Captive Insurance Council of the District of Columbia

SEGREGATED CELL CAPTIVES – THE LAW

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Overview

- What is a Cell Captive
- What’s in a Name
- Who Uses Cells
- The District of Columbia Law
- The Incorporated Cell
What is a Cell Captive

- Cell captives provide a means to isolate specific risks within a single corporate entity
- Exist in numerous domiciles
- Cell captive has general assets and cell assets
- Cell assets are identifiable assets segregated from other assets of the company for purposes of creditor protection
What is a Cell Captive (cont’d)

- Cell assets can only be used to satisfy creditors’ claims with respect to a particular protected cell.

- Protected cell captive may form one or more protected cells to insure individual risks of independent insureds.

- Captive maintains core capital base and each protected cell has additional capital provided by the individual or group using that cell.
Traditional Cell Captive Sponsored Captive Insurance Companies (VT)

- Participant Insured AAA Co.
- Fronting Insurer
- Participation Agreement
- Sponsored Captive
  - Cell AAA
  - Cell BBB
  - Cell CCC
- Reinsurance Agreement (on behalf of Cell AAA) Supported by Trust Agreement or Letter of Credit
Cell Advantages

- Less Expensive:
  - Organization
  - Capitalization
  - Cost Sharing of Service Providers

- Turn Key Operation

- Rapid Implementation

- Use someone else’s capital
Where in the World – Cell Domiciles

- Gibraltar
- Guernsey
- Isle of Man
- Jersey
- Malta
- Anguilla
- Bahamas
- Barbados
- British Virgin Islands
- Cayman
- St. Lucia
- Arizona
- Delaware
- District of Columbia
- Hawaii
- Iowa
- Kentucky
- Montana
- Nevada
- Oklahoma
- South Carolina
- Utah
- Dubai
- Mauritius
- Namibia
- South Africa
- Guam
- Vanuatu
What’s in a Name

- Protected Cell Company
- Segregated Cell Company
- Incorporated Cell Captive
- Segregated Accounts Company
- Sponsored Captive Insurance Company
- Segregated Portfolio Company
- Special Purpose Vehicle
- Special Purpose Financial Captive
Who Uses Cell Captives

Most of Today’s Cell Growth is Profit Center Focused

- Insurance Company Owned
- Insurance Produced Owned
- Associations
- Entrepreneurs
District of Columbia Captive Law: Key Points – Apply to All Captives

- Any form of business entity
- Any investments approved by Commissioner
- Any reinsurance approved by Commissioner
- Favorable U.S. Branch provision
- Best practices
District of Columbia Captive Law

- Capital Requirements
- Limitations on Business
- Sponsor
- Corporate Structure
- Core Liability
- Cell to Cell Agreement
District of Columbia Captive Law: Structure of Segregated Accounts

- Enables any individual or entity to organize a segregated cell captive
- Permits segregated cell captives to form one or more protected accounts to insure individual risks of independent insureds
- Allows a captive to segregate its own assets and liabilities from the assets and liabilities of segregated accounts
- Captive maintains core capital base and each protected cell has additional capital provided by the individual or entity using that cell.
District of Columbia Captive Law: Liability of Segregated Cells and Parent Captive

- Captive assets must be classified as either “segregated account accounts” or “general assets”

- Segregated assets can only be used to satisfy creditors’ claims with respect to a particular protected cell

- General assets of captive insurer not attributable to an individual cell will only be used to satisfy captive liabilities to the extent that such liabilities exceed existing statutory minimum capital requirements
District of Columbia Captive Law: Cells and Cell Companies

• Meaningful legal description of the relationship between core and cell and cell and cell in D.C. law

• Two Types of Cell Companies
  • Protected Cell Companies (PCC)
  • Incorporated Cell Companies (ICC)

• Two Types of Cells
  • Protected Cells (PC) – defined legal characteristics
  • Incorporated Cells (IC) – own legal identity
District of Columbia Captive Law: Relationship of Cells to Core

D.C. law clearly defines the relationship of each type of cell to core

- **Incorporated Protected Cell** means a protected cell that is established as a corporation or other legal entity from the protected cell captive insurer of which it is a part

- **Protected Cell** means a separate account established and maintained by a protected cell captive insurer
District of Columbia Captive Law:
Advantages

- Agreements between cells specifically permitted

- A protected Cell of a PCC may enter into an agreement with the PCC or another cell of the PCC that shall be enforceable as if each cell of the PCC were a separate legal entity

- Protected Cell (PC and IC) may transfer from one protected cell captive to another
District of Columbia Captive Law: Advantages (cont’d)

- Existing captive insurer may become a protected cell of a protected cell captive

- A protected cell may leave protected cell captive and become a stand alone captive

- A PCC may issue one or more classes or series of securities for one or more cells – proceeds to cell
District of Columbia Captive Law: Captive Director Liability

- Captive directors will not be personally liable for liabilities of a segregated account or the parent captive itself unless they acted fraudulently, recklessly, negligently or in bad faith.
The Incorporated Cell Captive
District of Columbia Captive Law: Incorporated Cells

Benefits of Incorporated Cell Captive

- Cell walls higher and thicker than PC
- Own FEIN and tax filing
- Each cell may have own directors and officers
- Inter cell agreements specifically permitted
- Each cell treated as a captive insurer for purposes of the Act
Forming a Cell Captive

- Any person or entity can form
- Determine structure of core and cells – any type of business entity
- Choose options – In case of ICC, same directors for core and cells (default); different directors; availability of core capital
- Required documents:
  - Articles of Organization/Incorporation
  - Bylaws
  - Participation Agreement
  - Policy Forms
  - Reinsurance Treaty
Forming a Cell Captive: Best Practices

- Follow domicile Law
- All accounts in domicile depository
- Separate account for each cell
- Designate all disputes to be resolved in domicile
- All original books and records in domicile
- All company actions, board meetings, policy discussion to take place in domicile
Example of Incorporated Cell Captive

American Society of Association Executives

- **Value to Producer**
  - Tie Producer and Association together
  - Skin in game and access to new markets

- **Value to Insurance Companies**
  - Way to compete for valuable new business
  - Better to have “half a loaf than none”
  - Tie company to association members and producer
Example of Incorporated Cell Captive

American Society of Association Executives

- Association of associations – 26,000 members
- Several endorsed programs
- Profit opportunity
- Created cell captive
- First program in core
- Second program – created two incorporated cells
- Reinsure both programs in incorporated cells
- Make cells available to members
Examples of Incorporated Cell Captive
American Society of Association Executives

- American Society of Association Executives
- ASAE Insurance Services, Inc.
- ASAE Insurance Company, Inc., ICC
  - AOP – 1 Association Office Package
  - Reinsurance
    - Member Association
    - Great America
  - Hartford
  - DO – 1 Directors & Officers
    - Reinsurance
Other Examples of Incorporated Cell Companies

- **REIT**
  - Entrepreneurial
  - Ensures Real Estate Investment Trusts
  - Cell Formed as LLC

- **Life Insurer**
  - Formed by Insurer
  - Cells to provide agency incentive owned by agents
  - Cells also available to insureds
  - Cell formed as corporation

- **Commercial Program**
  - Formed by property – owner manager
  - Cell for own property
  - Cell for joint ventures
  - Cell for third parties
Other Examples of Incorporated Cell Companies (Cont.)

- **Commercial Insurer**
  - Owner traditional insurance company
  - Cells owned by agents
  - Quota share reinsurance
  - Fronted by admitted company

- **Commercial Program**
  - Formed by owner of various facilities
  - Cell for owned facilities
  - Provide and manage cells for other non-owned facilities
The Series LLC

The Delaware Series LLC permits unlimited asset segregation

Debts, liabilities, obligations, expenses shall be enforceable only against the assets of a series entity

Master Operating Agreement and each series has a separate agreement – holds assets in own name

Premium tax advantages

Flexible governance opportunities
The Future

- Litigation challenging cell structure?
- Segregated Cell Risk Retention Groups
- New and even more creative cell legislation and use
Questions?
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