

STATES OF JERSEY



HSBC MIDDLE EAST (HBME): INVESTIGATION (P.10/2013) – COMMENTS

**Presented to the States on 5th March 2013
by the Chief Minister**

STATES GREFFE

COMMENTS

These comments are presented by the Chief Minister, but are brought with the agreement of the Minister for Economic Development.

1. Proposition P.10/2013 of Deputy G.P. Southern of St. Helier asks the States to decide whether they are of opinion “to request the Minister for Economic Development, in conjunction with the Chief Minister, to investigate the issues relating to Jersey contained in the U.S. Senate Report “U.S. Vulnerabilities to Money Laundering, Drugs and Terrorist Financing: HSBC Case History” and to report his findings to the States by 31st July 2013.”
2. In considering this matter it is worth repeating at the outset what was said by the Chief Minister in July 2012. “No jurisdiction in the world can say that its financial system is without risk of being abused by perpetrators of financial crime no matter how good the regulation is. This applies to London and New York as well as to Jersey. It is wrong therefore to imply that if a specific case is publicised with an apparent Jersey connection this puts in question the Island’s reputation for a high standard of regulation, particularly when that standard has been endorsed by independent bodies such as the IMF. Those cases if they occur are more appropriately to be seen as a bad apple in an otherwise good barrel, What is important however is that when individual cases are identified they are acted upon, and Jersey has a good record in this respect both through the rigour of the regulatory response and the robustness and integrity of the judicial system. Firm action is also expected from the financial institution concerned.”
3. Two points made in this statement bear repeating and expanding upon – “the Island’s reputation for a high standard of regulation” and “the rigour of the regulatory response”.
4. The IMF undertook an assessment of Jersey in 2008 as part of a worldwide programme of country assessments carried out under the IMF’s Financial Sector Assessment Programme. The report on the assessment was published in September 2009 and concluded that financial sector regulation and supervision was of a high standard and complying well with international standards. The rating for effective banking supervision and anti-money laundering placed Jersey in the ‘top division’ of international finance centres. In 2011 the Financial Stability Board engaged in the assessment of jurisdictions’ adherence to standards on international co-operation and information exchange and Jersey was placed in the top group consisting of those jurisdictions “demonstrating sufficiently strong adherence” to the relevant international standards.
5. On the subject of the rigour of the regulatory response, the Chief Minister, in his answer to questions put by Deputy Southern in July 2012, stated that the Jersey Financial Services Commission (JFSC) “will respond actively to any suggestion that there has been a breach of UN Sanctions or any lapse in AML/CFT”. The JFSC duly responded to the matters concerning HBME to which the U.S. Senate Report referred, and in November 2012 exercised their regulatory powers, which required HBME to appoint an independent reporting professional nominated by the Commission to undertake an investigation in accordance with a scope set by the Commission. It should be noted that,

contrary to the statement in Deputy Southern's report, this is not an 'internal investigation'. It is an investigation being undertaken by an independent reporting professional.

6. This investigation is still ongoing. The time taken reflects the fact that this is a complex, multi-jurisdictional matter. The comprehensive scope of the investigation; the geographical scope (numerous Middle East jurisdictions, including some very challenging ones in which to conduct such an exercise); and the need for the Report to be produced in accordance with the JFSC's Scope and for the report to be "maxwellised" (i.e. that those criticised in official enquiries should have the right to see the sections applying to them before the report is presented to the Commission) – these are all factors that have had or will have an impact on the time taken to complete what is a challenging investigation.
7. The report supporting the proposition presented by Deputy Southern refers to the need to appoint an independent, suitably qualified reviewer to undertake an investigation of the activities and procedures of both HBME and the JFSC itself. An independent reviewer has been appointed to carry out the investigation of HBME. Once the report is received by the JFSC, consideration will then be given to the need to undertake any further action in relation to HBME. If the Commission is minded to exercise any regulatory powers, for example issuing a public statement, it is important that such a decision is made in accordance with the Commission's published "Decision Making Process" and not hampered by an appointment as envisaged by Deputy Southern.
8. Only when this process is completed would it be appropriate to consider appointing a suitably qualified reviewer to assess the role of the JFSC. This is because the results of the HBME investigation when known – and the JFSC has indicated that hopefully this will be by July of this year – will provide an important indicator of whether and what earlier regulatory action could and should have been taken. States Members will note from the report supporting the proposition that the conduct complained of in the U.S. Senate Report, which breached no international sanctions nor any applicable Jersey laws, mostly relates to the period between 2001 and 2007, so any retrospective focus on the actions of the regulator during this period will not suffer from awaiting the outcome of the current investigation.
9. The JFSC has given an assurance that when the report on the investigation and due process of the HBME case has been completed, they will co-operate in accordance with their statutory duties with any independent qualified reviewer appointed to investigate their role in the matters of concern if such an exercise is thought to be justified. The proposition presented by Deputy Southern is therefore premature, and the requirement in the proposition that the findings of a review be reported to the States by the 31st July 2013 is unrealistic in the circumstances.
10. For all the reasons stated in this comment the Proposition is not supported.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

The Chief Minister apologises for the delay in presenting these comments; this was due to the late submission of advice, as the Special Adviser was out of the Island until Saturday 2nd March.