

From: James Mews
Sent: 29 January 2009 17:15
To: Alan J. Maclean; [REDACTED]
Subject: FW: Draft speech for Minister re: Companies Amendment No. 10 and Regs No. 3

Dear Alan,

P185/2008/ - Draft Companies (Amendment No. 10) (Jersey) Law 200- ("the Amending Law")
P186/2008/ - Draft Companies (Amendment No. 3) (Jersey) Regulations 200- ("the Amending Regulations")

Please see attached a draft speech for the Amending Law and the Amending Regulations, which are being debated by the States on 3rd February 2009. Both amend the Companies (Jersey) Law 1991. The Order Paper for this States meeting is not yet available, but it is anticipated that the Amending Law will be dealt with first and we have drafted the speech on this basis.



2009.01.26 Co 10
draft Speech ...

The amendments made by both the Amending Law and the Amending Regulations are mostly for clarification purposes. The principal changes are (i) increased rights of appeal to the Royal Court for companies and their members; (ii) the introduction of a new offence regarding the keeping of a registered address in Jersey; (iii) a change to the definition of an open-ended investment company (OEIC) to allow more funds to benefit from an exemption regarding the making of solvency statements; and (iv) giving companies the ability to specify a higher than 2/3rds majority for special resolution in order to enable the company to meet requirement for listing on certain foreign stock exchanges.

We have included answers to questions that might be raised by States members at the end of the draft speech, but please do not hesitate to contact me with any questions you might have. We hope to see you tomorrow afternoon to brief you on this speech as well as either myself or my assistant will be on-hand during the debate.

Best regards,

James

James Mews

From: James Mews
Sent: 04 September 2007 12:27
To: [REDACTED]
Cc: James Mews
Subject: RE: Amendment 10 Minutes

[REDACTED]

If you want to change the law in the light of the meeting then please do so. I think the only required change is in the change of registered office provisions to give the registrar discretion whether to strike off on the filing of the note by the occupier.

The other difficulties simply mean that it would be nonsensical for TCBs to use to get rid of non paying clients. This is something to look at separately.

[REDACTED] is out of the office this week so you may need to liaise with [REDACTED] for this minor change. [REDACTED]

Regards,

James

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[REDACTED]

I have made some changes you may wish to consider.

J

From: [REDACTED]
Sent: 31 August 2007 15:50
To: James Mews; [REDACTED]
Cc: [REDACTED]
Subject: Amendment 10 Minutes

[REDACTED] James,

Before I post these on our website please could you both review to confirm that you are happy that they accurately reflect our discussions.

Please contact [REDACTED] to confirm this or make any amendments.

Regards

[REDACTED]

From: Paul De Gruchy [Pa.deGruchy@gov.je]
Sent: 22 February 2006 11:58
To: [REDACTED]
Cc: [REDACTED]
Subject: Register of Directors

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All,

I have discussed the question of the Register of Directors internally, and also with the Commission and with Jersey Finance Limited. There is a shared general belief that the introduction of a register of directors had been accepted. As far as the Law Society is concerned, no objection was raised to the principle of introducing a register of directors either in its response to the consultation paper in respect of Amendment No.X that raised the issue or in the subsequent steering group that was constituted in relation to this matter and to which the Law Society contributed a member. This being the case, it is difficult to raise objections at this stage unless it can be shown that circumstances have changed since the consultation in 2003.

The introduction of a register of directors is part of a raft of legislative and policy measures aimed at increasing the number of Jersey incorporated companies. These measures include the introduction of corporate directors, lifting the requirement that the beneficial ownership of companies be disclosed prior to a company's incorporation, moving towards an electronic register and allowing companies to be incorporated in advance of their use. For as long as we do not have a register of directors, it would be difficult to permit - for want of a better phrase - "shelf companies". The majority of our competitor registries do have a register of directors, and to allow shelf companies without having such a register would be interpreted by many as a provocative move. For the majority of Jersey companies the requirement to disclose the identity of the directors will not cause any difficulty: they will be either corporate directors or individuals who do not object to being named. Having said that, these are arguments that have already been made and upon which a conclusion was reached to which objections were not raised.

One of the respondents to the consultation paper did raise a potential difficulty, which concerned the desire of high-profile individuals who were directors of companies to remain anonymous. In the UK difficulties have arisen in relation to businesses such as Huntingdon Life Sciences, where information in relation to directors was obtained from the public record and used by anti-vivisectionists for their own ends. So in the UK a discretion exists to withhold the identity of directors from the public record.

It seems to me that we can perhaps reach a solution that everyone can live with. The registry can have discretion to not require the identity of a director to be placed on the public record. This could operate in a number of ways. The Minister could issue guidelines to the Registrar as to the types of person or the circumstances under which a director could ask not to be disclosed. An alternative requirement could be that one Jersey resident director must be named in such circumstances. These issues can be explored. Further, the amendment to the Trusts Law that is being finalised will give additional certainty to settlor reserved powers, such as the ability to give binding directions in relation to the appointment of directors of a company held by the trust, something that will enable greater flexibility in structuring arrangements.

Foundations may also have a role to play in this regard.

It may be that as a result of the introduction of the register of directors we lose a small number of companies owned and operated by people who value secrecy above everything else. Clearly, we will do whatever we can to minimise such losses, and I am sure [REDACTED] will discuss with [REDACTED] and others how best to achieve this. We are, however, too far down the road of implementing a register of directors as part of a general review of policy and legislation to stop, unless compelling argument can be made as to why no objection was raised when the proposal was originally made and what has changed since.

Best Regards

Paul

Paul de Gruchy
Director, Finance Industry Development
States of Jersey Economic Development Department

Tel: 01534 603413
Fax: 01534 603644

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[REDACTED]

From: Paul De Gruchy [Pa.deGruchy@gov.je]
Sent: 21 February 2006 10:38
To: [REDACTED]
Subject: Register of directors

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[REDACTED]

I have had a chat with [REDACTED] and he has dug out his correspondence and we have talked it over. He shares my (and your) understanding that the introduction of a Reg of dirs was pretty much agreed. The one proviso was that [REDACTED] had raised in their response a question about high-net worth individual directors (e.g. sports and rock celebs). He said the Commission had indicated it would have a policy so that these people would not need to be disclosed.

It seems to me that this policy is the key to getting the amendment through without objection. The vast majority of directors will be corporates. If we can have a facility whereby there is no need to list sensitive individuals then the concerns of the law society fall away. I think this is a tricky policy to devise, because everyone would seek to take advantage of it. I don't know how far you have gone thinking about such a policy: would it be sufficient to have one director listed only in these case? Would it be sufficient to give just the registered office for those cases? Would exemptions be given on a case by case basis? I seem to remember the UK had real problems with this one but don't know how they resolved it.

Anyway, one to consider.

Paul

Paul de Gruchy
Director, Finance Industry Development
States of Jersey Economic Development Department

Tel: 01534 603413
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[REDACTED]

From: Paul De Gruchy [Pa.deGruchy@gov.je]
Sent: 21 February 2006 10:04
To: [REDACTED]
Subject: Register of Directors

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[REDACTED]

I thought it would be helpful to set out what the current problem is and how it may be resolved.

The important thing to emphasise is that the debate is not on the merits of introducing a register of directors. The important issue is whether the Law Society have been fully consulted on this question and whether they can legitimately say that the concerns they raised have not been addressed.

Clearly, there was public consultation on this matter issued in summer 2003. From then, what we need to do is find out:

- 1) Did the Law Society respond to the Consultation? If so, please let me have a copy of their letter.
- 2) What did the Law Society get back (i.e. the Commission's summary of responses)?
- 3) Were the Society invited to sit on the steering group? If so, did they nominate a representative?
- 4) What documents were provided to members of the steering group (i.e. minutes of meetings etc)?

If we can show that the Law Society did not respond to the consultation or did respond and then either chose not to be part of the steering group or else were part of the steering group and the group agreed that a register of directors with the introduction of corporate directors was the way to progress, then the Law Society cannot now complain of the result. If, however, they somehow fell outside of the consultation then we may have a problem.

I hope that helps: we really don't want this to become an issue because it is clear that Amendment No.9 could pave the way for a real increase in the take up of Jersey companies and it would be unfortunate to delay/lose that opportunity.

Call if you have any questions - otherwise I am happy to come up and talk this over.

Best Regards

Paul

Paul de Gruchy
Director, Finance Industry Development
States of Jersey Economic Development Department

Tel: 01534 603413
Fax: 01534 603644

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[REDACTED]

From: Paul De Gruchy [Pa.deGruchy@gov.je]
Sent: 20 February 2006 10:28
To: [REDACTED]
Subject: Companies Law No.9

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[REDACTED]

I have discussed the question of law drafting instructions on this amendment with the Law Society and internally. While this matter has not yet gone to the Minister, I think it worth highlighting that there is considerable industry opposition to establishing a register of directors, and my feeling is that in the current climate there is unlikely to be much appetite to amend the Companies Law to introduce such a register. [REDACTED]

Clearly, the final decision as to whether or not to progress a Register of Directors should be made by the Minister, and if you wish, I am happy to discuss the matter with him as part of the process of finalising law drafting instructions. Let me know whether you wish me to do this.

I am working through the rest of the law drafting instructions and hopefully will be able to get something to you fairly soon.

Best Regards

Paul

Paul de Gruchy
Director, Finance Industry Development
States of Jersey Economic Development Department

Tel: 01534 603413
Fax: 01534 603644

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James Mews

From: [REDACTED]
Sent: 19 July 2007 14:56
To: [REDACTED]
Cc: James Mews
Subject: RE: Questions about the register of directors

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[REDACTED]

I have now had some time to consider the public and private company director disclosure issue. I agree with the overriding principal that submitted information and process should be the same for both private and public companies and that only public companies should disclose publicly their directors.

Process:

All new companies to provide director details on incorporation from a date specified by order/regulation (probable 1 Jan 2009); From the specified date all new companies provide updates to the Registrar upon a change within 28 days of such a change; All live companies as at the specified dates have 12 months, from the date specified, to file director details, once filed any changes will be notified as above; All filing to be in a manner acceptable to the Registrar (this will allow the Registrar to accept filings in paper, disc, electronic filing individually or in bulk etc) Public company details made public; Private company details held by Registrar only; No requirement to file directors with the annual return from specified date.

Hope this makes sense.

[REDACTED]

-----Original Message-----

[REDACTED]

> -----Original Message-----

> From: James Mews

> Sent: 13 July 2007 17:23

> To: [REDACTED]

> Cc: [REDACTED]

> Subject: RE: Questions about the register of directors

>

> Hi [REDACTED]

>

> Please see comments below:

>

> -----Original Message-----

