

# GUERNSEY – KING OF THE CELLS

With its history of innovation and know-how, Guernsey continues to shine as Europe's top cell-captive domicile

IN A SPECIAL REPORT at the close of last year *Captive Review* ranked Guernsey as the number one captive domicile in Europe and third in the world, remarking that the island is “the undisputed king of the cell captive world.”

Guernsey's reputation for innovation and expertise in this field has been strengthened still further during 2010 as Guernsey-based Heritage Insurance Management achieved a worldwide first by amalgamating two Protected Cell Companies (PCCs) – with 17 cells between them – into one.

In addition, within the investment funds industry, Guernsey has hosted the first-ever conversion of a PCC to an Incorporated Cell Company (ICC) during a process which created the world's largest ICC mutual fund.

All this is a far cry from when Guernsey pioneered the cell company concept with the introduction of the PCC in 1997.

The subsequent success of this innovation is illustrated by the fact that the cell company is now used across the financial services world as an alternative application for the structuring of products. However, it is Guernsey that is the jurisdiction with the greatest experience and expertise in utilising the structure.

In addition, as well as adopting the innovative Incorporated Cell Company (ICC), the island has through legislative advancements, developed a regulatory infrastructure that enables it to be particularly widely employed. For example, in Guernsey, cell companies can be formed to conduct any business that would otherwise be

undertaken through a conventional company.

The island also boasts provisions that give notable flexibility to cell-company structuring arrangements, in particular: an ordinary company can convert to a PCC or ICC; a PCC can convert to an ICC; an ordinary company can convert into an Incorporated Cell (IC) and become part of an ICC; and an IC can leave the umbrella of the ICC and convert into an ordinary company. Furthermore, Guernsey allows for inward and outward migration of companies.

It is this environment which means Guernsey is ‘the king’ in providing many and creative uses of cell companies, including for investment funds, structured finance products, wealth management and of course insurance.

## Insurance

The cell company was developed to encourage the use of captive insurance: the structure reduces the risk in captive-sharing (which is more economically viable than establishing a traditional captive), and also allows the various parts of one institution's business to be written into separate cells.

The use of a third-party cell company rather than a full-blown captive has distinct benefits which for small to medium-sized businesses in particular makes captive insurance more viable:

- Lower operating costs
- Less management time
- Quicker and cheaper to set up and exit
- No minimum capital
- Less tax

The use of the structure as a risk-management tool has expanded to the extent that today it is also utilised in the form of:

- Transformer cells
- Cells converting intra-group reinsurance into third-party reinsurance (using a third-party reinsurance cell)
- Fronting cells
- Insurance Linked Securities (ILS), where cell companies can be used as special purpose vehicles (SPVs)
- Fully collateralised reinsurance cells, acting in a similar way to 'sidecar' vehicles

Growing recognition of Guernsey's excellence in employing cell companies as insurance products is illustrated by the fact that there were six PCCs and 14 cells domiciled in the island at the end of 1997, but by the end of last year this had risen to 63 PCCs and 323 PCC cells (including 73 life-policy cells), as well as five ICCs and six ICC cells.

### Investment funds

Cell companies are widely used for investment funds and particularly multi-strategy umbrella funds.

Traditionally, a series of separate funds would have been established under a family of funds structure. This faced the potential risk that losses attributable to one class or sub-fund may reduce or even extinguish the gain attributable to another.

Using a cell company means that individual cells can be established to run distinct investment programmes. These can be marketed under the same corporate banner but the provisions of structure mean that each cell is insulated from another. In addition, economies of scale mean that one cell company with its component parts is more cost- and time-effective to establish and run than a series of individual funds.

Mark Helyar, managing partner at Bedell Cristin in Guernsey, has recently written in MENA Fund Manager that cell companies offer great po-

tential for addressing "two key issues arising from the financial crisis....how to manage the transparency of financial instruments in the future and crucially how to prevent high-risk assets circulating in an opaque market from causing paralysis and contagion."

### Structured finance

Cell companies are also being used in Guernsey as special purpose vehicles (SPVs) for securitisation programmes where series of securities are issued, and backed by distinct underlying assets.

In such transactions cells may issue a series of bonds, notes or other debt securities where the payment of principal and/or interest is funded from the proceeds of a distinct pool of underlying assets attributable to that cell.

Again, the statutory segregation of assets afforded to a cell company provides enhanced security to the usual limited recourse provisions in any underlying contractual documentation.

### Wealth management

Guernsey's experience, expertise, flexibility and creativity with cell companies means that providers on the island have been able to start building a niche for their use within the wealth- management sphere, which includes private trust companies (PTCs) and family office solutions, family governance and succession planning; private investment funds; real-estate ownership; intellectual property and royalty ownership; and tax planning.

### Summary

Guernsey's position as the pioneer of the cell company concept means that it has been able to develop an environment of experience, expertise, flexibility and innovation that makes it 'the king' in providing many and creative uses of cell companies, including for investment funds, structured finance, wealth management and insurance.

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