COMPANY UPDATE

COMPANIES

Abolition of the International Business Company ("IBC") and the Exempt Company and Introduction of the Company Taxed at Zero Rate

The preliminary phase of the implementation of Jersey's adherence to the European Union Tax Package in 2003, whereby Jersey agreed to make changes to its tax regime involving the introduction of a general rate of 0% and to phase out companies with tax exempt status was to first abolish International Business Companies.

The International Business Company was abolished with effect from 1st January, 2006. Existing beneficiaries of the International Business Company regime at that date continue to enjoy the benefits thereof, but subject to them being progressively phased out by the 31st December 2011.

Jersey incorporated companies owned by non-Jersey residents have for many years been deemed to be not resident in Jersey for tax purposes and were able to elect for tax 'exempt company' status. Exempt status was granted upon payment of a nominal annual fee (most recently £600 per annum).

Jersey introduced a general rate of corporate income tax of 0% for companies incorporated or first becoming resident in Jersey from 3 June 2008 and such companies will not be permitted to elect for the previous exempt company status regime. However, companies holding exempt company status prior to 3 June 2008 will maintain that status until 31 December 2008, but thereafter the 0% rate applies to them.

Companies which are resident in Jersey or which have a permanent establishment in Jersey will pay tax at tax at 0% unless they are "financial services companies" which pay tax at 10% or utility and property rental or development companies, which pay tax at 20%.

The attraction of the new regime for non-Jersey residents requiring companies is that the cost of company incorporation and ongoing company administration is effectively reduced by £600 in each of the first and subsequent years of the company's life.

Protected Cell Companies

The Companies (Amendment No.8) (Jersey) Law 2006 came into effect on 1 February 2006, which allows protected cell companies ("PCC") to be incorporated in Jersey. The Law provides for traditional legal framework for this type of company, namely that the PCC may contain any number of cells as if each were a separate corporate entity, but each such cell does not have separate legal existence and personality. The PCC and its cells together constitute a single legal entity.

Jersey has gone a step further and innovatively was the first jurisdiction to introduce the concept of incorporated cells ("ICC"). Each cell of an ICC is a separate company with its own legal identity. Each cell is capable of having its own board of directors, capital structure and corporate personality. Each cell of an ICC may have a different asset and liability profile, and this structure has the distinct advantage that in the event that a cell becomes insolvent, the remainder of the cells remain solvent, and the structure as a whole is not "tainted" by the insolvency of a particular cell.

The Companies (Amendment No. 9) (Jersey) Law 2008 (see below) has abolished the requirement that a cell of a cell company must adopt the same directors on its board as the board of directors of the cell company itself. This is particularly useful in the funds arena where institutions and investors may own the cell company and underlying assets in the various cells in differing manners. This amendment also introduces procedures whereby a company can convert itself to a PCC or an ICC, and vice versa.

Goods & Services Tax

The Goods and Services Tax (Jersey) Law 2007, as amended and the Goods and Services Tax (Jersey) Regulations 2007 make provision for a goods and services tax ("GST") to be charged in Jersey.

The tax is a sales tax on the domestic consumption of local and imported goods and services. The tax was introduced at the rate of 3%. The tax is primarily a tax on consumers and not on businesses, and it is not intended to have effect internationally outside of Jersey. To this end, included in the exemptions from GST are International Service Entities ("ISE"). ISEs are legal entities which include trusts and companies. Therefore, companies incorporated for non-Jersey residents by Jersey trust and company service providers are exempt from GST.

The only impact for the clients of Jersey trust and company service providers is the annual cost of applying for ISE status for the particular entity concerned.

The Companies (Amendment No. 2) (Jersey) Regulations 2008

The Companies (Amendment No. 2) (Jersey) Regulations 2008 became law on 22 January 2008. The Regulations introduced the following changes in respect of Jersey companies:

- The holding of "Treasury Shares" is introduced in respect of Jersey companies. On a redemption or repurchase of shares, and subject to authorisation by special resolution, a Jersey Company may hold Treasury Shares rather than cancel them. Treasury Shares carry no voting rights and right to dividend. They can be cancelled or sold, and may be transferred to an employees' share scheme. The ability for a company to redeem or repurchase its own shares and to hold them pending their purchase by new investors is likely to prove commercially attractive, especially in the funds arena.
- The current rules which restrict the ability of a company from granting financial assistance for the purchase of its shares are abolished. It is therefore no longer necessary for complex "whitewash" procedures requiring special resolutions to be effected in circumstances where a buy-back of shares is commercially expedient. Buy back of shares are in order provided the transaction is in the best interests of the Company and the directors make certain solvency statements.
- The requirement that directors make a full enquiry into the affairs and prospects of the Company when it repurchases or redeems shares has been abolished. Only the directors who authorise the repurchase or redemption need sign the solvency statement. A new form of solvency statement has been introduced, namely that the directors state that the company is able to discharge it liabilities as they fall due as at the date of the redemption or repurchase, and that it is able to carry on its business and discharge its liabilities as they fall due over the following 12 months.
- Jersey companies may now have corporate directors provide that any corporate entity so acting must be registered in Jersey to carry on trust company business pursuant to the Financial Services (Jersey) Law 1998.
- Revised provisions as regards cell companies (see above).

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The Companies (Amendment No. 9) (Jersey) Law 2008

The Companies (Amendment No. 9) (Jersey) Law 2008 came into force on 27 June 2008 (with the exception of Articles 17 to 22 dealing with the preparation and signing off of accounts, which will come into force on a day to be appointed by the States of Jersey). The most important amendments are as follows:

- The capital maintenance rules whereby Jersey companies were required to make distributions out of narrowly defined “distributable reserves” have been changed to allow for distributions but can now make distributions freely from any source of funds other than nominal capital or capital redemption reserve, provided the directors make a statement in relation to the company’s solvency. A Jersey company may redeem or buy back shares out of any capital source subject to the directors making the solvency statement.
- Reductions of share capital will no longer require the formal sanction of the Court provided the reduction falls within the new rules for distributions referred to above.
- The notice period for annual general meetings, or any other general meeting convened for the purposes of a special resolution, is reduced from 21 to 14 days;
- Public limited companies may have a name ending with ‘PLC’, ‘plc’ or ‘public limited company’ and may, as is the case with private companies, dispense with the holding of annual general meetings provided all members give their consent;
- Provisions regarding interim distributions by liquidators or directors in the course of a creditor’s winding up are introduced.