



## **Jersey – Drafts Air & Sea Ports (Incorporation) (Jersey) Law 201**

Submission by Prospect, Unions for Professionals: Prospect is a UK based Trades Union representing over 120,000 specialists and professionals in industries as diverse as agriculture, electricity generation and heritage as well as Civil Servants in the UK, Guernsey, the Isle of Man and Jersey.

This note is an outline view of the proposed Law 201  
P.5/2015

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**Introduction: Prospect has placed previous opinions on record. Prospect are not opposed to incorporation per se and our work around the Andium Homes proves this point conclusively, but do have reservations around a number of issues which are unclear from the draft legislation.**

There does not appear to be a clear resolution to the question "what if it doesn't work"; will the organisation be taken back under States control? Will the staff return as Civil Servants? What will happen in terms of property?

This last question also arises for incorporation itself as the new organisation will control a large amount of land and property currently under States ownership.

In terms of staff, Prospect has concerns as the apparent inability of staff to be able to move to other Civil Service roles should their post become redundant. This narrows the field significantly and increases the risk to them.

**Comment**

From the draft itself, whilst there is clear intention in the opening statements, when raised with the employer, many of the objectives do not appear to be costed or planned. The statement that a shortfall in funding of over £300m is needed and that the incorporation model is the best way to achieve that, is not matched by clear detail as to how the model is the best and what the precise short, medium and long term plans are.

It may be the case that the exact income and expenditure as well as investment models and potential contracts for new business that will provide the funding above, do exist (as well as the additional income required at item 4. [p.7]) but this not spelt out in the law, neither is the exit plan should the strategy not work out. Assumptions are made against objective and commercial projects but these are not specifically identified. An assumption of £507m income over the life of the project looks attractive but again, there appears no option if those revenues are not generated.

Improved productivity [p.6] was not something that is envisaged as a goal by the new organisation yet is stated as something HFW identified as a "main benefit". This has not been part of the discussions on incorporation and has been ruled out as an identified benefit in discussions.

The objectives of incorporation [p.4] outline the existence of a board of directors on a "commercial basis". With this in mind, the single shareholder (the States) will be represented on that board but to represent the "customer" [p.9] and we also believe there should be a director to represent the interest of the key asset, the staff. This would allow potential issues that may be of concern to staff to be raised early on. From our own consultation it is clear that staff are keen to be involved and have many ideas around avenues for commercial exploitation in order to realise some of the financial undertakings given as part of the outline business plan.

Prospect therefore propose that a staff appointed Director's position be created on a rotational basis of two years.

The proposition adopted by the States on October 9th 2012 carried with the statement from the Minister that there would be "a reduction in financial liability". Whilst recognising that liability for staff transfers to the incorporated body, our question is, what happens if that body

fails to retain sufficient assets to service that liability? Prospect would propose that a total cost, recalculated at regular intervals, of staff liabilities (redundancy costs) should be the minimum assets the incorporated body may hold so that it can service 100% of the staff liabilities at any time. In the absence of this, we would expect to see a guarantee from the States that they would underwrite those costs so that no member of staff of the incorporated body would ever be paid less than his or her contractual redundancy pay calculated using the formula applicable at the point of transfer. This appears to have been ruled out at [p.7] with the phrase "[...] mitigating the risk of the Ports of Jersey having to call upon States funding [...]" so we seek assurances that, should this project fail, staff will see no detriment; will have the opportunity to transfer back into States employment and/or be paid their contractual redundancy terms.

The statement [p.5] also carries the line "The incremental benefits to a range of stakeholders demonstrate substantial improvements for our customers, employees, the parishes and the public at large." The statement fails to explain what any of those benefits are and Prospect therefore requests information as to what the "incremental benefits" and "substantial improvements" for employees are.

Page 7 identifies £60m in projects over the 25 year term falling far short of the amount required in total and there is little detail as to the security of those contracts, where they are in terms of negotiation, the risks of failure, penalty clauses etc.

At the bottom of this page the company is required to "[...] act in the manner best calculated to secure sustainable growth [...]" but there is, again, no proviso as to what should happen if they don't, in whose opinion the act is "in the best manner" and what happens to staff if they fail to act in such a way leading to the demise of the organisation.

The regulatory framework laid out is welcome and regulates the activity with a view to protect the customers and the economy; we hope this will also include the staff.

At the end of section 7 [p.9] it is stated that any decision to "[...] create new shares in the company, to sell those shares or to wind up the company [...]" requires a vote of the States Assembly. In view of the recent disastrous hiving off to the private sector of Jersey Tourism (a major policy change made by the Minister unilaterally and therefore contrary to the Scrutiny recommendations) we believe this section requires tighter regulation whereby a minister would be required to report all considerations to the Assembly which he or she intends to give direction on, prior to any final decision being made. It should be for the Assembly to decide whether its decision is required.

The draft outlines (section 11, p.11) an accurate reflection of TOPSE as it has been applied. We believe the act should recognise the continuity of collective bargaining in terms identical to those currently in place albeit that those arrangements take place with the POJL as opposed to the States itself.

Section 12 (p.11) outlines a position on property which is vague as a minimum, obfuscatory at worst. To quote the section it is intended that "[...] it has been recognised that a balance needs to be established between allowing the newly-formed company sufficient commercial freedom and agility to enhance potential income-streams, whilst still providing the States with sufficient assurance that the underlying infrastructure assets are secured to meet the ongoing operation in the Island's overall best interest." I am fairly convinced that this means the incorporated body will be able to sell (and buy?) land or property as it sees fit but that the States may intervene to stop anything it is believed would be unpopular. I believe the matter needs to be more clearly defined for both the public and staff and it may well be the case that the subsequent regulations do this.

## Conclusion

This section of the Law relies on subordinate regulation concerning the transfer of staff and assets. As these are key, if not the key issues, Prospect believe that any decision on incorporation must be set aside until such time as all of the issues around transfer of property and staff are resolved; until such time as the matter of liabilities, should the incorporation not succeed, are defined in Law and until such time as the issues around governance and decision making (both at board and Assembly level) are resolved.

The very direct "manpower" (staffing) implications are that all transferring staff suffer the not insignificant detriment of moving to a significantly smaller pool of employees (should there be any redundancies either now or in future) and appear to fall outside of any protection in terms of underwriting the redundancy liability (thus ensuring the payments are safeguarded) afforded to them as States employees.

## The Draft Law

Article 3 (5)	We believe the act should contain a commitment to long term, sustainable employment for the benefit of Jersey and it's economy.
Article 3 (6)	We believe this must contain a commitment that any major decisions are referred to the States Assembly and those decisions should not be limited to the ones contained in the Draft.
Article 6	There should be a similar commitment from the POJL in terms of employment as noted for Article 3 (5) above. In addition, POJL should be obligated to use its best endeavours to maintain a skilled workforce and have in place such plans to ensure both regulatory compliance and best practice in terms of providing staff training and qualifications.
Article 26 (3)	As it is completely compatible with (3)(a), there should again be commitment to long term sustainable employment and growing levels of employment as well as diversity, should be one of the statutory functions.
Article 27 (1)	Should have the caveat that "unless such a direction could be construed as a major policy change. In such a case the matter should be referred to the States Assembly. In cases where doubt exists, the default position should be referral to the States Assembly."
Article 31(6)	Should have the same proviso as Article 3 (6).
Article 31(7)	Should have confirmation that the States underwrites the liabilities in terms of staff redundancy payments and obligations, if the POJL becomes insolvent or ceases or changes operation in anyway as to render the staff redundant.
Article 33	Should not be enacted until such as the regulations referred to are defined and agreed.
Article 38	An addition to unequivocally confirm that there will be no loss of service in relation to redundancy or any accrued / length of service based benefits.

Protection of Terms Prospect believes that it is reasonable for staff to expect a post transfer period of protection on their terms and conditions of approximately 3 to 5 years.

Such protection to apply to key contract terms (under the initial statement of employment particulars) and include but not be limited to:

- remuneration
- holiday
- place of work
- hours of work
- frequency of pay
- job title and/or description of work

Prospect are committed to a positive relationship with the employers, whether that be the States or an incorporation. We believe that our members share that commitment but rely on their elected officials (both in the Trade Unions and States Assembly) to look after their best interests, careers and job security.

We remain at your disposal to answer any questions on our submission or any other matter on which you feel we may be able to assist.

**Bob King**  
For Prospect, JCSA