The changes to the Companies (Jersey) Law 1991 introduced by Amendment No. 8 which came into force on 1 February 2006, should bring wide ranging benefits to Jersey companies as well as its structured finance and insurance industries. The most significant change is the introduction of new forms of companies, to be known as Protected Cell Companies ("**PCCs**") and Incorporated Cell Companies ("**ICCs**"), which will be of great benefit in establishing multi-class investment funds, companies for a series of structured finance transactions and specialist insurance vehicles.

Before this amending law was approved, the States of Jersey spent considerable time and effort consulting with the Island's finance industry, with a view to developing and improving upon the previous models of protected cell companies used in Guernsey, Dublin and the Cayman Islands. Jersey's PCCs are seen as a significant advance from these other models. In particular, the ICC is an innovative new corporate vehicle offering strength and flexibility within group structures.

General points on Pccs and Iccs

Both forms of Cell Company are vehicles that can create individual segregated cells. Segregated Cells in both PCCs and ICCs will have their own assets and liabilities, distinct and "ring fenced" from those of other Cells and the Cell Company itself. The key legal principle of both PCCs and ICCs is that assets of each individual Cell will not be available to the creditors of any other Cell.

Administratively, once a Cell Company is created, repeat transactions can be expected to be established on a much-reduced timescale. Hence, Cell Companies have advantages for funds and securitisations structures where initial documentation can be complex but may potentially be replicated in future offerings. In theory, an administrator, investment manager or security trustee could develop model contracts which would govern relationships with each of the future Cells in a Cell Company. Also, Jersey regulatory consent may be obtained in advance for the broad structure of a fund or securitisation. This consent could then be updated when new Cells are added to the structure. This has potential cost savings for many structures.

Any Jersey Cell Company can be used for any commercial purpose and is not restricted to the sphere of funds, securitisation or insurance. It is thought that Cell Companies will be very flexible products and will have uses for all forms of companies and corporate finance structures.

The individual Cells of a PCC are to be known as PCs and the individual Cells of an ICC are to be known as ICs.

The Innovations of the ICC

As the first jurisdiction to introduce the ICC, Jersey led the way by developing the international model of Cell Companies used in other jurisdictions, from the PCC to an ICC, something which other jurisdictions have now also introduced.

In Jersey, a Cell of a Cell Company may elect to be incorporated as a separate legal entity. A Cell Company that creates such incorporated cells will be known as an Incorporated Cell Company, or ICC; and each cell as an Incorporated Cell, or IC. An IC, as a separate legal entity, will be able to hold assets, sue and be sued in its own name and do anything that a conventional Jersey company could do. In an insolvency of an ICC or of any of its underlying ICs, the fact that its cells have been incorporated with separate legal identity may give an advantage, particularly where the IC owns or holds assets in a jurisdiction not familiar with the concept of Cells.

Although the ICC may resemble a conventional group company structure in form, being akin to several companies under a holding company, the main difference will be that whilst an ICC may have significant control over its Cells, it will not necessarily own the shares in the Cells. The Cells in the ICC will tend to be owned by investors, whilst the ICC may be owned by the financial institution structuring the product, or even possibly by a charitable trust.

In contrast to ICCs, a PCC and its Cells will form a single legal entity. However, even though a PCC and its Cells constitute a single legal entity, shareholders in each PC will only be entitled to vote on the specific resolutions of that individual PC. On set-up, a PCC and its Cells will receive a single regulatory consent, which may be amended for any additional PCs. An ICC will receive individual regulatory consents for each Cell or IC. Also, a PCC and its Cells will only be required to make a single tax return, whereas an ICC's Cells will each be assessed separately for tax.

The directors of a PCC are under a duty to keep separate and identify separately cellular assets. In any transaction, the directors of a PCC will be required to inform the other side that it is a Cell Company and identify the relevant cell. Failure to do so may render directors personally liable for the transaction if the party with which the PCC transacts is genuinely unaware that it is dealing with such a vehicle. In the case of an ICC, the directors would have the same requirement. However, the separate legal categorisation of the IC should mean that the directors are already aware of their separate fiduciary obligations to the IC.

Relationship between Cells and Cell Companies

Cells in PCCs and ICCs will not be wholly independent of the Cell Company. This creates the distinction between Cell Companies and more conventional group structures.

Each Cell of a PCC or ICC will be required to have the same secretary and registered office as the PCC or ICC itself. Procedurally minutes of the directors of each Cell (in both PCCs and ICCS) will be documented as being in relation to that specific Cell. The Cell Company itself will be ultimately responsible for ensuring the upkeep of the underlying Cells, particularly with respect to annual returns and accounting records.

Whether the Cell Company is an ICC or a PCC, one important feature is that one does not become a shareholder in the Cell Company merely by virtue of being a shareholder in the underlying Cell. Each Cell will have its own constitution, share structure and shareholders. In theory, a Cell Company could have Cells with par value shares and others with no par value shares. Equally, it could have separate Cells with limited as well as unlimited shares.

Unless there is a provision in the constitution of a Cell to the contrary, a Cell may only change its constitution by special resolution of both the Cell and the Cell Company. In this way, a Cell Company can retain a degree of control over the Cells that it creates, without there necessarily being any ownership relationship between the Company and the Cells. This reflects the reality that Cells may be branded products created by financial institutions or for investors generally.

Each Cell will, in theory, be able to invest in another Cell of the same PCC or ICC. Cells are treated as if they were separate investment products. The Amendment to the Companies (Jersey) Law 1991 provides that whilst the Articles of a Cell shall be taken to include a provision that the Cell may not own shares in its Cell Company; unless the contrary is stated, a Cell may own shares in another Cell of the Cell Company.

Another of Jersey's innovations is that, on the insolvency of an individual Cell, the only assets that will be available to creditors are the assets of the particular cell with which the creditors contracted. In Jersey, there is no right of recourse to the Cell Company's non-cellular assets. These are, in any event, unlikely to be sufficient to meaningfully satisfy any large creditor. By restricting the assets available to creditors to those of the particular Cell, it will be possible for that Cell to be subject to winding-up or bankruptcy proceedings whilst the Cell Company and the other Cells are unaffected. This innovation should avoid the need to place an entire Cell Company structure into administration in consequence of the insolvency of an individual Cell.

Advantages of Jersey Cell Companies

- Stronger ring-fencing of assets and liabilities;
- Clear distinction between the Cell Company and its Cells;
- Reduced risk of Cell Company itself becoming insolvent;
- Choice of incorporated (ICs) or unincorporated Cells (PCs);
- Ability to have Cells of a different character (i.e. no par value and par value – limited and unlimited);
- Rights of Cells to invest directly in each other;
- No legislative limitation upon uses of Cell Companies.

For more information on Protected Cell Companies and Incorporated Cell Companies please contact Kate Anderson or Ian Strang of Voisin.

This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.