

STATES OF JERSEY

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DRAFT COMPANIES (AMENDMENT NO. 1) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 17th January 2006
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT COMPANIES (AMENDMENT No. 1)(JERSEY) REGULATIONS 200

REPORT

The Companies (Amendment No. 8) (Jersey) Law 200 is expected to come into force on 1st February 2006. The Bankruptcy (Désastre) (Amendment No. 5) (Jersey) Law 200 has been approved by the States but has not yet received the sanction of Privy Council.

Until such time as the Bankruptcy Law Amendment comes into force, it is not clear whether a creditor of a cell of a cell company will be able to bring an application to have a désastre declared in respect of the cell of which he is a creditor. The general view is that, certainly in the case of a cell of a protected cell company, such a remedy is not available. This is not desirable and is likely to prove a significant disincentive to those seeking to invest in or transact with cell companies.

The purpose of these Regulations is to clearly provide that creditors of a cell of a cell company shall have the right to bring an application to seek a désastre against the cell with which they have transacted. The Regulations will cease to have effect from the time the Bankruptcy Law Amendment comes into force and confirms that creditors have this right under the Bankruptcy Law.

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

The purpose of these Regulations is to give full effect to Article 127YU(1) of the Companies (Jersey) Law 1991 until Article 2 of the Bankruptcy (Désastre) (Amendment No. 5) (Jersey) Law 2000 comes into force.

Article 127YU(1) of the Companies (Jersey) Law 1991 provides –

“(1) Where a creditor of a protected cell company has a claim against the company in respect of a particular cell of the company ..., only the cellular assets of the company held by it in respect of the relevant cell shall be available to the creditor.”.

Article 2 of the Bankruptcy (Désastre) (Amendment No. 5) (Jersey) Law 2000 amends the definition of “company” in the Bankruptcy (Désastre) (Jersey) Law 1990 to include a cell of a cell company so that, if the cell of a cell company becomes insolvent, a declaration need only be sought in respect of the cell and not in respect of the company as a whole.

However, the Bankruptcy (Désastre) (Amendment No. 5) (Jersey) Law 2000 has still to receive the approval of the Privy Council, to be registered in the Royal Court and to be brought into force by an Act of the States.

In the meantime it is important that the States’ cell company legislation is brought into force in a manner that gives it full force and effect.

The temporary amendment to Part 18D of the Companies (Jersey) Law 1991 made by these Regulations, which is permitted by Article 127YN of that Law, will achieve this purpose.



Jersey

DRAFT COMPANIES (AMENDMENT No. 1)(JERSEY) REGULATIONS 200

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 127YN of the Companies (Jersey) Law 1991,^[1] have made the following Regulations –

1 Article 127YU of Companies (Jersey) Law 1991 amended

- (1) The purpose of this Regulation is to give full effect to Article 127YU(1) of the Companies (Jersey) Law 1991 until Article 2 of the Bankruptcy (Désastre) (Amendment No. 5) (Jersey) Law 200 comes into force.
- (2) Accordingly, during the duration of these Regulations Article 127YU of the Companies (Jersey) Law 1991 shall be taken to have been amended by the inclusion after paragraph (3) of the following paragraph –

“(3a) In the Bankruptcy (Désastre) (Jersey) Law 1990, ‘company’, as defined for the purposes of that Law, shall be taken to include a cell of a cell company.”.

2 Duration

- (1) These Regulations shall come into force on the same date as Article 29 of the Companies (Amendment No. 8) (Jersey) Law 200^[2] comes into force and shall cease to be in force when Article 2 of the Bankruptcy (Désastre) (Amendment No. 5) (Jersey) Law 200 comes into force.
- (2) On these Regulations ceasing to be in force, the provisions of Article 17(2) of the Interpretation (Jersey) Law 1954^[3] shall apply in like manner as they apply in relation to an enactment that has been repealed.

3 Citation

These Regulations may be cited as the Companies (Amendment No. 1) (Jersey) Regulations 200.

[1] *chapter 13.125*

[2] *L.37/2005*

[3] *chapter 15.360*