

**Judgement 5/2006 Jubilee Absolute Return Fund PCC - Royal Court
(Company File 44327) – 10th February, 2006**

Companies (Guernsey) Law, 1994 – Protected Cell Companies Ordinance, 1997 – Migration of Companies Ordinance, 1997 – foreign company incorporated under legislation similar in nature to the Guernsey protected cell company legislation – Court satisfied that the Financial Services Commission would grant permission for the company to convert to a protected cell company – permission granted for the company to be registered in Guernsey as a protected cell company

**IN THE ROYAL COURT OF GUERNSEY
(Ordinary Division)**

**Jubilee Absolute Return Fund PCC
Limited**

**Application to Royal Court to Migrate a
Company to Guernsey as a Protected Cell
Company**

Reasons delivered 10 February 2006

Before: Richard John COLLAS Esq., Deputy-Bailiff

Advocate for Jubilee: Advocate D Moore

Legislation referred to:

The Companies (Guernsey) Law 1994

The Protected Cell Companies Ordinance 1997

The Migration of Companies Ordinance 1997

1. I understand this is the first occasion on which the Royal Court has been asked to approve the immigration of a foreign company which is incorporated under legislation similar in nature to the Guernsey legislation governing protected

cell companies and which, if consent is given for its immigration, will operate as a Guernsey protected cell company.

2. I am told that on a previous occasion, the Royal Court refused to approve the immigration of a foreign company with a conventional limited liability structure and which proposed, upon registration in Guernsey, to convert to a protected cell company. On that occasion, the Royal Court directed that it must first register as a conventional Guernsey company before converting into a protected cell company.
3. As this is a novel application, and having discussed it in Chambers with Advocate Moore on behalf of the applicant, I wish to deliver in open Court my reasons as to why I am prepared to grant the application.
4. The principal company legislation in Guernsey is the Companies (Guernsey) Law 1994 (“the Law of 1994”) which permits the incorporation of companies with a conventional limited liability structure.
5. The Companies (Enabling Provisions) (Guernsey) Law 1996 permitted the States by Ordinance to make provision (inter alia) for:
 - i) The incorporation in Guernsey of protected cell companies. That is to say companies whose assets may be segregated into two or more classes (cells) each of which may be protected from the creditors of another cell.
 - ii) The migration of companies into Guernsey, whereby a foreign company is registered as a company under the Law of 1994.
6. Pursuant thereto, the States enacted the Protected Cell Companies Ordinance, 1997 (“the PCC Ordinance”) which came into operation on 1 February 1997 and then the Migration of Companies Ordinance 1997 (“the Migration Ordinance”) which came into operation on 1 August 1997.

7. So, there are now two ways of establishing a Guernsey company: by incorporation under the Law of 1994; and by immigration. If a company is incorporated in Guernsey, Section 3 (1) of the Law of 1994 requires that its memorandum of association shall be registered under the authority of an act of the Royal Court in the Register of Companies. Section 6 (1) of the Law of 1994 provides that “Upon the registration of a company’s memorandum and articles in the Register of Companies in accordance with the provisions of this Law, the Company shall be incorporated under the name and for the object set out in the memorandum”.
8. A foreign company wishing to be registered in Guernsey does not follow the registration procedures in the Law of 1994. Instead it must comply with the provisions of the Migration Ordinance and apply to the Royal Court for consent to register as a Guernsey company under Section 1, having obtained the prior written consent of the Guernsey Financial Services Commission (“the Commission”) (Sections 5 and 6(c)). The Court also requires the other documents detailed in Section 6, including a copy of the memorandum and articles of the company which must comply with the requirements of the Law of 1994.
9. The provisions of the Law of 1994 apply in relation to a protected cell company except to the extent they are modified and supplemented by the provisions of the PCC Ordinance.
10. Section 1(1) of the PCC Ordinance states:

“it shall be lawful, subject to the provisions of this Ordinance:-

- (a) To incorporate a company which shall be a protected cell company;*
- (b) To convert an existing company, if so authorised by its articles, into a protected cell company”.*

11. The definition of a protected cell company in Section 27 of the Ordinance is:

“a company incorporated as, or converted into, a protected cell company in accordance with the provisions of this Ordinance”.

12. The provisions for the conversion of an existing company into a protected cell company include the requirement that the consent of the Commission be obtained. The Ordinance does not require application to be made to the Royal Court to approve the conversion. In most instances where a Guernsey company converts to a protected cell company, the only involvement of the Royal Court will be under Section 22 of the Law of 1994 to confirm a special resolution changing the name of the company so as to incorporate the expression “protected cell”, “PCC” or any cognate expression approved in writing by the Commission in accordance with the requirements of Section 6 (1) of the PCC Ordinance 1997.
13. In the present case I am told that the company is presently incorporated in Bermuda as a segregated accounts company which I am told is the Bermudian equivalent of a protected cell company. So, I am told, it is already established in accordance with the broad requirements of the PCC Ordinance. The company wishes to immigrate to Guernsey and be registered as a Company under the Law of 1994.
14. I am grateful to Advocate Moore for giving me notice of the proposed application and hence giving me an opportunity to consider it, and to hear argument from him, in Chambers. Advocate Moore sought to persuade me that the company can apply under the Migration Ordinance to register as a protected cell company.
15. In my Judgment, the combined effect of Section 1 of the PCC Ordinance and the definition of “protected cell company” which I have quoted above is that a Guernsey company can only be a protected cell company if it is either:
 - (i) incorporated as such under the provisions of the PCC Ordinance or

- (ii) an existing company which has converted to a protected cell company in accordance with the requirements of the PCC Ordinance.

16. Advocate Moore argued that, following the enactment of the Migration Ordinance, the word “incorporation” is to be given a broad meaning. The natural meaning of the word “incorporated” suggests that a Company which was initially incorporated in a foreign jurisdiction cannot be said to have been incorporated in Guernsey. That interpretation, in my view, is confirmed by the wording of Section 6(1) of the Law of 1994 quoted above. A foreign company which migrates to Guernsey will be registered in Guernsey under the provisions of the Law of 1994, but it will never be considered to have been incorporated in Guernsey.

17. I therefore conclude that a foreign company can only become a protected cell company if it so converts in accordance with the requirements of the PCC Ordinance which include obtaining the consent of the Commission. Whether to grant such consent is, as I have said, a matter for the Commission and not one which requires the approval of the Royal Court.

18. In conclusion, if the Commission is able to grant, and does grant, consent for the conversion under Section 8 of the PCC Ordinance and if the Commission also grants consent to the migration of the company under the provisions of Section 5 of the Migration Ordinance, application may be made to the Royal Court for the company to be registered as a company under the Law of 1994. If so registered, it will then be a protected cell company in accordance with the provisions of the PCC Ordinance.

19. I should add that I accepted, without hearing from the Commission, that it would grant permission for this company to convert to a PCC. On a first reading of Section 8 of the PCC Ordinance I had assumed that the Commission could only grant a consent to an existing Guernsey company. Advocate Moore argued otherwise. Since I heard from Advocate Moore in Chambers, the Commission have granted consent for the company to convert into a protected cell company upon its migration.

20. An application has now been tabled for the Court to consent to the company's registration as a Guernsey protected cell company called Jubilee Absolute Return Fund PCC Ltd. The application is supported by the necessary consents (referred to above) from the Commission under the Migration Ordinance and the PCC Ordinance. I am advised that all formalities had been complied with and I duly give the Court's consent.