

STATES OF JERSEY



JERSEY CONSUMER COUNCIL: ESTABLISHMENT AS A LEGAL ENTITY

Lodged au Greffe on 1st June 2011
by the Minister for Economic Development

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 2nd February 2011 regarding the future mandate of the Jersey Consumer Council, in which they requested the Minister for Economic Development to take the necessary steps to provide for the Council's effective operations (P.182/2010), and –

to establish the Jersey Consumer Council as an incorporated association in accordance with Article 1 of the Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations in order to enable the Council to rent accommodation and enter into employment and research/consultancy contracts in its own right.

MINISTER FOR ECONOMIC DEVELOPMENT

REPORT

On 2nd February 2011 the States adopted proposition P.182/2010 which detailed a future mandate for the Jersey Consumer Council (JCC). Paragraph (b) of the proposition required the Minister for Economic Development to take the necessary steps to provide for the Council's effective future operations. Paragraph (b)(i) imposed a time constraint in that it required the Minister to bring a proposition to establish the Council as an appropriate legal entity by July 2011. This proposition ensures that the deadline is met.

Options for legal entity

Legal advice was sought from a long-established local legal firm, and after consideration it was decided that there were in fact 3 options for establishing the JCC as a legal entity, which can be summarised as follows –

1. A company (either limited by shares or by guarantee) owned by a Non-Charitable Purpose Trust (NCPT)

This model has certain attractions in that the business of the JCC would be run through a company, and the operation of such a company is familiar to all interested parties. The NCPT is very much a passive holding entity sitting above the company.

However, the downsides to this model are three-fold. Firstly, there is an element of ongoing annual cost in respect of keeping the company on the register (£150 per annum annual return) and any professional fees for providing a registered office and administering the company. Secondly, the concept of the NCPT could be said to be alien to many non-lawyers with an interest in this type of body. Thirdly, the fact that there are 2 layers – a trust and a company – could be said to be rather cumbersome. Also, one other consideration is that this model could be said to be somewhat untested in the States arena.

2. A Foundation

Since July 2009 it has been possible to incorporate a Jersey foundation. Broadly, the Foundations (Jersey) Law 2009 provides for the possibility of the incorporation of a separate legal entity (a foundation) which is essentially ownerless. It is possible to establish a foundation for purposes or for beneficiaries, or for both.

In many ways the foundation would be an ideal vehicle for the incorporation of the JCC. The legislation is modern and up-to-date. It is flexible and would provide precisely what is called for – a separately incorporated legal entity which is ownerless. However, the downsides are that the vehicle is somewhat untested in the courts and there is a recurring annual cost and a requirement for a regulated entity to sit on the council which would bring added cost.

3. An Incorporated Association (the favoured option)

In essence, this vehicle is a uniquely Jersey option in that it makes use of the 1862 Law on the Holding of Immovable Property on Trust and the Incorporation of Associations (Loi (1862) sur les teneures en fidéicommis et l'incorporation d'associations). Under the 1862 Law it is possible to apply for the incorporation of an association through the Royal Court. The association would have to have a

constitution which would need to be approved by the Attorney General and ultimately the Royal Court. There are no recurring fees, and aside from legal fees the only set-up cost is £60 stamp to the Court.

In terms of the detail of the Law, it is clear that an association can be incorporated for a number of reasons and it is possible that the purposes and activities of the JCC would fall under “commercial and industrial” taken in its broadest sense.

There are no obvious downsides in using this vehicle. The association is an incorporated body, and after an amendment in 1997 the Law makes clear that the members of the association are exempt from the debts of the association itself. Therefore there would be no personal liability for JCC members. There are no fees and no ongoing legal obligations for record and register-keeping as there are with companies and foundations. The only ongoing obligation is to ensure the Royal Court is advised of any changes to the 2 individuals with responsibility for representing the association before the court.

Recommendation

In light of the above summary of the legal advice received by the Minister for Economic Development, it is recommended that the States agree that the JCC achieves legal status by being set up as an incorporated association.

Financial and manpower implications

The Jersey Consumer Council is funded by an annual grant from the Economic Development Department and for 2010 the grant was £120,000. This will continue to be negotiated based on an annual business plan submitted by the Council. There are no manpower implications.