

Companies (Amendment No.8) (Jersey) Law 2006

The Introduction of Cell Companies

SUPPLEMENTARY INFORMATION

States 
of Jersey

1. INTRODUCTION

The Companies (Amendment No.8) (Jersey) Law 2006 (the **Amendment**) is expected to come into effect on 1 February 2006. The Amendment will, among other things, permit cell companies to be incorporated in Jersey, and sets out the legal framework relating to such cell companies.

There are, however, a number of ancillary matters relating to the operation of cell companies that are not set out in the Amendment. Many (though not all) of these matters are set out fully and authoritatively in subordinate legislation.

The purpose of this note is to assist those interested in using cell companies by providing within a single document issued prior to the introduction of the new regime, a summary of these ancillary matters, but it is not and does not purport to be authoritative or comprehensive, and should not be relied upon as such.

It should be especially noted that this note sets out the anticipated regime that will apply to cell companies. Certain matters set out in this note are subject to confirmation from either the Minister for Economic Development or by the States of Jersey. This note sets out what is, at the time of publication, expected to be the position when the cell company regime is launched on 1 February 2006.

2. USES OF CELL COMPANIES

Like all Jersey incorporated companies, cell companies will be required to comply with the published policy of the Jersey Financial Services Commission (the **Commission**) in relation to Sensitive Activities. There are, however, no specific additional restrictions in relation to the purposes for which a cell company may be established or utilised.

Cell companies are relatively novel and specialised vehicles and, as a matter of policy, all cell companies will ordinarily be required to appoint a business regulated under one of the Island's regulatory laws to provide administrative and/or secretarial support to the cell company. In addition, any cell company used to carry out a regulated activity will be required to comply with the Island's regulatory framework and the requirements of the Commission.

The Economic Development Department intends to closely monitor the number of cell companies established and the manner in which they are being used and, if it is appropriate to do so, will provide guidance to the Commission in relation to areas of commerce in which it would not be in the public interest for a cell company to operate.

3. TAXATION OF CELL COMPANIES

The Amendment permits the introduction of two types of cell company: the Incorporated Cell Company (**ICC**) and the Protected Cell Company (**PCC**). The most important difference between the two types of cell company is that whereas a PCC and all of the cells it creates together form a single legal entity, each cell of an ICC is a separate body corporate.

As a result of this distinction, it is neither desirable nor appropriate to apply the same tax treatment to both ICCs and PCCs. Following discussions, the Comptroller of Income Tax has issued the following statement in relation to the taxation of cell companies:

Article 123A of the Income Tax (Jersey) Law, which is the legislation applicable to exempt companies, refers to '...a company...' making an application for exempt status, not parts of a company, so I am of the opinion that it is the company itself as a whole which makes the application and pays the exempt company fee, not particular cells of the company. So the exempt company fee payable, therefore, will not be dependent on the number of cells within, or which comprises, the company, and a single exempt company fee will be payable by a Protected Cell Company in respect of itself and all of the cells it creates..

Article 123B, which is the legislation for international business companies (IBC) also refers to '...a company...' rather than parts of a company so IBC status will also be given for the company as a whole and the appropriate rate of tax applicable to the IBC will apply to the IBC's taxable profits as a whole.

In the case of incorporated cell companies, given that each cell is, as a matter of law, a separate company, each incorporated cell will be treated for the purposes of the Income Tax (Jersey) Law as a separate entity with its own tax treatment.

4. FEES PAYABLE BY CELL COMPANIES

A cell company will be required to pay fees under the Companies (Jersey) Law 1991, as amended. In addition, in the event that the cell company or the cells it creates carry out a regulated activity, fees may be payable to the Commission in respect of that activity. This aspect of the regulatory treatment of cell companies is covered in section 5 below.

The fees payable in respect of a cell company should be the same, whether the company is an ICC or a PCC. The fees payable in respect of each type of cell company should not be a factor in determining which form of cell company to establish.

It should be particularly noted that there will be no fee payable in respect of the creation of a cell of a cell company.

Fees payable under the Companies Law

Fee payable upon formation of a cell company	£200
Fee payable upon a special resolution by a company to convert to or from being a cell company	£500
Fee payable for transfer of a cell between cell companies	£200
Annual return fee for a cell company	£150
Annual return fee for each cell of a cell company	£150

The full scale of applicable fees is set out in the Schedule to the Companies (Fees) Order 2006.

5. THE REGULATORY TREATMENT OF CELL COMPANIES

From a regulatory perspective, ICCs and PCCs will, insofar as in possible, be treated in the same manner, both as regards the manner in which permits are sought and the fees levied. Each cell company will hold a single document that sets out all of the regulatory permits that apply to the company and its cells.

The terms of the permit will, however, differ, as a PCC will be a regulated entity, whereas it is the cells of the ICC that will be regulated entities. Nevertheless, from a practical perspective it is sensible to require all regulatory applications in relation to a cell company to be co-ordinated through the cell company itself, rather than through ad-hoc applications made by each cell.

A permit issued to a PCC will apply directly to the PCC, whereas a permit issued to an ICC will apply directly to the individual cells. In each case the permit will list all of the cells of the company and any permit conditions that apply to each cell.

i) Collective Investment Funds

The approach taken has been to treat cell companies as being analogous to existing umbrella funds. However, as a matter of law, where it is cells themselves that issue units, it will be the PCC that is the

functionary where a PCC structure is used, whereas individual cells will be the functionaries when an ICC is used. The fees Order addresses this through a provision providing that, in total, an ICC will be required to pay the same amount of regulatory fees in relation to itself and all of its cells as a similar PCC would be required to pay.

The fees payable are as follows:

Functionary fee	£1,000
New pool of assets	£500
Fee when the functions of an existing functionary are transferred to the cell of a cell company	£2,000

In addition, the annual fees payable by reference to the number of pools of assets in respect of which a permit holder is a functionary has been amended as follows:

Number of pools of assets	Annual fee
1	£2,000
2-4	£2,500
5-9	£3,000
10-19	£4,000
20-49	£5,000
50-99	£7,000
100-149	£10,000
150-199	£15,000
200 or more	£20,000

The full fees structure is set out in the Collective Investment Funds (Permit Fees) (Jersey) Order 200-, which is the authoritative source for the level of fees payable under the Collective Investment Funds Law.

In addition, the Collective Investment Funds (Unclassified Funds) (Prospectuses) Order is being amended to require cell companies to include in any prospectus:

“a statement to the following effect –

‘This prospectus is issued in respect of a Jersey cell company, which is a specialised corporate vehicle. It is therefore recommended, if you are unfamiliar with the nature of Jersey cell companies, that you discuss this aspect of the fund with your usual advisor.’”

ii) Insurance Business

The Insurance Business (General Provisions) (Amendment No.5) (Jersey) Order sets out the fees applicable to cell companies or cells of cell companies granted Category B permits.

The fees can be broadly summarised as follows, though it should be noted that the fees framework under the Order is more complex than the summary suggests and the summary will not therefore be entirely accurate in all cases (for example, in certain circumstances a fee payable by a cell company shall include the first cell of the company):

Permit granted to a cell company	£3,500
Permit granted to cell and including long-term business of any class	£2,000
Permit granted to cell and including general business of any class	£1,000
Where an insurance company changes from being a limited company or limited liability partnership to a cell company or a cell	£1,000

6. CELL COMPANIES AND THE BANKRUPTCY (DÉSASTRE) LAW

The Bankruptcy (Désastre) (Amendment No.5) (Jersey) Law (the **Bankruptcy Amendment**) was approved by the States in October 2005 and is awaiting Privy Council sanction. It is likely to come into force in April or May 2006. One of the provisions of the Bankruptcy Amendment sets confirms that a creditor may seek a declaration of désastre against the cell of which he is a creditor.

Until the Bankruptcy Amendment comes into force, however, it is not clear that the creditor has such a right. The States will therefore be asked to consider on 31 January 2006 the Companies (Amendment No. 1) Regulations 200-, the purpose of which will be to provide that, until such time as the Bankruptcy Amendment comes into force, the definition of “company” in the Bankruptcy Law shall be taken to include the cell of a cell company. This will then permit creditors of a cell to apply to the court for a declaration of désastre in respect of that cell.

This Paper has been issued on behalf of the Minister for Economic Development.

Any comments in relation to this paper should at the first instance be to

**Paul de Gruchy
Finance Industry Executive
Economic Development Department
c/o 5th Floor
Cyril Le Marquand House
The Parade
St Helier
JE4 8QT**

**Telephone: 01534 603413
Facsimile: 01534 603644
e-mail: pa.degruchy@gov.je**