Commentary on Tax Research (TR) paper entitled "Jersey's tax reforms and the EU Code of Conduct on Business Taxation" dated 25th May 2005.

Page 1

TR says that if a company has any shareholders resident in Jersey (excluding charities) then the company is legally obliged to pay a sum equivalent to tax at 20% on its profits to its shareholders so that they pay tax on those profits as if they were their own, whether or not all those profits have been paid to them.

The Fiscal Strategy paper lodged by F&E on 8th March 2005 included the following:

Page 2:
"to approve the introduction of imputation provisions requiring Jersey residents to pay personal tax based upon the profits of the Jersey companies in which they have a beneficial interest, (known as 'look through' arrangements), by 1st January 2009."

Page 46:
"Where a corporate, for whatever reason, does not actually distribute enough profits to enable the Jersey resident to meet the tax liability under these 'look-through' provisions, it is proposed that an undistributed profits charge, or a deemed distribution charge, be raised on the corporate – as agent – for the Jersey resident with an interest in it, at the rate of 20%."

It will be noted that the above wording does not imply any legal obligation on a company to pay tax at 20% to its shareholders as stated by TR.

The proposal imputes the profits of a company to a Jersey resident individual. It is the individual who is liable for the tax, subject to any personal allowances and relief's he may have. The Code of Conduct does not apply to the taxation of individuals and it is for Jersey to decide how such persons should be taxed.

Companies do not always, as a matter of course, distribute their entire profits. It is understandable therefore that tax due by a shareholder should, as a matter of administrative convenience, be paid by the company as agent for the shareholder. The benefit to the company is that of every pound of profit it makes it retains 80% thereof whereas this would be lost if it paid a cash dividend to the shareholder.

Senator Le Sueur has stated that there is a written record of EU acceptance of the fiscal measures proposed by Jersey (Ecofin Council conclusions of 3rd June 2003). The same message is given in the Fiscal Strategy report lodged on 1st June 2004, from which is quoted:

"Some attention has been given to the durability of a 0/10% corporation tax structure in a fast-changing world. The E.U. agreement specific to our proposals is contained in the record of the meeting of the combined E.U. Finance Ministers, known as ECOFIN, on 3rd June 2003. These ECOFIN Council Conclusions recognise the acceptability and timescale for implementation of the 0/10% proposals to the European Union, which throughout the negotiation process had also gained the full support of the United Kingdom Government."

These comments do not of course touch on the fact that Jersey resident shareholders will pay 20% tax on profits apportioned to them. This is perhaps understandable in that the Code of Conduct does not apply to personal taxation.

The idea that profits may be imputed to shareholders is not new; such a system operated in the UK for a number of years. The UK system was brought in because the company rate of tax was much lower than

the rate applicable to individuals. The system only applied to what are termed "close companies", in other words, companies controlled by five or fewer individuals (taking into account persons closely connected with them, for example certain trustees, family members and so forth). The system, known as "shortfall", applied to all companies, whether trading or investment, with the proviso that a trading company's profits, to the extent required for business purposes, as agreed with the Tax Inspector, were not apportioned to shareholders.

UK tax rates have varied over the years. Until the onset of the imputation system in 1973 (whereby the shareholder was then given credit for tax paid by the company) a company had its own fixed rate of tax. Individuals, apart from being liable at the standard rate, were also liable at higher rates of up to 50%, known as Surtax. After 1973 individuals were liable instead at the so called higher rates and, if applicable, the investment income surcharge. These were personal taxes levied on individuals. Profits apportioned to such individuals were liable at these higher rates of tax. Any tax not paid by an individual under the shortfall system was recoverable from the company.

Surtax and higher rate tax was always assessable on both resident and non UK resident individuals. Whether the tax was actually paid by a non UK resident depended on the individual concerned and his personal circumstances because it was often unenforceable (the jurisdiction of the Inland Revenue not extending beyond the UK's boundaries). It appears that Jersey has taken a pragmatic view in not seeking to tax non residents of Jersey, due presumably to jurisdictional difficulties in enforcing any tax assessed.

While collection of tax assessed on non Jersey residents could pose difficulties where cash dividends have been paid, the same cannot be said in relation to retained profits of a Jersey company allocable to non Jersey resident individual shareholders.

(If Jersey source dividends were taxable in the hands of non resident individuals this would of course make the holding of, for example, shares in a Jersey mutual fund unattractive to non residents. It should be noted that the UK does not tax non residents on several types of UK source income, including dividends (FA 1995, section 128))

The look through system proposed by Jersey has many similarities in principle with the UK's shortfall system. Jersey is distinguishing between corporate and personal tax as did the UK under its shortfall system. In effect it is saying that the Code of Conduct applies to the former and not the latter and consequently takes the view that its proposals are sound from the point of view of the EU.

On the other hand TR is saying that Jersey will fail to meet the requirements of the Code because one cannot distinguish between personal and corporate tax liabilities; in effect TR is saying they are one and the same.

(At page 29 of its report TR says that profits apportioned to shareholders and taxed on them is a business tax in disguise. It says that the only way in which this tax might be considered a personal tax is by deeming it to be so. It says that Jersey is used to deeming things to be other than they are in its taxation law. However, TR has not commented that "deeming" is a common thread running through the tax laws of many foreign jurisdictions. As already noted above, the UK applied the deeming principle in connection with its shortfall legislation. Deeming comes into play in the application of sections 739 and 740 – see below. When someone leaves the UK for permanent residence abroad he is deemed to remain domiciled in the UK for three tax years following his departure. Other examples can be quoted. The deeming principle is therefore not peculiar to Jersey tax law).

Page 2

At paragraph e. TR refers to "this law". At present there are proposals but no law as such.

Also at paragraph e. TR comments that Jersey owned companies will be at a disadvantage compared to companies owned by non residents because the profits of the latter may be accumulated at will whereas the former may not. This is incorrect; profits allocable to Jersey residents not paid as dividend will bear tax at 20% but the remaining 80% may be accumulated.

Also, companies owned by non residents do not automatically escape tax. Many tax jurisdictions tax the profits of foreign subsidiaries whether dividends are paid or not. The legislation, generally termed Controlled Foreign Corporation (CFC) legislation, is applied by countries such as the UK, USA, Japan and Australia.

Under Jersey's proposals, in the case of the UK, it will receive 30% tax on the profits of its Jersey subsidiaries whereas under present rules it only receives 10%. The difference is accounted for by the fact that at present the UK gives credit for the 20% Jersey tax which in future, under the proposals, will disappear. The differential, in the case of companies licensed by the JFSC, will of course be 10% rather than 20%.

Not all countries automatically apply CFC legislation to foreign subsidiaries. For example, in the Netherlands, profits of foreign subsidiaries are not caught if the so called "participation exemption" applies. Profits qualify for exemption if they are subject to taxation in the country from which they derive. Consequently, Dutch companies will be worse off by approximately 10% under Jersey's proposals because they will no longer be subject to Jersey income tax.

Switzerland applies a territorial form of corporate taxation. Non Swiss source profits are generally not taxable in Switzerland and therefore Jersey's proposals are neutral as far as the Swiss and like jurisdictions are concerned.

In the case of privately owned companies, again many countries apply their own domestic legislation to tax their residents owning or having an interest in such companies, wherever established, including Jersey.

Taking again the case of the UK, it has detailed legislation contained in sections 739 and 740 of the Income and Corporation Taxes Act 1988. Section 739 applies to foreign companies unless established for bona fide commercial reasons (Jersey proposes the same exception) where the taxpayer himself was instrumental in setting up the foreign company. In such cases the current profits are imputed to the taxpayer and form part of his total taxable income for the year.

Section 740 applies in all other cases, again subject to the bona fide commercial exemption. In other words tax under this section is charged where the taxpayer was not instrumental in setting up the overseas company but in fact enjoys a benefit from it. This might take the form of, for example, an interest free loan or rent free occupation of the company's property. In such cases the value of the benefit is quantified and the taxpayer is liable thereon for the year of enjoyment.

In Jersey's case the proposals to date do not differentiate between taxpayers who set up the non Jersey based company and those who did not but nevertheless enjoy a benefit there from, such as mentioned above.

Prior to 1981 the UK had only what was then section 478 to tax both types of taxpayer (termed transferors and non transferors). In a case which was heard by the House of Lords it was ruled that the application of the then section 478 by the Inland Revenue was unconstitutional and so in 1981 the law was revised and sections 739 and 740 were introduced. Section 739 applies to tax transferors currently on income arising to the overseas company. Section 740 applies to tax capital benefits enjoyed by non transferors (income benefits would be taxed in any event under general law).

TR casts doubt on whether the inclusion of de minimis rules would be acceptable under section B5 of the Code. I would not share these doubts as the scope for abuse is minimal and in any event they are related to personal rather than business taxation. It is also for any tax jurisdiction to determine for itself what it deems cost effective. Jersey will no doubt view the matter in this light and weigh the cost of administration against the tax yield end product in fixing the de minimis.

At page 2, paragraph 2, TR says that the new 10% tax on profits of financial services companies is in contravention of sections B1, B2, B3 and B5 of the Code. I do not agree with this conclusion. The 10% tax will apply to all companies licensed by the JFSC whether or not owned by Jersey residents.

TR then goes on to confuse such companies with Special Purpose Vehicles (SPVs), examples of which it lists at page 10 of its report. These are companies established for specific purposes, usually as part of Capital Markets transactions. This is a segment of the financial services market in which Jersey has an excellent reputation. Capital Markets projects are driven by companies wishing to maximize the potential of their assets and I shall comment thereon in more detail later in this paper.

The basis upon which the JFSC issues a licence should be properly understood in considering whether the 10% tax proposal is or is not in breach of the Code of Conduct.

1. Whether or not an entity requires a licence in Jersey will depend upon whether or not it is conducting a regulated activity. So for example if it is deposit taking or conducting fiduciary business it would require a banking licence or a trust company licence respectively. SPVs rarely conduct any licensed activity. They are usually established as stand alone structures which are administered by entities that are themselves licensed to provide fiduciary/banking services in Jersey. Contrary to what is suggested by TR it is **not** open to the JFSC to choose what should or should not be licensed. The question is whether or not the entity is conducting a licensed activity and therefore requires to be regulated. Regulation of SPVs as such is generally front end in terms of a review of the proposals at the commencement of the transaction and for incorporation of the SPV and by conditions placed upon any control of borrowing consent required in connection with, for example, any securities being issued .

For clarity, the same general analysis applies whether an SPV is established onshore or offshore - for example, an SPV established in the UK in an onshore securitisation structure would usually be structured so that it does not require to obtain a deposit taking licence or an investment business (FSA) licence in the UK. Consequently Jersey is on precisely the same footing as the UK in this regard.

Much of what TR says later in its report (page 20 onwards) implies that SPVs ought to be subject to the 10% tax because on its reading of the Financial Services (Jersey) Law 1998 these entities are conducting regulated activity and should therefore be licensed. Clearly this is not the view of the JFSC or the legal fraternity in Jersey.

2. The JFSC would only wish to licence an SPV as such where it is conducting a regulated activity in Jersey such as deposit taking, fiduciary business, investment business etc. There are certain carve outs in the financial services legislation which recognise the particular circumstances of SPVs as non trading special purpose financing entities where their related activities may otherwise unwittingly bring them within a regulatory net that it is not considered to be, prudentially, necessary for them to fall in.

As SPVs are not generally involved with deposit taking or fiduciary or investment business in relation to the public at large, they are in consequence not within the proposed 10% tax charge.

It is perhaps worth mentioning at this juncture that Jersey's regulatory framework, legal and administrative, has been reviewed by bodies such as the Financial Action Task Force and the

International Monetary Fund and no criticisms have been raised in connection with Jersey's regulatory framework nor its licensing system for entities conducting business in Jersey.

Page 3

TR suggests that GST and the proposals for the financial services sector will not be compliant with the EU Code. My understanding is that the Code (as of 1st December 1997) addresses three specific areas:

a) Business Taxation;

b) Taxation of Savings Income;

c) Withholding taxes on cross-border interest and royalty payments between companies.

None of these heads refer to the EU's value added tax system in connection with harmful taxation. Nor will any reference thereto be found in the Code of Conduct (Business Taxation)/ Primarolo Group Report to ECOFIN Council of 29th November 1999.

Consequently, unless TR can provide something more substantive to demonstrate that Jersey's proposed GST will be covered by the Code, there seems to be little point in commenting in detail on the matters covered in its report. Also if, as suggested by TR, GST is in fact covered by the Code the matter needs to be covered in detail by Finance & Economics to ensure that it is compliant.

The States have taken an in principle decision to adopt GST. So far, nothing I have read from TR undermines this position. It follows that any further review should look at the detailed proposals for GST which at present we do not have. I have raised some questions relevant to the tax and sent these to Scrutiny. Beyond this at this stage there appears little that can be done to progress the review in any detailed sense, other than interview witnesses. However, should Scrutiny wish me to comment on any additional matters they choose to raise, I shall of course be pleased to do so.

Page 5

TR has made some suggestions for raising additional revenues and it may assist if I comment on these.

1. Increase the registration fees for all limited companies to raise an extra £21 million per annum.

Comment: For this to succeed the new fee would have to be competitive with the rates charged in other jurisdictions otherwise one would simply see a migration of business elsewhere.

2. Impose a registration fee on trusts established in Jersey to raise £10 million.

Comment: Again, one would risk seeing a substantial migration of trusts to less expensive jurisdictions.

The financial services industry is global and highly competitive. Jersey's pricing structure must be sensitive to international competition.

3. Encourage the distribution of dividends by Jersey companies to raise £7 million.

Comment: As the proposals put forward by F&E involve a deemed dividend of company profits, it is not clear what this proposal will achieve. I accept that TR considers that the proposals will not be acceptable under the EU Code but as indicated above I question why this should be so.

4. Exempt the financial services industry from GST to raise £5 million.

Comment: The industry has objected to the imposition of this additional cost as it will, it is argued, affect its international price competitiveness. This is presumably because the cost would be passed on to the customer through increased pricing. I am not convinced of this argument and believe that F&E ought to consider exemption for the industry (i.e. it would suffer GST on its costs but would not be able to invoice the tax through to the customer. Also, assuming GST was deductible in computing profits for tax purpose, net cost would be less than 3% - for Jersey residents the net cost would be 2.4%).

5. Use Jersey's share of revenues arising through the EU Savings Tax Directive raising £27 million per annum.

Comment: TR has made certain assumptions in arriving at this figure which may or may not prove to be accurate. It should be possible for F&E to take a view on the amount the Treasury will collect, even if very conservatively estimated.

Pages 9 & 10

TR comment that funds held on deposit in Jersey are just a "giant accounting exercise". No one to my knowledge has ever attempted to say that these funds are invested in Jersey's infrastructure. The majority of the funds find their way into the international capital markets just as they do via London, New York, Tokyo, Zurich, and other financial centres. Money flowing through these centres does not necessarily belong to investors based in the host country. There is nothing intrinsically wrong with this. The myth TR is attempting to explode does not exist. Even if it did, it would apply to all other financial centres. There is nothing special or unusual about Jersey in this regard.

TR refers to "artificial transactions", "international avoidance", "secret spaces", "consequences might be hidden", "obscurity", re-characterization" and "aggressive tax avoidance" in relation to SPVs based in Jersey. TR continues in the same vein through the succeeding pages of its report.

Nevertheless I can instead provide Scrutiny with a factual statement of the position in regard to SPVs and the role they play in Jersey's finance industry. In the light of this the Panel can come to its own conclusions as to whether TR's statements are credible.

Firstly, here are some examples of the companies that have used SPVs and their purposes:

(a) Barclays Bank - credit card securitisation.
(b) Lloyds TSB - commercial paper conduit (securitisation).
(c) Capital One Bank - credit card securitisation.
(d) DZ Bank - all manner of capital market activity - securitisation, synthetic securitisation, capital raising etc.
(e) Commerzbank - commercial paper conduit (securitisation).
(f) HSBC - securitisation.
(g) Bank of America - securitisation.

Should Scrutiny require more names, perhaps they would let me know. Perhaps TR can state in what manner the transactions conducted by the above, to use their adjectives, are "secret spaces", "artificial transactions" and so forth, and state the evidence it has in support of its contentions.

Secondly:

The SPVs criticized by TR are aimed at sophisticated users/experts/advisers who understand the

techniques being described. This is one of the reasons why they do not require to be licensed by the JFSC.

It appears that the author of the comments seemingly has no (or little) understanding of the financing techniques being described and that that misunderstanding is fuelling a confusion of the purposes for which such structures are established.

Certainly it is the case that a key benefit of using Jersey for establishing SPVs is the domestic tax regime that applies in Jersey. In structured transactions (for example securitisation transactions involving SPVs) the "originator" of the transaction (the person seeking to securitise its receivables, for example) will understand that the interposition of an SPV (which is a necessary feature of the arrangements to achieve a securitisation of the receivables) will open the possibility of some tax impact on the SPV. The originator and investors acquiring the securities issued by the SPV will wish to minimise any such risk.

Accordingly offshore financial centres offering neutral tax treatment on payment flows through the SPV are attractive to the originator and the investors acquiring those securities at the other end of the transaction. That is not to say that tax is not paid in the jurisdiction of the originator or indeed by the investors in the place where the securities are purchased – the point is that no additional tax is suffered on monies passing through the structure. Thus, in principle, all that has happened is that the originator has achieved its end by obtaining the financing it needs whilst still being subject to tax in its own jurisdiction in the normal way.

Investors have received what they want in terms of the securities being acquired and will pay tax in their own jurisdiction(s) in the normal way. The SPV itself has not added to that overall tax burden. If the originator had been able to securitise its receivables directly (i.e. without an SPV), the same position would have prevailed. There is no "tax leakage" as such – just no additional tax burden occasioned by the use of a further entity which is required to achieve this type of structure. Therefore, it is rarely the case that SPVs are criticised as representing aggressive tax planning arrangements of any sort. The transactions are driven by financing and related purposes and one of the structuring objectives is to minimise any additional tax impact.

Once they have established an understanding of this "key" requirement as to neutral cash flows through an SPV, the originator/arranger (typically an investment bank) will then select an offshore financial centre based on other key factors/concerns. Typically Jersey is high on this list for the following reasons:

(1) It provides a well regulated environment and enjoys political and economic stability.

(2) There is a convenient local infrastructure with many established and experienced professional service providers.

(3) OECD membership and FATF recognition, but outside the EU.

(4) Widespread credibility with supra-national bodies, rating agencies and leading investment banks in cross-border finance transactions.

(5) Relative cost of doing business *vis a vis* onshore (and some other offshore) jurisdictions.

(6) Strong modern legal/statutory framework.

(7) Absence of foreign exchange controls.

(8) Track record/investor perception in the marketplace.

It is therefore incorrect for TR to suggest that SPV business comes to Jersey solely for tax purposes.

Business comes to Jersey for very many reasons – one of which may be the favourable domestic tax treatment. Indeed, transactions have been structured through Jersey where there is no particular requirement to be "offshore" whatsoever and local service providers have been appointed to administer Jersey SPVs for the purposes of those transactions simply because established relationships are such that the arranger wishes to use that service provider for that purpose in that particular transaction. That is to say that there is, increasingly, a blurring of what exactly "offshore" means for Jersey service providers – a good number of providers are carrying out activities that could be carried on "onshore" (e.g. the SPV could be structured with little or no incidence to UK tax). That is a sign of the maturity of the market place and the credibility of Jersey service providers in cross-border financing transactions.

TR has commented on the obscurity of the terminology in describing the types of transactions conducted by SPVs. It might be of some assistance for me to explain in brief terms some of the activities in order that a better understanding may be gained.

(i) Issuing debt securities – this is a straightforward structure under which debt securities (e.g. bonds, debentures, commercial paper etc) may be issued by a Jersey company. An example of this may be a UK Plc establishing a Jersey subsidiary to raise finance in the international capital markets by the issuance of securities. The proceeds of the securities would be on loaned to the UK Plc which would, typically, guarantee the obligations of the Jersey SPV.

(ii) Repackaging securities – the term "repackaging" connotes an arrangement under which certain assets (typically securities) having particular characteristics are sold or transferred into an SPV which finances itself for that purpose by issuing securities having different characteristics. This is often done to change the particular characteristics of the securities for a different type of investor. For example, securities having a particular currency denomination or return (for example a fixed return) can be repackaged (through the use of hedging arrangements entered into by the SPV) into securities of a different currency and having a floating return. So, in summary, this is a technique used by investment banks to create "tailored" products to cater for particular investor demand.

(iii) Asset backed securitisation – securitisation is a widely recognized and used financing technique representing a multi billion dollar worldwide industry of considerable importance to governments and corporates around the globe. In short, it is a process by which an entity
owning a financial asset type having a certain or predictable income flow (e.g. loans, credit card receivables, trade receivables) can raise finance against those assets by transferring the benefit of those assets to an SPV which, in turn, finances the acquisition of those assets by issuing securities to investors in the capital markets (the income flows are thus "securitised" and the credit risk the investor takes is on those assets and not the "originator" as such). Typically, these are investors in the wholesale capital markets - sophisticated institutional investors. The driving forces behind different securitisations will vary but are typically

a) financing (raising funding from the capital markets rather than depending on more traditional and expensive forms of bank funding), and/or

b) management of capital ratios (banks may use securitisation to remove financial assets from their balance sheet in order to free up capital for development of other parts of their business). The key issue is in effectively separating the securitised financial assets from the originator's credit risk. This is what is meant by the term "off balance sheet" in this context.

(iv) Synthetic securitisation – this is a process derived from (iii) above. All the word "synthetic" connotes is the use of derivative transactions (swaps) to pass risk in the underlying securitized assets – as opposed to an outright transfer of the securitised assets to the SPV. Synthetic securitisation is widespread onshore and offshore and is an important part of the capital markets and, indeed, the increasing convergence between the insurance and the capital markets (as much synthetic securitisation has certain of the characteristics of insurance risk transfer).

(v) Catastrophe bonds and insurance linked securitisation – again, securitisation is the technique described at (iii) above. The reference to catastrophe bonds is a reference to bonds issued in a securitisation where the underlying risk of loss (ultimately being taken by the investors holding the securities issued by the SPV to fund the losses (if any)) relates to certain insured events e.g. natural disasters such as hurricanes. Effectively, the SPV receives the "premium" on the risk and takes the risk of the losses occurring, supported by the funds provided by the investors.

(vi) Conduits – the reference to conduits is, more specifically, to asset backed commercial paper (CP) conduits. Many leading investment banks "sponsor" SPVs established for the purposes of commercial paper (short term debt) issuing programmes. These provide an effective means by which clients of the bank (e.g. trading corporates generating trade receivables from their ordinary business activities – for example, manufacturing) may securitise their income flows on those receivables through an established programme structure (i.e. without having to establish their own structure at significant cost). Many asset backed commercial papers conduits are established in Jersey and other offshore finance centres. There is wide investor demand for such securities (typically with treasury departments of institutions).

(vii) Purchasing vehicles – this is a generic reference to an SPV formed for the purposes of a CP conduit structure, for example, where it is often the case that separate vehicles will be used to acquire assets for particular transactions funded by the CP conduit – the use of a separate purchasing vehicle simply being a means by which to ring fence the interests of the funding creditors and other interested parties under a particular transaction being funded by the CP conduit.

(viii) Receivables trusts – these entities are also creatures of the securitisation marketplace and are generally used in circumstances where the nature of the assets/income flows being securitised is "revolving" e.g. credit card receivables accounts. The use of the trust enables a legal framework to be established which meets the interests of the originator and the secured funding entities whilst permitting rating of the funding transaction to the required rating agency standards.

(ix) Investments made off balance sheet – for accounting/regulatory capital reasons, for example, banks or other entities may wish to fund investments otherwise than through their direct ownership. A debt financed SPV may be used for that purpose. The fact that the transaction is off balance sheet for accounting or regulatory purposes does not mean that it is not disclosed – it simply connotes the nature of the relationship the originator has with the SPV.

(x) Tax driven structured financings – SPVs may be used by investment banks to arrange transactions for their clients in circumstances where the primary driving factor is the lawful mitigation of the incidence of tax in relation to related transactions. These are typically structured on advice from onshore tax advisers to ensure compliance with all domestic tax laws in the jurisdiction of the originator and other interested parties. The SPV is used to optimise tax efficiency whilst minimizing impact of tax through the interposition of the Jersey SPV.

(xi) Debt defeasance structures – where banks have debt on their books, for example, they may seek to refinance that debt (off balance sheet) through a standalone SPV structure, effectively ridding themselves of carrying the credit risk on the debt transferred and passing that risk to a series of new creditors who have agreed to accept that risk.

(xii) Credit default and total return swap structures – the derivative markets have grown considerably since the early 1980s and many banks and other institutions use swaps and other derivatives to manage the risk they undertake/hold. Credit default and total return swaps are examples of types of swaps which may be used by banks, for example, to contractually transfer risk in assets they hold (e.g. securities of corporates) to a swap counterparty which has agreed to undertake that risk. That swap counterparty may be an SPV which has issued securities to investors to finance/collateralise the risk it has agreed to undertake in such assets. Such swaps offer legal, documentary and practical efficiencies for

the parties.

(xiii) Islamic financing arrangements – Shariah law contains particular restrictions in relation to the forms of financing it permits. Islamic finance connotes transactions designed to be Shariah compliant. Jersey SPVs have been used for various on and off balance sheet transactions for Islamic sponsors which have been structured to be Shariah compliant – securitisation financing is a recent example of this.

(xiv) Restructuring of security arrangements ancillary to bank financing – on financing/refinancing loans or other credit arrangements with large multi national entities, it is sometimes administratively and structurally convenient for particular assets being offered as security for that bank financing to be held through a single entity. Use of a Jersey SPV for that purpose may bring administrative and cost efficiency in addition to tax neutrality from a Jersey domestic perspective.

Summary

I hope these brief explanations are helpful. I have attempted to keep them as brief as possible. Much technical information can be provided on this subject. My concern is to make it clear that each of these financing techniques is widely recognised in the international financial marketplace. It is important to dispel TR's view that any of these arrangements somehow is intended to create an arrangement which is illusory, a sham or otherwise does not appear to be what it is. Far from it; leading rating agencies and regulators often review/opine on transactions in which such Jersey SPVs are involved and purpose, transparency, integrity and certainty of transaction structure are key issues they will consider
in their analysis of the transaction.

Paul Frith
8th June 2005