British Virgin Islands
Harneys

The rise of restricted purpose companies

When British Virgin Islands (BVI) company law was amended and restated on January 1 2005, one of the new features which largely went unnoticed was the introduction of a new type of company – the restricted purpose company (RPC). Although a small number of restricted purpose companies had been formed over the intervening years, it is only recently that their true value has been fully appreciated and their popularity has started to rise.

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The basic concept of an RPC is not new. In fact, one could say it is very, very old. The fundamental premise is that the RPC has only certain limited "objects" into which it can enter, and anything which it does outside of those objects is *ultra vires* and void. To bolster that protection, RPCs are also still subjected to the old doctrine of constructive notice, whereby third parties are deemed to have notice of the contents of their constitutional documents by virtue of the public filing. In other words, RPCs look a lot like all companies used to look during the Victorian era.

On the face of it, such a backwards looking entity would be an unlikely product to spearhead innovation as a structured finance vehicle. The general trend of the last 100 years has been to move away from limited objects clauses, *ultra vires* and constructive notice. Such limitations make it extremely difficult for a company to carry on day-to-day trading and ordinary commercial operations.

However, it is precisely because of these difficulties that RPCs are well suited for use as special purpose vehicles in financings, particularly involving the issuance of asset-backed securities. Investors can purchase securities with a high degree of confidence that, so long as the RPC has been properly set up, any attempt by the directors of the RPC to deal improperly with the underlying assets will simply be regarded as *ultra vires* and void. Under the ordinary common law rules of contract, title to assets cannot pass under a void contract (as opposed to a voidable one), and any security interest granted by the RPC over its assets which was not permitted by its objects would also be void.

RPCs are also particularly useful where, for legal or commercial reasons, the relevant assets against which the securities are to be issued cannot be made subject to a security interest in the usual way. By limiting the powers of the RPC to (i) owning and holding just that single asset, and (ii) issuing the relevant debt securities but not otherwise incurring any liabilities, one can ensure that the holders of the debt securities will enjoy a first ranking claim (and only claim) to the assets without the necessity of actually creating a mortgage or charge over the underlying property.

With hindsight, it is possibly not that surprising that RPCs took time to grow in popularity. Conventional BVI companies had been used as structured finance vehicles for many years before 2005, and a degree of reservation was to be expected when introducing a new vehicle to replace a product that the market was already largely happy with. A number of safeguards which had been introduced to make sure RPCs were not misused also undoubtedly played a part in limiting enthusiasm for the new vehicle – not least the extremely high registration fees to which RPCs were made subject ($5,000, as compared to $350 for a conventional company).

But, as with many innovations in the structured finance arena, a single high-profile transaction can result in a rapid change in market perceptions. Particularly in markets where investors require a great deal of reassurance, RPCs have been re-examined of late and are steadily growing in popularity as a way to provide that additional level of comfort that the relevant holding structure will provide robust protection for the investors' commercial expectations. The recent surge in popularity of RPCs must be heartwarming to the original draftsmen who predicted a need for such vehicles.

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