



# Segregated Asset Companies

## - Guernsey looks to the future

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**W**e are now standing on the threshold of an exciting new future for the use of Guernsey segregated asset companies (sacs). This is because in September 2005 the Guernsey authorities varied the rules restricting the use of the Protected Cell Company (PCC) and this was closely followed in May 2006 by the introduction of the Guernsey Incorporated Cell Company (ICC), an innovative extension of the PCC.

Together, these changes have unblocked restrictions and released the full potential of sacs and there are now limitless new opportunities to utilise their strength and flexibility in all areas of both corporate and personal asset structuring and tax planning.

That Guernsey should still be leading the way is not surprising. The sac concept was first introduced in Guernsey as the Protected Cell Company in 1997 and since then nearly 300 have been incorporated. Throughout almost a decade, the skills, expertise, systems and know how of their application have been tested, applied and developed extensively within the captive insurance, fund and securitisation industries. Further testimony to the success of the PCC comes from the fact that the Guernsey concept has now been copied in more than 30 other jurisdictions.

However, despite this success and the imitations, the finance industry in Guernsey has always been acutely aware of – and very keen to pursue – the potential for sacs in other areas of financial planning. The variation of the rules now makes this possible and the years of knowledge and experienced gained will be expertly applied in carrying the sac forward into a greater diversity of tax planning areas.

### The basic concept – what is a sac?

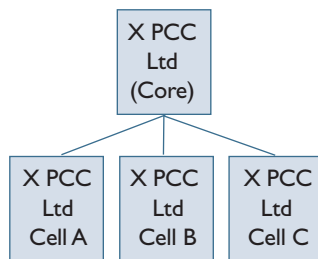
The fundamental structure of the sac will be familiar to financial planners through the basic tools of the PCC and, since May 2006, the ICC. It is worth briefly recapping

on the key points and traditional uses of both before considering them in the light of potential future applications.

Essentially, a sac is exactly what it says – it is a *company* that holds an *asset* (which may or may not have the potential to become a liability), within a corporate “cellular” environment and under specific legislation that allows the assets of one cellular company to be legally *segregated* from those of all other companies within the structure.

### The Protected Cell Company

A PCC is a single legal corporate entity consisting of a core vehicle which has the power to create individual cells into which separate assets and liabilities can be placed and thereby segregated. Subject to consents, any Guernsey company can be incorporated as a PCC or, if required, an existing Guernsey company can convert to a PCC. The PCC must be administered by a Guernsey licensed entity.



The strength and attraction of a PCC lies in the ring-fencing of assets and liabilities within separate cells because the legislation expressly provides that the assets of any one particular cell are only available to the shareholders and creditors of that cell – creditors of another cell having no recourse against them. Similarly, and following a recent change to the legislation, the core assets may not be used to satisfy cellular insolvency either, except in cases where there is a specific “recourse” agreement in place.

### Additional benefits of a PCC

As well as the ability to ring-fence assets and liabilities there are practical and administrative benefits to establishing and using a PCC which also have the benefit of minimising costs when compared to a traditional corporate structure:

- There is only one corporate entity, so, unlike a group company structure, there is only one Board and only one annual return to be filed.
- Regulatory consents will have been obtained in advance for the PCC meaning that as new cells are required, the level of regulatory scrutiny and time will be reduced.
- Distinct shares can be issued by each cell so that the profits and dividends associated with the investment or business of each cell are kept separate rather than being pooled as in a conventional company.
- Individual cells can quickly be created to act in specific roles – for example, if a fund manager wanted to create a new fund to take advantage of investing in a booming sector or country.
- A commercial advantage is that a cell, successful or otherwise, may be detached from the PCC (subject to court order) and transferred to another company, in another jurisdiction, irrespective of whether that company is itself a PCC, thus providing protection against “collateral” liquidation.

### The Incorporated Cell Company

The ICC, which has been available since May 2006, does no more than extend certain of the features of the PCC, but these extensions do increase the power and flexibility of the use of sacs in certain situations.

An ICC has the same basic structure and advantages as outlined for the PCC above. But, from that point on, the concept has been extended, which in turn has resulted in added benefits:

- Although an ICC has cells like a PCC, each cell is a *separately incorporated, separately registered, legal entity in its own right*. This identifiable, separate legal identity brings the benefit of giving each cell the ability to legitimately enter into binding, legal contractual obligations not only with third parties, but also with one another. Within such a structure, an example may be the need for inter-cellular loans, guarantees or credit agreements.
- This legal separation brings the benefits of facilitating commercial transactions (such as borrowing from a bank) because the bank is dealing with an individually, accountable entity and not the cellular structure as a whole, which in turn means that the legal complexity in creating commercial

relationships is simplified. In essence, the third party is dealing with a stand alone company.

- Administrative benefits – and thereby cost savings – come from several aspects including the cell company and the individual cells having the same directors and registered offices; sole responsibility for maintaining the registers of shareholders for each cell lying with the “principal cell company”; the submission of a combined annual return for all cells; and, the principal cell company being the only cell within the structure that is required to create separate accounts.
- The overall structure is very similar to a traditional group corporate structure. It is also believed to be less susceptible to challenge and to inter-cellular contamination in the event of creditors’ claims.
- An existing ordinary Guernsey company will be able to become a cell within an ICC (and vice versa) which provides great flexibility.

Given all of this flexibility and the relaxation of the rules surrounding their use, it is no surprise that Guernsey practitioners are busy unlocking the potential of sacs and turning them into one of the most powerful, invaluable and innovative tools in the financial planner’s armoury.

Sacs will, of course, still have a key role to play in what may now be considered to be their traditional uses and, before considering some of their future potential, it is worth reiterating the uses and reasons why they have become so firmly established.

### Captive insurance

The use of PCCs in the captive insurance industry represents their traditional and most enduring use. They continue to enable the efficient segregation of insurance risks, coupled with the benefit of cost savings. Historically, this opened up the first cost effective insurance route to the small company and is an option which still remains available today. Rather than have the expense of setting up a stand alone captive, the company can now approach an insurance manager who, having established a PCC, can insure any number of businesses in separate cells, yet within that single vehicle. This not only reduces the formation costs but, also, the capital requirements of the individual companies.

### Funds and Hedge Funds

The ability to segregate assets and liabilities within the fund industry make sacs a powerful and well used tool. A typical umbrella fund structure represents a straightforward example because it is possible for a major liability that attaches to the assets of one share class to have a detrimental effect on the other share

classes in the umbrella. This risk of “cross-losses” or “cross-contamination” across share classes can be obviated by the segregation of the potential liabilities within different cells of a sac.

In the same way, highly volatile instruments such as options, futures, forwards and derivative assets, or focused investment in a risk associated sector, can be isolated within individual cells.

### Structured finance

The sac remains ideally suited for structured finance transactions in that it can issue bonds and notes where the repayment will be funded from the proceeds of specific investments within individual cells.

In a similar way, a sac can also be used for guaranteed or protected products where the guaranteed element may be placed on deposit while the remainder is invested to generate the return. In this way, passive and active cells are created and any under-performance in the active cell will not erode the guaranteed element, whilst any over-performance in the active cell can always be added to the passive cell.

### Looking forward – using sacs in the future

The traditional uses of the sac as outlined above have been within the corporate sector. Although these will remain, future uses of the sac will focus more on personal and family asset structuring and tax planning.

For example, subject to consents, an individual private client with a mixed property portfolio of retail, commercial and developmental property and land, should now consider structuring the entire business through a sac, thereby isolating the risks from one another and from his other assets.

Outlined below are some further areas of private asset structuring where, over the course of the next year, the Guernsey sac will undoubtedly be applied. Perhaps this is best illustrated in the context of the use of sacs as a useful structure for the Family Office.

### The Family Office and the sac

The Family Office is, in itself, becoming an important co-ordinating factor in the long-term generational planning of family assets. When considering the uses of a sac, the two seem tailor-made for one another simply because, within the context of the Family Office, a sac provides the ideal framework for an underlying corporate structure that could hold the family assets. This can reduce the administration for the Family Office normally managed through a complex mix of corporate and trust structures. Trusts can still hold the shares of the sac if required. Corporate governance of the sac can be closely aligned to the

governance aims of the family as a whole.

Each cell can provide a separate holding vehicle for one or more assets and, therefore, is ideal for separating family assets within sub groups of the family, such as shares in the family company; investment portfolios (perhaps based on risk or need to generate income); property, maybe based on residential versus commercial; or accessories, wasting assets such as yachts or planes, while at the same time providing the overall structured framework through which the Family Office can operate.

Add to this the option for variable voting rights, differing fees and expenses, a range of investment policies, the option of appointing multiple investment managers, perhaps with each having a specific mandate over different cells and, lastly, varying distribution policies and the flexibility and power of sacs in a private client context is clearly demonstrated.

### Holding intellectual property

The Guernsey legislature has also been busy updating the legislation relating to all intellectual property (discussed in detail elsewhere in this feature). This has made Guernsey an attractive centre to register such rights. Tying this in with the sac changes enables any corporation or individual wanting to place their intellectual property portfolios in Guernsey to do so through a PCC or ICC.

This will allow the income flows from royalties, franchising and other rights to flow into a tax efficient environment while, at the same time if, for example, there were elements of research and development, these risks could be isolated. Ultimately, if something of high value were developed, the onward sale of the cell of value could be carried out in isolation.

### Countless applications

Now the rules surrounding the use of sacs have been relaxed the opportunities to use them in private client asset structuring and tax planning appear limitless. Multi-manager funds, REITs, the inward migration of companies to Guernsey and their conversion to a sac will all provide still further opportunities

One thing is clear – the continued forward thinking of the Guernsey authorities working in co-operation with Guernsey Financial Practitioners has enabled client advisors to step over the threshold, continue to be creative and innovative with sacs and ensure that Guernsey remains a leader for yet another decade.

[www.butterfieldbank.gg](http://www.butterfieldbank.gg)

“Protected Cell Companies - a new form of company”  
May 2001, Issue 116  
offshoreinvestment.com/archive