

STATES OF JERSEY



DRAFT RATES (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 19th October 2010
by the Comité des Connétables

STATES GREFFE



Jersey

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REPORT

The Rates (Jersey) Law 2005 provides for the levying of Parish rates and of the Island-wide rates on the owners and occupiers of land. Land is defined in the law and includes a house, building or other structure on the land. The definitions of “owner” and “occupier” relate to the person entitled to “occupy and use” the land.

Where “land” is owned by virtue of the ownership of shares in the company, the shareholder may have the right to a specific part of that property, such as a named flat, as well as to communal areas which all shareholders are entitled to use (the exact rights and entitlements will be set out in the company’s Articles of Association).

Parishes have received returns relating to share transfer property with some treating the shareholder as the owner and the occupier and others treating the corporate body as the owner and the shareholder as the occupier (in this case the shareholder receives the demand for occupier’s rate and has to pay the foncier rate through the company).

The Committee has received legal advice that for share transfer properties the owner of the shares is entitled to occupy and use the flat and therefore each shareholder is the owner of his flat but, with regard to the communal areas, the company is both the owner and occupier.

This interpretation creates an administrative burden for companies, their shareholders and the parishes. It also makes the assessment of parts of the property more difficult as communal areas should be separately assessed (with rate demands sent accordingly) and, as share transfer flats can be purchased as an investment by persons not living in Jersey, shares are sold without a parish being aware of the transfer.

The Committee therefore considers it appropriate to amend the definitions in the law so that in relation to share transfer properties the company is treated as both the owner and the occupier. The amendment will do this and will thus simplify, for all parties, the administration and collection of rates.

It should be noted that the definition of “occupier” is the owner of the land or the person to whom the land is let under a lease or tenancy agreement. The Committee has been informed that a shareholder does not have the power to grant a lease (or ‘paper lease’) of the land to another although, subject to the Articles of Association of the company, it would be possible for the shareholder to grant a licence for the occupation and use of the property.

A ratepayer (or if joint ratepayers the first named) is a member of the Parish Assembly so the Committee has sought advice as to the implications if the company, rather than the shareholder, is the ratepayer. As registration under the Public Elections (Jersey) Law 2002 also entitles a person to be a member of the Parish Assembly, all shareholders may be members of the Parish Assembly if they are eligible to register as an elector (this requires residence for 2 continuous years or for 6 months and any period(s) that total 5 years at the date of registration). The advice received is that any human rights issues which might arise from the amendment are unlikely to be significant. A body corporate may also nominate a representative who is a member of the Parish Assembly and so the company will also have a vote on any decision by the Assembly. A member of the Parish Assembly has only one vote on any decision by the Assembly.

The Committee has consulted with the Minister for Treasury and Resources as the amendment affects the recovery of the Island-wide rate as well as the parish rate (albeit indirectly) and the Minister supports the amendment. The Committee is also consulting with the Law Society.

The Committee therefore proposes this amendment to the law so that for share transfer properties the body corporate is treated as the owner and the occupier of the land owned.

Financial and human resource implications

There are no financial or human resource implications for the States. The amendment will simplify the administrative process for companies, their shareholders and the parishes thus may result in some small financial and human resource savings.

Explanatory Note

These Regulations amend the definition “owner” in the Rates (Jersey) Law 2005 (the “principal Law”) to make it clear who is to be treated as the owner in respect of share transfer property for the purposes of the principal Law. In particular, the definition is relevant to liability for the payment of rates. The owner of land is liable to pay such rates except in some circumstances where the occupier (if different) is liable for payment. Under the amended definition, in respect of share transfer property, it is the company owning the land who is treated as the owner in each case.

As a consequence of the amended definition, these Regulations also insert the definition “share transfer property” in the principal Law. “Share transfer property” means property that a person is entitled to occupy either (a) by virtue of owning shares in a company that owns the land, or (b) by virtue of being entitled to occupy such property under licence from another person, such other person being entitled to occupy the land by virtue of owning shares in such a company.



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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 49 of the Rates (Jersey) Law 2005¹, have made the following Regulations –

1 Article 1 of the Rates (Jersey) Law 2005 amended

In Article 1(1) of the Rates (Jersey) Law 2005² –

(a) for sub-paragraph (a) in the definition “owner” there shall be substituted the following sub-paragraph –

“(a) if the land is not let under a lease or tenancy agreement –

(i) except in the case of share transfer property, the person entitled to occupy and use the land either as owner or usufructuary owner or in the exercise of rights of dower, *franc veuvage*, seignioralty or otherwise, or

(ii) in the case of share transfer property, the company owning the land; or”;

(b) after the definition “Rates List” there shall be inserted the following definition –

“‘share transfer property’ means any land the entitlement to the use and occupation of which by a person arises by virtue of –

(a) the ownership by that person of shares in a company that owns the land; or

(b) a licence from another person owning shares in a company that owns the land, such other person being entitled to use and occupy the land by virtue of owning such shares;”.

2 Citation and commencement

(1) These Regulations may be cited as the Rates (Amendment of Law) (Jersey) Regulations 201-.

- (2) These Regulations shall come into force 7 days after they are made.

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- ¹ *chapter 24.950*
² *chapter 24.950*