

STATES OF JERSEY



FINANCIAL INSTITUTIONS REGISTERED IN JERSEY: LINKS TO PANAMANIAN LEGAL FIRM MOSSACK FONSECA

Lodged au Greffe on 26th April 2016
by Deputy G.P. Southern of St. Helier

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request that the Chief Minister, in co-operation with the Minister for Treasury and Resources, as appropriate –

- (a) directs the Jersey Financial Services Commission (JFSC) –
 - (i) to request the handover of any information held by financial institutions registered in Jersey about their dealings with the Panamanian legal firm Mossack Fonseca, and
 - (ii) to ask what action the institutions concerned are taking as a result of any significant issues or relationships identified following internal investigation; and

should the results of steps taken under paragraph (a) suggest that further action is required –

- (b) establishes, with appropriate funding, a taskforce, consisting of the JFSC, the Financial Crimes Unit and the Comptroller of Income Tax, to examine any abuse or breach of regulatory standards by those Jersey financial institutions identified in the “Panama Papers” which might jeopardise the Island’s international reputation.

DEPUTY G.P. SOUTHERN OF ST. HELIER

REPORT

The 11.5 million documents released from the legal firm Mossack Fonseca, known as ‘the Panama papers’, reveal the setting-up of over 100,000 shell companies by wealthy individuals and institutions from around the world, including some based and registered in Jersey. For example, 2 Jersey companies, Credit Suisse Channel Islands Ltd. and Coutts & Co. Trustees (Jersey) Ltd., are placed third and seventh on the list published by the ICIJ of banks which have requested Mossack Fonseca to register offshore companies for clients, with 918 and 487 requests respectively.

The release of these papers has once again drawn attention to the activities of the offshore industry, and many governments and jurisdictions have already responded to establish investigations and to work together to analyse the information and to respond to the international concern which has been shown.

The Geneva prosecutor has launched a criminal enquiry in connection with the Panama papers.

The UK Financial Conduct Authority (FCA) has already written to City of London companies about the revelations.

The UK Prime Minister has already agreed £10 million to fund a taskforce of HMRC and the National Crime Agency to investigate potential illegality.

The EU and OECD have already responded, and tax investigators from 28 countries have met to launch an international inquiry in Paris.

The UK Prime Minister and others have reacted swiftly to concerns in order to protect the reputation of their offshore regulation and activities. When asked about the issue, our own Chief Minister took a different approach on 12th April in the States Assembly.

4.8.1 Deputy G.P. Southern:

“Could the Minister suggest why a company registered here, such as Credit Suisse or Coutts Jersey, should suggest to its clients that they should register companies in Panama or the British Virgin Islands when we are a financial services institution with the best regulation in the world; why should they advise someone to go to a less well-regulated jurisdiction? If he cannot say why that might occur, can he ask the J.F.S.C. (Jersey Financial Services Commission) and see if they have a reason?”

Senator I.J. Gorst:

“There could be any number of reasons. I am not a financial adviser and it would not be right for me to start second-guessing why, for any particular individual client or structure, it depends where the asset is situ that they might be putting into that company, it depends on where they are raising capital for the venture they might wish to invest in, it depends on where they might wish to invest that, it depends where the investors might be resident, there are any number of reasons why an individual financial services firm might recommend a particular jurisdiction. We are in a competitive market-place and we do our best to ensure that people want to come and use Jersey, even if instruments are registered elsewhere because of the quality of our regulation.”

4.8.2 Deputy G.P. Southern:

“So, will he answer the second part, which was: will he ask J.F.S.C. to investigate in order to come to us with some explanations?”

Senator I.J. Gorst:

“The Deputy is asking me about what could be a thousand myriad different situations on why advice might be provided by a financial institution to a particular client or group of clients, it is just not feasible. So once again, I am afraid, it shows that the Deputy appears to misunderstand totally how financial services operate.”

In responding with the line that there could be “*a thousand myriad different situations*”, the Chief Minister fails to mention that these myriad reasons include the possibility that the intention is to hide the investment from the tax authorities in a manner that cannot easily be traced with the intention of evading or avoiding tax.

His suggestion that: “*it is just not feasible*” for the JFSC to investigate the circumstances under which such transactions have taken place suggests that our high degree of regulation counts for little in ensuring that these activities are not illicit.

The Chief Minister cannot have it both ways. He cannot boast about the high quality of our regulations in preventing aggressive tax avoidance and evasion and then, when possibly suspicious activity is drawn to our notice, say that investigation is not feasible. If he does so, it must bring our reputation into question.

Later on, in response to a question from Deputy M.R. Higgins of St. Helier, on the setting-up of shell companies and the use of bearer bonds, the Chief Minister made the following statement –

“The Deputy is making assumptions that advice is being issued by Jersey firms to their clients and I currently do not see evidence of that.”

Surely the response to a lack of evidence is to seek that evidence to clear up the issue. Once again the Chief Minister seems loath to do so.

Deputy M. Tadier of St. Brelade brought the issue to a sharp focus when he compared the actions of the UK Prime Minister in response to the Panama papers with that of the Chief Minister.

4.8.6 Deputy M. Tadier:

“The Chief Minister has talked about many jurisdictions following Jersey’s example, but will the Chief Minister follow the example set by the U.K. Prime Minister and set up and fund an investigation by the J.F.S.C., the Financial Crimes Unit and the Comptroller of Tax, into any possible instances of aggressive tax avoidance and evasion by the use of Panama-registered companies by Jersey-registered companies?”

[10:45]

Senator I.J. Gorst:

“Of course we are taking notice of information that might come into the public domain that might have reference to Jersey operations and appropriate action and investigation will be undertaken by the appropriate authorities.....”

4.8.7 Deputy M. Tadier:

“There is no suggestion, but I think a similar statement could, and has, been made by the U.K. Prime Minister when he set up his investigation. He is not saying that everything in the City of London is toxic or corrupt; he is saying that they also have mechanisms, but because their reputation is important he is willing to spend money on such a critical industry to the U.K. and London economy to make sure that the world knows it is squeaky clean. Will the Chief Minister perhaps not take a leaf out of the book of his U.K. counterpart?”

Senator I.J. Gorst:

“We have already taken the lead. The fact that the Deputy does not understand the lead that we have taken in this regard to tax evasion and tax avoidance is disappointing.....”

The only thing that is disappointing here is the Chief Minister’s reliance on past actions. The activities revealed in the Panama papers pose serious questions about the activities of financial institutions around the world, including the City and Jersey. If only to prevent potential reputational damage, we ought to be prepared to investigate the nature of transactions between Jersey institutions and Mossack Fonseca, and to publish the results of such an investigation in the interests of transparency.

Financial and manpower statement

With a budget for investigations and litigation of around £700,000, there should not be any problem in financing part (a) from JFSC revenues. The additional costs required for further action as indicated in part (b) could only be estimated once the results of part (a) are known, but should not exceed the £113,000 spent on the report on changes to business tax by Oxera in 2012.