



Our Ref: DMcD/LB

12th April 2019

Senator Kristina Moore
Chairman
States Greffe: Scrutiny
Morier House
St Helier
JERSEY JE1 1DD

Dear Senator Moore

Thank you for the opportunity to contribute to the Corporate Services Scrutiny Panel's review of the Draft Public Finances (Jersey) Law, due to be debated on 30th April 2019.

JT's position is that it should not be listed as a Specified Organisation in Schedule 2 of the Draft Public Finances (Jersey) Law as it already operates within a robust and proven framework that provides an effective and appropriate level of structured governance and oversight. That framework includes a Memorandum of Understanding with its shareholder, relevant statute (including the Companies (Jersey) Law 1991), independent regulation and a highly competitive marketplace. This is a framework that has been in place for over 16 years and has been shown to work well and serves to ensure that JT takes capital investment decisions that are in the long term interests of Jersey. It is not clear that there is a requirement to add further to the well established framework already in place.

That said, we would make the following observations in relation to the Draft Public Finances (Jersey) Law, as set out below.

Director duties under the Companies (Jersey) Law 1991 taking precedence over the terms of the Draft Finances (Jersey) Law

Under the terms of the Telecommunications (Jersey) Law 2003, the activities of the States of Jersey Telecommunications Board were incorporated into JT Group Limited and its subsidiaries. Directors were appointed to those companies under the terms of the Companies (Jersey) Law 1991 and the duties of those directors are clearly set out in Article 74(1) of that Law, where it states:

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- (1) A director, in exercising the director's powers and discharging the director's duties, shall –
 - (a) act honestly and in good faith with a view to the best interests of the company; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

When the Draft Telecommunications (Jersey) Law was debated on 31st July 2001, this was a matter that was considered at length and some of the commentary in the supporting proposition reflected on the improved governance that would arise from the incorporation of the activities of the States of Jersey Telecommunications Board. One such comment stated: "Under the new arrangements for telecommunications, the various interests will be distinct from the start and thus any inherent conflicts between the interests will be avoided."

The current position benefits from being extremely clear and entirely consistent with relevant laws. The Draft Public Finances (Jersey) Law deals with the appointment of an "Accountable Officer" to specified organisations, one of which is listed as JT Group Limited and its subsidiaries. Article 39 (2) (b) of the Draft Public Finance (Jersey) Law states that the functions of the Accountable officer "are in addition to, or subject to, any functions specified in any enactment that apply with respect to that accountable officer".

JT's interpretation of this clause is that the terms of the Companies (Jersey) Law 1991, including Article 74(1) which sets out director's duties, would take precedence over the terms of the Draft Finances (Jersey) Law, but we would appreciate confirmation of this. If JT's interpretation is incorrect, then we would wish to make very serious representations of the negative legal implications that would result and the significant difficulties that could be faced by directors seeking to comply with differing and potentially conflicting legal obligations under different laws.

Appointment of an "Accountable Officer"

The Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018 introduced a raft of changes to various laws, including the Public Finances (Jersey) Law 2005. Included in those changes was an option for the Principal Accountable Officer to appoint an Accountable Officer to bodies including JT Group Limited and its subsidiaries (see Article 38 (c) of the Public Finances (Jersey) Law 2005 where it states "...appointing accountable officers for such of any of the following as the PAO *may* specify". (emphasis added)

In the event that the Principal Accountable Officer was considering whether to appoint an Accountable Officer to JT Group Limited and its subsidiaries, it is JT's understanding that this would only have been considered following significant engagement and consultation with JT where any concerns could be considered and then appropriately dealt with.

JT's reading of the Draft Public Finances (Jersey) Law is that Article 39 (1) (e) would change that position significantly, such that if an Accountable Officer is not appointed for JT then the Principal Accountable Officer would be the *de facto* Accountable Officer for JT. This does not seem correct and JT believes that an amendment may be necessary to revert to the existing structure whereby an Accountable Officer could be appointed for JT but this would only be after proper engagement and consultation with JT where any concerns could be considered and then appropriately dealt with.

Draft Public Finances Manual

JT understands the Public Finances Manual is currently being drafted and is extremely keen to ensure that this manual deals with key principals that are relevant to whether an Accountable Officer is required in the arm's length body and, crucially, recognises that the duties and obligations set out in the Companies (Jersey) Law 1991 take precedent over those contained in the Draft Public Finances (Jersey) Law.

Should you require any further clarification on the above, then please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Daragh McDermott', with a long horizontal flourish extending to the right.

DARAGH McDERMOTT
CORPORATE AFFAIRS DIRECTOR