

5th April 2019

Senator Kristina Moore
States Greffe
Morier House
Halkett Place
St. Helier
JE1 1DD

Dear Senator Kristina Moore,

Corporate Services Scrutiny Panel: Review of the Draft Public Finance (Jersey) Law

Thank you for inviting Jersey Post to comment as part of your review. We will confine our comments to those issues which could or would have a direct impact on Jersey Post International Limited (JPIL).

Our main point of concern is that the draft law, if enacted, would give additional powers to the PAO that would both conflict with existing law and confuse the accountabilities and responsibilities of JPIL directors under the:

- Postal Services (Jersey) Law 2004
- Memorandum of Understanding between the Shareholder (nominees of the Treasury & Resources Ministry) and JPIL;
- Articles of Association of JPIL;
- Companies (Jersey) Laws;
- Public Postal Operator's Licence Class II Licence for Jersey Post Limited renewed in 2016 regulated by CICRA (JCRA);
- Financial Services (Jersey) law regulated by JFSC.

The appointment of the directors including the CEO and Finance Director is also governed by the Jersey Appointments Committee.

In addition, we understand that under the new structure of civil service there is both a "Shareholder Executive" that manages JPIL as a strategic asset and operates the roles and responsibilities of a shareholder, and a Partnership Director responsible for opportunities to work more closely together.

Cont...

Our existing Memorandum of Understanding states:

“...the Minister recognises the independence of the Board of Directors in managing the business”

Under our postal operator’s licence it states:

“2.11 The Licensee shall ensure that:

*(b) Its dealings with its **shareholders**, **Subsidiaries**, or **Associated Companies** are conducted on a **normal commercial basis and at arm’s length**, and this may be audited by the JCRA, having given due notice”.*

We are therefore concerned that giving the PAO the authority to appoint in a limited company an AO, and to state reporting requirements, could create conflict between the roles and duties of directors of the company reporting to the shareholder and an AO reporting to the PAO. There could also be a conflict between the role of Treasury and Resources Minister and that of the PAO in respect of responsibilities for JPIL.

We would expect that any legislation clearly states the hierarchy of authority in the event there is a conflict and would expect that Company Law would always take precedent.

At the detailed level we have a number of comments on the Draft Public Finances (Jersey) Law:

- Article 39 Functions of the Principal Accountable Officer: there is a risk that these could conflict with the accountabilities and responsibilities of the Directors of the business and could run the risk of the PAO acting as a shadow director of JPIL;
- Article 41 Accountable to the States: this could create conflict between the accountability of an AO and that person’s role as a director of the company;
- Article 42 Duty to provide information and produce records: these are already covered by existing legislation and the memorandum of understanding and re-stating here raises the risk of conflict between different legislation and licences;
- Article 50: this only allows a ground for refusal to provide information for “legal professional privilege”. As a commercial company operating with a number of partners it is important that commercial confidentiality is also included as grounds for refusal.

We currently consider that we have an excellent open relationship with Treasury, the Assistant Minister and those in the Shareholder Executive. We are therefore unclear what issue in respect of state owned enterprises our inclusion is this draft law is trying to resolve.

If you require further information or clarification please feel free to contact me.

Yours sincerely



Tim Brown
CEO