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Bermuda Tables Incorporated Segregated Accounts Companies Act Allowing for Cells with Separate Legal Status

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The Incorporated Segregated Accounts Companies Act 2019 (ISAC Act) was tabled in Bermuda’s House of Assembly on 27 September 2019. The ISAC Act allows for the creation of segregated accounts, or cells, with separate legal status.

The ISAC Act is companion legislation to the Segregated Accounts Companies Act 2000 (SAC Act). Both the SAC Act and the new ISAC Act ring-fence the assets of each individual cell from the creditors of other cells and allow for the winding up of individual cells without affecting any of the others. As with SAC cells, each cell of an incorporated segregated accounts company (ISAC) will be able to contract with one another and/or the ISAC itself.

The two pieces of legislation differ in that under the SAC Act the statutory divisions between the segregated accounts do not create separate bodies corporate, but under the ISAC Act each incorporated segregated account is a separate legal entity in its own right. As such, each account or cell will have many of the attributes of a company, including the ability to hold assets, sue and be sued in its own name, be subject to winding up proceedings with no impact on other cells and the ISAC, and most importantly, legal segregation of the account or cell from the ISAC and other accounts or cells. Each cell will also have its own board of directors, separate from the board of the ISAC, though the same directors can sit on both if so desired.

ISACs may be a more cost-effective way of creating a corporate group structure, as the administration costs for cells are lower than for a traditional group of companies. ISACs will be advantageous for insurance and reinsurance structures in that, due to the separate legal personality of each cell, it would be possible for each cell to function as an independent licensed insurer within the same ISAC, obtaining separate tax elections (if relevant) or credit ratings, which may be an attractive feature for some. They will likely be of interest for those offering Insurance Linked Securities, rent-a-captives and life insurance.

ISACs will also be advantageous for investment funds and private equity enterprises as it will permit an unlimited number of accounts or cells to function as independent investment vehicles within the same structure, thereby minimizing operating costs and permitting economies of scale, with the additional benefit of protecting the assets of each account or cell from creditors and counterparties of other accounts and the company as a whole.

The ability for each account to sue or be sued in its own right is also advantageous as it permits each cell to effectively operate autonomously from the others, further ring fencing operation costs and potential liabilities. Given the ability for one account to invest in another, a unique attribute to Bermuda’s incorporated segregated accounts legislation, master/feeder structures may be established in a single corporate entity permitting a “platform” approach to the establishment of investment funds. The ability for each cell to have its own dedicated and independent board of directors further enhances the attractiveness of this product to the investment industry.

Except where otherwise provided in the ISAC Act, ISACs will be governed by the Companies Act 1981 and each will be subject to the appropriate licensing and regulatory regime depending on the nature of its business.

To learn more about the ISAC legislation please contact your usual Conyers lawyer or one of those listed below.

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