is the liability solely of the company's core assets or that other cell's assets.

CONTACT FOR FURTHER INFORMATION

Mark De La Rue
Director
Jupiter Trustees Limited
PO Box 344
Mont Crevelt House
Bulwer Avenue
St Sampson
Guernsey GY1 3US

Tel (direct):	+44 (0) 1481 201721
Tel (main):	+44 (0) 1481 242233
Fax:	+44 (0) 1481 249233
Email:	mark.delarue@jupiter.gg
Web:	www.jupiter.gg

GENERAL DISCLAIMER

This guide is intended as a brief summary of Guernsey as a company jurisdiction looking at the types of company available, their uses and features. It is very important that specific professional advice is obtained before incorporating a company. Jupiter Trustees Limited cannot accept any responsibility for any loss arising from any inaction or action taken due to any content of this publication and will not be liable for any omissions or errors contained within this guide.

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