

Cells of Jersey protected cell companies have standing to enter into schemes of arrangement in...

Insights - 13/01/2014

Cells of Jersey protected cell companies have standing to enter into schemes of arrangement in their own right

In its decision in *Re Ashburton Global Funds PCC* of 9 January 2014, the Royal Court confirmed that a cell of a protected cell company incorporated under the Companies (Jersey) Law 1991 (the Law) has standing to enter into arrangements with its members which can be the subject of an application to seek the sanction of the Royal Court for a scheme of arrangement and can bring such an application in its own right.

The decision arose at the first stage of two schemes of arrangement concerning cells of Ashburton Global Funds PCC, known as Dollar International Equity Fund PC (**Dollar**) and Sterling International Equity Fund PC (**Sterling**). Dollar and Sterling respectively sought orders under Article 125(1) of the Law convening meetings of the registered holders of ordinary shares in each cell respectively to consider, and if thought fit, approve a scheme of arrangement under which the respective assets of Dollar and Sterling are each to be transferred to a sub-fund of Ashburton Investments SICAV, a Luxembourg UCITS structure. In broad terms, the schemes involve the transfer of the assets of Dollar and Sterling to the sub-fund of the SICAV in consideration for the issue of shares in the sub-fund to be held through a nominee structure.

Although Ashburton Global Funds PCC, as the protected cell company joined in the applications, the Court held that by reason of Article 127YD (3) of the Law, the cells could themselves enter the arrangement and bring the application in their own right. Article 127YD (3) provides that: *A cell of a protected cell company shall not be a company but it shall, except as otherwise provided by this Part, be treated as a company registered under this Law for the purpose of the application to it of this Law.* The potential issue faced by a protected cell which has now been resolved by the Court's decision was that Article 127YP of the Law provides that: A cell of a protected cell company is not a body corporate and has no legal identity separate from that of its cell company. The Court was

content that the lack of corporate personality or separate identity of the cell did not affect the ability of a cell to be treated as a company for the purposes of the scheme of arrangement provisions contained in the Law, noting that, in any event, a cell has its own board, memorandum and articles of association, its own cellular assets and liabilities and can be wound up under the Law independently of its cell company.

The Court also held for the purposes of convening the Court meetings for each scheme that holders of management shares in each cell which had no economic interest in the assets of the respective cell and no ability to vote, did not constitute a separate class for the purposes of convening meetings to consider the schemes.

Comment

This is a helpful confirmation by the Royal Court of how protected cells are considered for the purposes of the statutory provisions in the Law, namely that they will be treated as companies. It does not alter the position generally that a protected cell does not have corporate capacity and accordingly cannot contract in its own right and would not have title to sue a third party.

Ogier's funds and litigation teams are acting for Ashburton, Dollar and Sterling in this case.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



Edward Mackereth

Global Managing Partner

Jersey

E: edward.mackereth@ogier.com

T: +44 1534 514320

Key Contacts



Nick Williams

Partner

Jersey

E: nick.williams@ogier.com

T: +44 1534 514318

Related Services

Dispute Resolution