

STATES OF JERSEY

Economic Affairs Scrutiny Panel

MONDAY, 9th FEBRUARY 2009

Panel:

Deputy M.R. Higgins of St. Helier (Chairman)

Deputy C.F. Labey of Grouville (Vice-Chairman)

Deputy S. Pitman of St. Helier

Deputy D.J.A. Wimberley of St. Mary

Deputy J.M. Maçon of St. Saviour

Mr. T. Oldham (Scrutiny Officer)

Mr. S. Le Quesne (Scrutiny Officer)

Witnesses:

Senator A.J.H. Maclean (The Minister for Economic Development)

Mr. M. de Forest-Brown (Director, International Finance)

Mr. J. Mews (Finance Industry Development Executive)

Mr. K. Lemasney (Strategic Development Manager)

Advocate P. Byrne

Deputy M.R. Higgins of St. Helier (Chairman):

Obviously, at the last States sitting I asked that the Amendment No. 10 to the Companies Law be

referred to the panel primarily because there was confusion among a number of States Members as to what exactly it was doing. So, it really is taking the opportunity here for your department to explain it to us in more detail and just satisfy us, and once it is absolutely clear we can go back and report to the Assembly as a whole that we have looked at it and we are quite happy with it.

Senator A.J.H. Maclean (The Minister for Economic Development):

All right, Mr. Chairman. Can I just, first of all, introduce you to Advocate Peter Byrne. He was on the steering committee when this particular piece of legislation was put together and I thought it would be useful if he could perhaps be here as well if there was any more detail that you wanted to get into. Apart from that, we have more or less the same team that was here before that will be able to answer any additional questions that you might have.

Deputy M.R. Higgins:

I think it is more clarification than anything else.

Senator A.J.H. Maclean:

Well, that is exactly what the whole thing is about. This relates to the Companies Law. As you will be well aware, there are 2 projects, in effect: there is the amending law and the amending regulations and they are effectively looking at strengthening the competitiveness of the Jersey company. There was one particular area that was included in that, which was the ability to change the shareholding percentages because of the wish to be able to list on the Hong Kong Stock Exchange, an interesting opportunity that has come forward. That was included as part of the projects. I do not think there is really very much more ...

Deputy M.R. Higgins:

Can I just suggest that, in a sense, if you just take us through, for example, Amendment No. 10, exactly what is proposed again so we fully understand it and then we will go from there?

Senator A.J.H. Maclean:

James, do you want to ...?

Mr. J. Mews (Finance Industry Development Executive):

Yes, absolutely. If you would let me do that, in summary, as Alan has already said, Amendment No. 10 and Regs No. 3, I am not sure whether you wish me to touch upon Regs No. 3 as well or simply ...

Deputy M.R. Higgins:

Well, to be perfectly honest, the only one that was referred back to the panel was the first one, Amendment No. 10. If you wish to ... maybe you can move on to that and just tell us about it, then it would help for the debate when we go back there anyway.

Mr. J. Mews:

Yes, absolutely. Great. As Alan has said, there is a ... in the main, this is all clarificatory, consequent on the principles which were put forward in Amendment No. 9, the previous amendment, and also the Regs No. 2 which were passed by the States at the same time as Amendment No. 9.

Deputy M.R. Higgins:

When was that, by the way? When did that take place?

Senator A.J.H. Maclean:

Last year, summer.

Mr. J. Mews:

It came into force in June. It was debated in 2007, I think it was around ... no, it was the first sitting in January 2008. It was passed by the States then and then came into force, obviously the regulations before the law because the law had to be approved by the Privy Council. But there was certain key things in that law, quite large changes which resulted in Jersey companies being able to distribute out

capital using a solvency statement, and that was quite a big change, something which many commentators across Europe had thought would be beneficial for the company and it is certainly something which we acted on here in Jersey as a result of the proposals initially put forward by the steering group. I am not sure whether you were on the steering group at that time; it was prior to my involvement. So there were these changes to the Companies Law going on which made the Jersey company one of the most flexible company vehicles in Europe and, as a result of that, it has been used extensively in the finance industry by a number of vehicles for funds and other instruments. So it is very much key to what we are doing at the moment both to help Jersey move forwards and in such challenging circumstances make sure that the company offering which we have really is the best possible and most competitive that we can offer. So, as I said, there are certain principles which were addressed in Companies No. 9. Companies No. 10 built on that. Inevitably, you have steering groups looking at law and you have consultation, but on something which is both as tricky and as technical as this, once it comes to be used in practice sometimes you do find there is a few little things which would benefit from tweaking. So, in the main, Amendment No. 10 looks at just clarifying some of the changes which were brought in by No. 9. Other than that, there were 2 sort of slightly larger things, one of which is something which gives the company the option to raise the standards when a special resolution is passed. As Alan has referred, that is critical to being able to list on certain exchanges around the world.

Deputy M.R. Higgins:

For the benefit of one or 2 members of the panel, can you explain what you mean by that? Because I can see already ...

Deputy D.J.A. Wimberley of St. Mary:

Yes, indeed. In fact, even going back to Amendment No. 9 I missed something. Amendment No. 9 created or enabled a Jersey company to distribute out of capital something which I missed; distribute what out of capital?

Mr. J. Mews:

Yes. Basically, historically, the company had been set up so that the means of protection for the creditors was that there would always be shares which were bought and certain key pieces of money, capital, which was owned by the company, and so if you were in a situation where the creditors needed to be paid off, that capital would always be there as a buffer against insolvency. But what was realised was that, to be perfectly honest, that was not a system that was very effective because a company might only have £1 or £100 worth of share capital and, therefore, if you have got multimillion pound debts, £100 is going to be neither here nor there. So, what was generally accepted was that it would be more sensible to move towards the directors making a solvency statement. That is making a statement that at the time a company is able to pay its debts as they fall due but also, looking forward a year, looking forward 12 months, that in 12 months the company would also be able to do such.

The Deputy of St. Mary:

So they make a statement that they will be able to out of their £100 pay the million pounds that they owe? Sorry, I am not ...

Deputy M.R. Higgins:

Whatever capital they have.

Mr. J. Mews:

No, they make a statement saying that based on the state of the company's finances at this time, if they distribute this money from the company's reserves or from its capital accounts, they will still have enough in the coffers to be able to pay their debts now and in a year's time. So it is something which is much more effective because it is looking at the company as it is, as it is trading, and what it is going to be able to pay in the future.

Mr. M. de Forest-Brown (Director, International Finance):

So, literally, they just have to make a statement they are solvent and are likely to be solvent for the

foreseeable future.

Deputy M.R. Higgins:

Of course, the directors would be liable for any false statement and so on?

Mr. J. Mews:

Exactly, yes.

Deputy M.R. Higgins:

Do you want to carry on, James?

Mr. J. Mews:

Absolutely.

Deputy M.R. Higgins:

He is mulling it over. Just carry on. **[Laughter]**

Mr. J. Mews:

Give you a bit of time to mull that over. So, that was the major change which was introduced into the Companies Law, and a very beneficial change. Now, I think this is ... if you want me to take you through provision by provision, this is probably the best time to do it because it is all subsequent to that change in the main, though there are a couple of other things. I suppose if you look at the law, one of the other things here is ... and we can see basically ...

The Deputy of St. Mary:

Are we on page 5?

Mr. J. Mews:

If we look at what is ... I do not have page numbers on mine, but Article ...

Deputy S. Pitman of St. Helier:

You are going through the Articles.

Mr. J. Mews:

Article 2. So if we look at Article 2, which amends Article 16, both Article 2 and 3 are human rights provisions which were put in at the request of the Commission. This was sort of one of the follow-on things from the general I.M.F. (International Monetary Fund) review. This was not one of the critical changes which is why it was not addressed in earlier legislation, but the idea is that if you are a ... once you hit the 30 ... basically have more than 30 members, then you are deemed a public company and there is much more onerous requirements which you have to comply with. But, for example, if you do not behave like a public company, it seems reasonable that you should be able to act like a private company and be deemed to be a private company. So, therefore, this ... and the Commission can make a decision about that. This simply introduced an appeal mechanism from decisions of the Commission, so that is simply to be human rights compliant. Article 4, which amends Article 39 of the Companies Law, this is one of the clarificatory changes which we brought in subsequent to Amendment No. 9 because it was realised that although there had been various changes to other parts of the law it had not been entirely clear that this particular part was dealt with ... that it should be dealt with in isolation. So the change to Article 39(3) makes clear that by adding: "In the making of a distribution in accordance with Part 17." That makes clear that Part 17 operates separately from this part, and so it is purely clarificatory. That is for par value companies. Article 5, which amends Article 39(a), does the same thing for no par value companies.

Deputy M.R. Higgins:

On that basis - sorry, I know, Shona, you were asking this question earlier - could you explain the difference of par and no par value?

Mr. J. Mews:

Basically, when you set up a company you can either give a fixed price for those shares, so a price which each share is nominally worth, or you can just allocate a number of shares and the value of the shares are what it is worth if you divide the assets of the company by the number of shares. So if you do that it is no par because there is not a par.

Deputy M.R. Higgins:

So, in other words, we are saying the share certificate does not say it is a £1 share, and if it is ... it is whatever it is trading on the market at that particular time divided by number of shares?

Mr. J. Mews:

Precisely, yes. So, moving on to Article 6, basically this was because both part 8, part 12 and part 17 and part 11 are ones which there is a lot of interlinking between these different parts, it was considered to be sensible to be able to amend this part by regulations in the future should there be further tweaking which is required. So that was the reason for Article 6. Article 7 is again a clarificatory insertion. So you can see from 58(c), making clear that redemption, purchase or cancellation by a company under this part of its shares is not for the purpose of part 12 a reduction of capital. So, part 11 deals with separate circumstances from part 12, and again this is making sure that there is not any confusion about that. Then, looking at Article 8, which amends Article 61, this was words which had been put in by Amendment No. 9 and subsequently some of the practitioners, on looking at this, thought that it perhaps confused the issue more than it was clarificatory, in which the whole aim was that it would be clarificatory. So for that reason the steering group recommended that those words would be deleted, so that is the reason for that. Again, I have spoken about the interlinking of these parts or the need to make clear that certain parts are separate, so again Article 9, the idea is that we could amend this by regulations in the future so that changes could be made far quicker. Article 67 of the main law, which is Article 10 of these, the other interlinking provisions, this was all inserted as a result of the Commission wishing us to change certain things. Basically, at the moment you can squat, your company can squat at another person's address and there was no provision in the law to prevent that from happening. So it is

clearly something which was unsatisfactory and so we have introduced a procedure whereby you have to make sure that you have a person's consent whose address you are using before you put that as the address of the company. There is also the ability for the Registrar, if he is aware that the company's address is not the proper address of the company, to change that. So that is something which is fairly straightforward. Turning to Article 11, this is one of the changes here, and this is making sure that if you pass a special resolution you can alter the standard, so you can raise the bar if you want from two-thirds as it currently stands to a higher degree. This is particularly critical because, as you are very aware, Jersey Finance is going to be opening offices in the Far East and this is part of Jersey diversifying its product. So one of the things here is if you are to list on the Hong Kong Stock Exchange, your company needs to be able to state that you cannot pass a special resolution with less than 75 per cent of members agreeing to that. So this was something which you can raise the bar if you wish to and it is relevant for Hong Kong. It is also relevant for potentially other exchanges or other markets as well.

Deputy J.M. Maçon of St. Saviour:

Is there provision to reverse that? So if the company no longer wanted that?

Mr. J. Mews:

It is up to the individual company to decide based on how they decide to set up the company. So you can reverse it or not. Turning to Article 12, which amends Article 115, the first part of that is a very minor change changing "is" to "shall" in terms of distributions. The purpose behind that was just to make it very clear that it is the directors who are authorising a distribution. 12(2) is clarificatory, again following on Amendment No. 9. This is again making sure that if you do make a distribution under this part that it is not a reduction of capital under part 12, which is a separate part. The reason for that is if you go through the process in part 12 you have to apply to court and the court sanctions a reduction of capital. There is a separate procedure under this part and so it seems pointless and it was never envisaged that you would have to both go to court and separately make a solvency statement. Turning on to Article 13, again this is the ability to amend this part by regulation. It states in slightly more detail

there what we might do by regulation just to make sure that the regulatory power extends to being able to ensure that Jersey companies can merge both with foreign companies as they can at the moment, but also they can merge with other corporate entities such as partnerships, foundations or other type of bodies. The idea behind this is to make the Jersey company as flexible and competitive as it possibly can be.

Deputy M.R. Higgins:

How many other jurisdictions have these type of provisions? Or are we unique in this? Is it something the industry has come up with to make it so flexible that it gets a competitive advantage or are there others?

Advocate P. Byrne:

I think some other jurisdictions already have this. The intention is that the framework for mergers will track the continuance framework so that there are ... I forget the figure now, but there are probably 12 to 15 jurisdictions which one can continue a Jersey company into and vice versa. I think certainly some of the competitive offshore jurisdictions such as Cayman and the B.V.I. (British Virgin Islands) already provide for this kind of merger arrangement.

Mr. J. Mews:

Then again, Article 14 repeals Article 181(9) which was a provision simply stating that that Article be changed by regulation, the idea being that Article 15 gives the power to amend all of part 21 by regulation. So that is the major ... well, that is all of Amendment No. 10. As you can see in the majority of clauses it relates to clarificatory provisions. If you would like, I can move on to the regulations No. 3.

Deputy M.R. Higgins:

Before you do ... sorry.

Deputy S. Pitman:

Sorry, I just want to go back to Article 11 where it mentions special resolutions. What are special resolutions?

Mr. J. Mews:

A special resolution is basically ... well, you have different types of resolution. A resolution is a resolution passed by the company, by its directors, at the meetings of the company. Now, certain things relating to the governance of the [Aside] ... of the shareholders, yes, sorry. Certain things relating to the company are so fundamental that you have provisions in the law which prescribe that there must be a certain amount of majority who agree to that. So a special resolution is a particular type of resolution to which a high threshold should apply.

Advocate P. Byrne:

Yes, so an ordinary majority is a bare majority, so 50.1 per cent, but then there is a category of issues which, as James said, are fundamental, so changing the name, amending the constitution, commencing winding up and so forth.

Mr. M. de Forest-Brown:

And the threshold has been moved to 75 per cent for that resolution if the company chooses to do that.

Mr. J. Mews:

In fact, it is even more flexible than that. You can choose what the threshold is so long as it is above two-thirds.

Mr. M. de Forest-Brown:

The point behind this is that it is about protecting the minority. If 51 per cent can make a fundamental change, then 49 per cent could potentially be disenfranchised. Our law currently stood at two-thirds, so the two-thirds of people could impose on the last third a fundamental change to the company if that is

how it was set up. One of the requirements of the Hong Kong Stock Exchange is that the minority protections are improved so that it takes a ratio of 3 to 1, so 75 per cent of the people only ... well, you need 75 per cent or more to impose a fundamental change on the minority. There are other elements in company law. There is, for example, a 90 per cent law which relates to forcing a minority to sell its shares. So there are these different protections in company law where you have to get a greater majority depending on how much of a fundamental change it is. This law, because to list on the Hong Kong Stock Exchange they require it to be at 75 per cent, we are simply changing our law so that a company can establish itself either with a two-thirds if it has no interest in the Hong Kong Stock Exchange and that is preferential to it, or it can choose the 75 per cent if it is interested in listing on the Hong Kong Stock Exchange and meeting the higher threshold.

Deputy M.R. Higgins:

In fact, on that, I know that the Minister indicated to me there was a company that wishes to do this already. Is that correct?

Mr. J. Mews:

I believe that is the case, yes.

Deputy M.R. Higgins:

Was this change coming from the desire of the company to do that or is it one that came from the Law Society generally?

Mr. M. de Forest-Brown:

Neither. It was as a result of a general desire to diversify and look at building business in China, Hong Kong, India and so on. As part of our marketing trips, we identify particular themes for industry that would be helpful, such as listing. The key point about listing on the Hong Kong Stock Exchange is it allows Jersey companies to maybe raise money on the U.K. Stock Exchange or the Hong Kong. Sometimes it is useful to list on the A.I.M. (Alternative Investment Market) and then do a secondary

listing in Hong Kong. So there are certain themes in terms of the way you structure. So, when we go on a marketing trip we take a basket load of things and gain understanding of what the perception is or, as a result of the trips, people will specifically point out: “Well, one of the problems with using Jersey is that your Jersey companies cannot list on the Hong Kong Stock Exchange, which is why we always use a B.V.I. or a Cayman company.” So it is as a result of those types of marketing trips that, as I was saying to you earlier on, we bring back information and say: “Okay, it seems like we have this particular blockage, which is why Jersey companies are not being used.” Then typically we will go to industry and say: “Is there an appetite for this?” If there was a big resounding silence or one company came forward and said: “Oh, yes, I would like to use it” then it would probably move down the priority list. But if we get a big support for it and say: “Yes, this could really help us generate a lot of additional business in the particular areas that we work”, then we will move that up the priority list. This was one of the areas in particular that industry had said would have been very useful. So we had taken an all-party trip; both industry, government and the regulator went. We met with the securities regulator in Hong Kong. We had previously written and had a favourable reply, but as a result of the face to face visit they said: “Okay, we can explore how we will now be able to work through this process”. So we are now going through a sort of mock listing to stress test all of our legislation and all of our laws and regulations. If that works effectively then we will be able to list ... or Jersey companies will basically be allowed to list on the Hong Kong Stock Exchange.

Deputy M.R. Higgins:

Deputy Le Hérissier, when he was questioning, his concern was I think about Jersey companies, whether they actually had a presence in the Island. My understanding is ...

Senator A.J.H. Maclean:

Sorry?

Deputy M.R. Higgins:

He was, I think, going on about whether the company was based here and had a real presence here or

whether it was just registered in Jersey. I take it obviously these provisions will apply to any company, whether it is ...

Senator A.J.H. Maclean:

Any company.

Deputy M.R. Higgins:

Yes, so it is not just having a presence in the Island and so on. So, in terms of the fact that, let us say, it is a non-resident company, they do not have a presence here and there is income coming and everything else, why are we making these changes? Because it benefits both, or is it to attract more people on to the companies register or what?

Senator A.J.H. Maclean:

It is making the Jersey company more competitive for all the reasons that have been previously stated.

Advocate P. Byrne:

I think just to add we have been out of line with English companies law since 1985 as regards the three-quarters majority, and that is in line with many other Commonwealth jurisdictions. So we were seeing a number of English lawyers who were drafting articles of association and they were just instinctively putting in the three-quarters requirement. Occasionally, where we only saw this after the event, we were having to say: "For a boring technical reason ... that could be entirely void." So, I think from the lawyers' and the practitioners' perspective it was the mismatch with English law and other Commonwealth jurisdictions. Of course, from just the perception perspective, it is very much raising the bar. So you are allowing a smaller minority to be able to block these ...

Mr. M. de Forest-Brown:

It has nothing to do with substance whatsoever. This is totally separate from the issue of substance.

Deputy M.R. Higgins:

I am just addressing his concerns. The other thing, too, is ...

Mr. M. de Forest-Brown:

Sorry, does he have a concern that we should properly address or ...?

Deputy C.F. Labey of Grouville:

What he said in the States was: "There is a difference between being registered and physically operating your main purpose of business on the Island to which we are referring."

Mr. M. de Forest-Brown:

Yes. Jersey has a combination of obviously businesses which are here with substance - buildings, people and so on - but a significant chunk of what the Jersey finance industry is about is providing vehicles. This sometimes results in confusion. Obviously, to the extent that a business is a regulated entity, then there is a requirement that there is substance here and people that we can manage and control. In terms of a corporate vehicle or other form of vehicle, those invariably absolutely do not have any presence here at all. They are simply a legal vehicle. So we need to keep those issues carefully in our mind. This is simply a change in the constitution of the company whether it has substance or not; in all cases it will be protecting the minority by raising the bar.

Deputy M.R. Higgins:

I just realised what it was. Going back to your point about the U.K. and having 75, do they have a flexible provision like this or is it fixed at 75?

Advocate P. Byrne:

Their law just provides the special resolution is a resolution passed by at least a three-quarters majority. So ours is slightly more flexible. There are some structures where the relevant shareholders want some decisions of the company to be unanimous, so this allows you to have different thresholds, if you like.

Deputy M.R. Higgins:

The only other point, again just to satisfy Deputy Le Hérissier, this is to benefit ... **[Aside] [Laughter]**
Anyway, yes, obviously I think he was concerned that basically it was just there for companies that are just registering on the thing, but it applies to both, those who are domiciled and have a presence here and any others who are on the registry as well. So, just to clarify that.

Mr. J. Mews:

Yes, but the other important thing, of course, is that if the Jersey is being used, then that increases Jersey's prestige around the world and it also means that the company law is governed by Jersey company law and, therefore, there will be work generated for our Jersey lawyers.

Deputy M.R. Higgins:

The only comment I would make about the first part of that is if the company are a bunch of crooks or the people who are running it are a bunch of crooks and it fails and causes a problem, then it has an adverse effect on our reputation as well. So, it can be either/or, yes.

Mr. J. Mews:

Yes, in theory, but, of course, this is a change in provision which is all about protecting minorities.

Deputy M.R. Higgins:

Do not get me wrong, I am not disagreeing with that. I see it as a sensible provision. What I am making is just a comment about reputation. Reputation can work both ways and we do not have a degree of control over the companies that are registering in the Island, just using the register and going forward, in the same way that ... okay, I am not saying that this was a company that there were any problems with, but if we think of the publicity associated with Granite, for example, that has been on the Panorama programme, there is a negative connotation to Jersey because of some of these structures. That is the only comment I am making. But in terms of what you are doing, I see no objection to that.

Mr. J. Mews:

There is a really key point here because on going out to China and seeing how B.V.I. and Cayman and other jurisdictions have really taken a lot of the ground there and established themselves, it is based on their company vehicle as the core offering which is being used. So, by the Jersey company being able to be used in the same type of circumstances is really key to Jersey establishing itself in those sort of areas. So, there is a really strong and important point there.

Senator A.J.H. Maclean:

Jersey is not particularly well known in those areas, and those are markets that we have identified as offering some significant potential and benefit. As James was saying, this does open up the opportunities.

The Deputy of St. Mary:

I am just puzzled by some of the phrases being used: one of the most flexible company structures in Europe; we need to have the most competitive offering and most competitive thing that we can offer; and then the difference between companies that have substance and companies that do not have substance. I just find all this very puzzling and it just seems to me that when you have the big boys of this world now looking at stuff like this, I just wonder how safe this is down the line, reputational and in terms of ...

Mr. M. de Forest-Brown:

I think you have really got to start from where your initial premise is. If we were an Island that its primary industry generating 53 per cent of its G.V.A. (gross value added) was selling shampoo, let us say, you probably hope ...

The Deputy of St. Mary:

Real shampoo.

Mr. M. de Forest-Brown:

Yes, real shampoo. You would probably hope that we were not selling just one type of shampoo, that you went into the shop and found this single bottle there and said: "That is the shampoo. We specialise in that shampoo." You would probably hope that there was a range of shampoos here so that if you particularly wanted something that was for red hair or for brittle hair, you would have a different ... All finance is about exactly the same; it is simply about having a range of products that allow you to market so that you are a better shop than somebody else in terms of what you offer. Now, if one starts from the premise that these are all things that are related to skulduggery, then maybe there is a problem. But they are not, no more than any other jurisdiction anywhere in the world where crooks and so on will make use of vehicles. Jersey has done everything it can to improve regulation and law to minimise our reputation coming into ... as you say, resulting in some bad reputation around the world. We are changing the colour of the bottle, the range of the shampoos and so on. That is all that is happening here. It is not about putting in a clause that says: "If you have 50 per cent support you can sell garments (?) through your company." We have to keep it very clear in our mind between simple issues of legislation, corporate governance and so on and then how they are used, how these companies might be used. It is a really important distinction because if one starts from the wrong premise then one will always look at this stuff and think: "Hold on, this is confusing and you must be up to something and there must be some skulduggery about." There really fundamentally is not.

Deputy M.R. Higgins:

I might add that I have no problems at all with any of what is being proposed here. The only time I would ever have a concern - and this would be on the regulatory front - is where we are racing to the bottom trying to compete with other jurisdictions to the lowest common denominator. Then I would have an objection, but on this, no. It is safeguarding rather than lowering the bar, in a sense.

Mr. M. de Forest-Brown:

But I make that mini speech because I am concerned when people think that this is risky, and we need to

be very clear in our mind and identify what the sources of risk are and where ... you identified one just there which might be if you were in a position where you were racing to the bottom, but there is nothing intrinsically risky about this stuff. It is as simple as that.

Deputy M.R. Higgins:

No, special resolution, human rights protection, it is all positive so I have no problem. I do not know if any other members of the panel have any other comments they want to make? No. Shall we just quickly then ... you might as well inform us about the other one which we did not pull but at the same time that makes us more knowledgeable for when it comes to the debate.

Mr. J. Mews:

Regs No. 3 is very brief, the substantive provisions on one page. Here, looking at Article 2, this is an important change which is basically changing the definition of an O.E.I.C. (open-ended investment company).

Deputy M.R. Higgins:

Can I just ask, for the benefit of the other members of the panel, explain what an O.E.I.C. is to them, please. [Laughter]

Mr. M. de Forest-Brown:

I will give you a simple ... If any of you have invested in some form of investment fund, you can go and sell yours tomorrow, and they can sell more of it tomorrow to somebody else. So, the actual value in the vehicle can change. You can have people given the money back and you can have people who want to buy more. That would be open-ended. If you have a closed scheme, so that once it is set up then nobody else can invest and you cannot sell either without basically unravelling the whole thing, then that is a close-ended investment scheme. So an open-ended investment scheme is the typical structure for many, many funds that people invest in that are in the public domain where lots of people can either invest or sell.

Deputy M.R. Higgins:

Again, sorry, if you can just expand that slightly - it is just for the benefit of everyone here - the types of funds that they may be operating in? I know the vehicle is used for different things.

Mr. M. de Forest-Brown:

Absolutely anything. It could be anything from wine to real estate to bombs, anything. It is just the vehicle in which you then take the cash and then buy whatever it is you want to invest in.

Deputy M.R. Higgins:

That is fine.

Deputy S. Pitman:

Sorry, can I ask what C.O.B.O. means?

Deputy M.R. Higgins:

Control of borrowing order. It is a piece of legislation.

Mr. M. de Forest-Brown:

It is a fine piece of Jersey legislation. **[Laughter]**

Deputy M.R. Higgins:

Until you read it.

Mr. M. de Forest-Brown:

Do not quote me on that because we might come back to repeal it in due course. **[Laughter]**

Deputy M.R. Higgins:

We were talking about in times past, yes.

Mr. J. Mews:

Reform of C.O.B.O. is one of the issues. Basically, you have different funds which are controlled from a regulatory point of view by different mechanisms. So, C.O.B.O. is one of the mechanisms which controls certain types of funds. The main purpose behind the change to the definition of an open-ended investment company was linked to the idea that previously the definition included the fact that you had to spread risk. Now, the reason that this would cause complications is that one of the recent lines of business which Jersey has set up is unregulated funds, and it was to complete the entire funds offering which Jersey was offering. But typically you will have, or in many unregulated funds you will have a master fund and a feeder fund. The feeder fund collects all the monies up and gives it to the master fund who then invest the monies. Now, if you had a risk spreading criteria in the definition, then because the feeder fund was simply investing the money in one fund, it was not diversifying or spreading its risk. So it would not then be able to fall under this criteria. The other part of the criteria which has been changed is that it falls to be a C.I.F., a collective investment fund, under the Collective Investment Funds Law. Again, an unregulated fund is not this type of fund. So an unregulated fund would then fall out of the definition. But it was really important that an unregulated fund could be within this definition because typically a fund of this sort may have to redeem at very short notice and you need to be exempt from certain provisions of the Companies Law for an investor to be able to take their money out at short notice. So this, basically we had to find a way so that the unregulated fund was exempted from these parts of the Companies Law and fit within this definition. So, for example - and do stop me if I am getting too technical here - there are certain criteria regarding accounting principles and when a solvency statement is given, how often they need to be given and that sort of criteria. It simply is not possible for the directors to make a solvency statement every day for these things. So, because of that, it was felt that we needed to change the definition in order to bring in unregulated funds within its scope. If there are any questions which people wish to ask about that, then I will be happy to answer them, but it is quite technical.

Deputy M.R. Higgins:

Anyone?

The Deputy of St. Mary:

The problem is that the words “unregulated fund” do not appear anywhere here, so I do not see why we ... I am very naïve, but why does it not say that? Or is it included in one of these other terms?

Mr. J. Mews:

Basically, an open ...

The Deputy of St. Mary:

Oh, that is not part of the actual thing, then. The thing is here. That is an explanation. That is an explanatory note.

Mr. J. Mews:

Yes, I am explaining to you the reason why we changed the definition. We changed the definition to permit us to do certain things, and so that is one of the main things which we wished to do, was to enable unregulated funds to benefit from the exemptions which are accorded to open-ended investment companies.

The Deputy of St. Mary:

So that paragraph (a): “the sole business of which is to invest”, that includes unregulated funds?

Deputy M.R. Higgins:

Sorry, we do not have a copy of the regulations, have we? Do we have a marked-up copy of the regulations to show ...?

The Deputy of St. Mary:

I am looking at page 7 of the ...

Mr. J. Mews:

You have a marked-up copy of the law so it is included in that. So if you turn to the definitions section in Article 1 of the law, we can see a definition of open-ended investment companies. We can see that previously we had in (a) ... and I do not have pages so I am sorry, I cannot refer you to a page, but it is in Article 1 so it is near the beginning. It is on roughly, I do not know, page 4 or 5 under “open-ended investment company” you can see some of it is crossed out. So we substituted the old definition. We can see at the end of (a): “with the aim of spreading investment risk”, so we have deleted: “with the aim of spreading investment risk” because, as I said, feeder funds invest purely in the master fund so there is no spreading of the investment risk. We have also, because an unregulated fund is not a C.I.F, a collective investment fund, basically we have deleted (c) which has the criteria of holding a permit as a functionary of group 1 of part 2 of the schedule to the Collective Investment Funds (Jersey) Law.

Deputy M.R. Higgins:

So, in other words, although a C.I.F. is a regulated fund, by taking that out it applies to both is what you are saying. That is where it is coming from, then, the idea of regulated and unregulated.

Mr. J. Mews:

Yes.

Deputy M.R. Higgins:

Thank you for that. I am pleased to be able to look at the marked-up copy. This is why, by the way, I ask the department when you are bringing legislation through if we can have marked-up copies.

The Deputy of St. Mary:

It makes it a lot easier.

Deputy M.R. Higgins:

Because it makes life so much easier than just looking at an amendment which nobody has a clue.

The Deputy of St. Mary:

Apart from the fact that pages are not numbered so there is a bit of a ...

Deputy M.R. Higgins:

Well, yes. So we can do that on Word next time with page numbering.

Mr. J. Mews:

All right. If we look at Article 3, which this is one of the clarificatory amendments which we put in the regulations because we were able to, which then speeds up how quickly it can be passed into law. So, basically, we have put in in Article 114(2)(c) we have substituted: “any reduction of capital made in accordance with part 12”. That was just finessing the previous wording in order to make clear the distinction between the different parts. Then Article 4, which amends Article 181, that basically is a consequential change on Amendment No. 9. That is something which, to be perfectly honest, probably should have been spotted by the steering group the first time round. We did not, but the concept had been taken out of the law by some of the other changes, so we needed to make a consequential change to Article 181.

Deputy M.R. Higgins:

[Aside] Sorry, carry on, James.

Mr. J. Mews:

Well, I think, though that may be clear as mud, I think I have come to an end there. So, I would invite any questions about those changes.

Deputy M.R. Higgins:

Does anybody have any questions they would like to ask, then, or are we all content? Okay. Well, I am sure no matter what we are all going to go back and before the States debate on this revisit it until we are happy.

Mr. J. Mews:

Absolutely.

Deputy M.R. Higgins:

Thank you very much for the explanation.

Mr. J. Mews:

A pleasure.

Senator A.J.H. Maclean:

Just for clarification, you are happy for it to proceed to the debate on the 24th, which is what has been ...

Deputy M.R. Higgins:

I think, unless anybody has got any objections, that would be what I would be proposing.

Senator A.J.H. Maclean:

Fine. Can I also just at this point ... obviously any legislation that we are bringing forward gets notified to your panel in advance. Is there anything you particularly need for future reference when we are bringing legislation forward?

Deputy M.R. Higgins:

I think obviously the marked-up copies is absolutely vital.

The Deputy of St. Mary:

That is what you need.

Deputy M.R. Higgins:

Because I do not know how States Members in the past have even passed all these things without ... if they just have the amendment they have not got a clue and I cannot believe have even read them. Now, one of the things that we said with this panel we would do is scrutinise laws and other things going through, so what I would ask is if you could send it through and if we have got questions we want to ask, then perhaps we can direct them to you and get an understanding and obviously facilitate a process for the States and make sure there is effective scrutiny. If we need a hearing we will have a hearing. But I think I see our role as helping the States with the enactment of this legislation.

Senator A.J.H. Maclean:

That is fine. So, in effect, if you get your marked-up copy in advance, you will go through it. If you want to have a hearing prior to the debate in the States, then we can facilitate that as well.

Deputy M.R. Higgins:

I think we have the ability to do that, that is right. There is 2 means we can do it. We can either do it prior or pull it from the debate. Obviously the best one is to do it prior.

Senator A.J.H. Maclean:

Absolutely, and we are happy obviously to give you a full briefing if you so wish prior to debates occurring.

Deputy M.R. Higgins:

Can I ask that not only for the Companies Law, if you are doing something like, I do not know, the Gambling Law or something like that, again a marked-up copy, please, on whatever so we can all have it.

Senator A.J.H. Maclean:

Okay, that is fine. Yes, I suppose one thing which is ... a point which is quite important for me to make is that obviously some of these changes are very critical for the finance industry and we all know how much we depend on the finance industry for the profits which make our Government run. So, if we could identify any issues in advance of it going to the States, then I think that would really be beneficial in the future because for the finance industry to hear that its legislation has been called into scrutiny really does send out quite a negative message.

Deputy M.R. Higgins:

Okay. Well, let us say we are starting from afresh now anyway, and so whereas maybe the States have not scrutinised it in the past, it will be in future. But again, we will try and do it beforehand. As I say, we always reserve the right if necessary to pull but, as I say, with the help of this and the idea of these briefings, then I do not see future problems with that.

Senator A.J.H. Maclean:

It is somewhat of a learning process and hopefully the process will be improved and better streamlined in future.

Deputy M.R. Higgins:

Yes. Anyway, thank you all. Has anybody got any other questions?

The Deputy of Grouville:

I would just like to make a comment with regards to Jersey Finance Limited. If we are meant to be a leading finance industry here, then surely they should have seen ... they should have looked to change these laws sooner than now?

Senator A.J.H. Maclean:

It is not really just Jersey Finance. For this particular Companies Law, there was a steering group drawn

from all sectors of the business community, legal profession, representatives here and so on, so it is not just focused as narrowly as Jersey Finance.

The Deputy of Grouville:

But the fact that ...

Senator A.J.H. Maclean:

These things are always evolving, of course.

The Deputy of Grouville:

Yes, but B.V.I. and Cayman and everyone else are already, as you said, established or getting established in China and India.

Mr. J. Mews:

Well, a lot of other jurisdictions made decisions in the 1970s and 1980s to go out there and market themselves and, as a result of that, they have established a very strong foothold. So we are not talking about decisions of Jersey last year or the year before, we are talking about proactive decisions that were taken elsewhere by certain other people decades ago. Now, clearly it is all down to the resources which the government wish to give the finance industry to market itself.

Deputy M.R. Higgins:

Also in that case, their laws are constantly evolving as well as they see an opportunity, so it is a game of catch-up all the time. We may be ahead of them, they may be behind us, or the other way around. Okay. If there are no other questions, I would like to thank you for this much longer session than was originally agreed, but it was extremely useful and I look forward to working with you in the future.

Senator A.J.H. Maclean:

Yes, likewise. Thank you very much.

