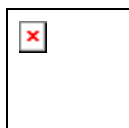


**REPORT OF THE TASK FORCE SET UP TO CONSIDER THE REVIEW OF FINANCIAL REGULATION IN  
THE CROWN DEPENDENCIES (THE "EDWARDS REVIEW")**

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**Presented to the States on 7th December 1999  
by the Policy and Resources Committee**

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# REPORT OF THE TASK FORCE SET UP TO CONSIDER THE REVIEW OF FINANCIAL REGULATION IN THE CROWN DEPENDENCIES (THE “EDWARDS REVIEW”)

## 1. Introduction and summary

- 1.1 The Edwards Report, with its clear and positive statements on the quality of regulation already exercised by the Insular Authorities, has been helpful in improving the view taken of the Island by overseas regulators and law enforcement agencies. The report gave independent confirmation of the Island’s high standards of regulation - particularly as compared with other jurisdictions.
- 1.2 The Insular Authorities had already embarked upon an ambitious programme of regulatory and legislative reform designed to ensure that Jersey kept pace with international standards. The Edwards Report endorsed the agenda for reform and provided a large number of helpful suggestions, which have enhanced and supplemented that agenda.
- 1.3 The Island established a Task Force to consider the Report, which in turn asked the Jersey Financial Services Commission<sup>[1]</sup> (“the Commission”) to advise it, taking account of an extensive programme of research and consultation with the industry. Clearly where the Task Force conclusions require new or amended legislation, those conclusions are subject to final approval of the necessary legislation by the States or relevant States Committee.
- 1.4 The Task Force has endorsed most of the Edwards conclusions. The degree of congruence between Edwards’ conclusions and the Insular Authorities’ own objectives is clearly evidenced by the large number of proposals that have already been implemented or, as this report makes clear, have been accepted in principle and are now in the process of being implemented.
- 1.5 The main exceptions to this fall in three broad categories. In respect of certain proposals, the Task Force believes that the objective behind the proposal can be achieved in a better way. In respect of some “technical” recommendations, the Task Force, after careful research and consideration of the evidence presented to them, does not agree with the conclusions drawn by Mr. Edwards.
- 1.6 In respect of a very small number of suggestions, the Task Force, having considered evidence of practice elsewhere, does not consider that it is in the economic interest of Jersey to move ahead of the United Kingdom and other countries with which it would wish to be compared. Such suggestions are of course the subject of continuing international debate, to which Jersey intends to contribute fully.
- 1.7 In considering the Report’s conclusions and setting out a programme for their implementation, the Task Force has been determined to build upon the success to date and thereby to enhance further the Island’s standing in the international community.

## 2. Background to the Edwards Review

- 2.1 On 19th November 1998 the Report on the Review of Financial Regulation in the Crown Dependencies (the “Edwards Report”) was published. Mr. Edwards had been asked by the Home Secretary to review with the Insular Authorities their laws, systems and practices regulating their financial centres including collaborating with overseas regulators, dealing with financial crime and registering companies.
- 2.2 The Report confirmed that the arrangements in place conformed in large measure to the internationally accepted standards of financial regulation. The Islands were said to be in the top division of offshore finance centres. The Report concluded, however, that there were a number of changes which it was thought could raise standards, both in the United Kingdom and in the Crown Dependencies, reflecting, among other things, a need identified “to extend the depth of regulation”.
- 2.3 The Insular Authorities stated at the time of the Report’s publication that they would want to study the Report in detail, and the United Kingdom Government and the Insular Authorities agreed on a series of meetings at which the Insular Authorities could inform the Home Office Minister with responsibility for the Islands what action they were taking in response to the proposals in the Edwards Report.
- 2.4 In Jersey a Task Force<sup>[2]</sup> was set up under the chairmanship of the President of the Policy and Resources Committee. The Task Force asked the Commission to consider all of the Report’s conclusions, take action in areas within its own competence and give advice to the Task Force on other matters.

- 2.5 In responding to this request the Commission established several working parties, comprising representative members from all of the major industry associations, to consider the implications of each of the Report's conclusions. That process is now completed.
- 2.6 For some of the conclusions a detailed and comprehensive research programme was also initiated. One of the objects of this research was to enable the Commission to gain a clear view of policy and practice in other relevant jurisdictions and, where appropriate, obtain a more detailed understanding of the full legal implications of following the recommended course of action in the Edwards Report. That programme of research is now also completed.
- 2.7 In considering the conclusions of the Edwards Report, and their application to the Island, the Task Force has had two key objectives in mind. One is to ensure that the Island maintains its high regulatory standards. The other is to ensure that the Island's reputation and economic interests are fully protected. The Task Force has also seen the need to preserve due confidentiality for those engaged in legitimate business while actively participating in the global pursuit of those engaged in financial crime. The Insular Authorities recognise the importance of complying with international standards in financial regulation and anti money laundering measures. Where those standards do not yet exist, or lack a clear definition, attention has also been focused on the existence of an international level playing field embracing those jurisdictions with which the Island would expect and wish to be compared.
- 2.8 In undertaking a review of the Edwards Report proposals, the Task Force and the Financial Services Commission have been sensitive to the fact that a number of the Edwards Report conclusions raised important points of principle which are also being actively considered by jurisdictions world-wide, including the United Kingdom. Many of the Report's conclusions carry significant human rights implications, particularly in view of the forthcoming introduction into domestic legislation (in Jersey as in the United Kingdom) of the European Convention on Human Rights. The Task Force has sought to ensure that the response to the Edwards Report is informed, well-judged and compatible with the Human Rights Convention. With this in mind the Commission has obtained an opinion from leading independent counsel on the potential implications of the Convention for the Report's conclusions.

### **3. Jersey's response to the principal measures discussed in the Report**

- 3.1 The Edwards Report included over 150 individual proposals, conclusions and expressions of opinion. The Task Force has identified and considered each of these in detail as part of the industry consultation process. Edwards himself categorised and summarised these proposals under a series of "principal measures" which he set out in the Report's conclusion (attached at the Appendix). The Task Force's response to these principal measures is described below.

3.2 All Crimes Money Laundering

Implemented. **The Proceeds of Crime (Jersey) Law 1998** came into force on 1st July 1999, putting the Island in a position of having All Crimes Money Laundering Legislation broadly on a par with the United Kingdom. This legislation places Jersey at the vanguard of the fight against international organised financial crime, and compares extremely well with that in force in many Member States of the European Union or the Organisation for Economic Co-operation and Development (OECD).

3.3 Removal of prosecution time-bar

Implemented. The **Criminal Procedure (Prescription of Offences) (Jersey) Law 1999** was registered on 23rd July 1999. This removes the requirement that prosecutions of statutory offences must be brought within three years of the date when the alleged offences were committed.

3.4 PACE Law or equivalent

Accepted, implementation in progress. A draft **Police and Criminal Evidence Law** will be presented to the States during the course of 2000. This Law will afford the Insular Authorities additional powers to obtain information needed for investigations and judicial evidence, through such means as production orders and search and seizure warrants.

3.5 International Co-operation Law

Accepted, implementation in progress. It is anticipated that the draft **Criminal Justice (International Co-operation) (Jersey) Law 200-** will be presented to the States in the first quarter of 2000.

3.6 Recruitment of extra staff for law officers, police and FSC

Accepted, implementation in progress. All of the law enforcement agencies have recruited or are in the process of recruiting additional staff to deal with the introduction of new legislation and the extension of the regulatory regime. Staffing levels are the subject of continuous review.

3.7 Possible structural changes in fraud and financial investigation

Accepted. The Task Force has accepted the report of a Working Party chaired by the Attorney General that a Financial Crime Unit be established to co-ordinate more effectively the efforts of the domestic law enforcement agencies in dealing with fraud, intelligence and investigation. The proposal will now be put to the Defence Committee and the Finance and Economics Committee.

3.8 Financial Services Commission and regulatory changes, including Board and structural changes

Implemented. The Task Force has accepted that the Commission needs to be, and perhaps just as importantly, be *seen to be* entirely independent of Government. It has therefore agreed that there should be no political representative on the Board of Commissioners. The Financial Services Commission (Jersey) Law 1998 (“the Commission Law”) has been amended to provide for a non-political Chairman, and the Commission’s former Chairman, Senator Frank Walker, has now stood down in favour of Colin Powell OBE.

The Task Force agrees that there should be clearly defined circumstances in which the Commissioners can be removed and these have been in the Commission Law since its enactment.

The Task Force has also accepted that the Commission should not be responsible for the promotion of the Island’s finance industry. A new independent body is to be established to take on this function and an amendment to the Commission Law will be required to reflect this.

Following the completion in April 1999 of a major independent strategic review, the Commission has now restructured itself by introducing dedicated authorisation, compliance and enforcement divisions. It has also significantly increased its complement of professional staff.

3.9 Depth of regulation proposals

Accepted, implementation in progress. In the light of the continuing international trend towards “conduct of

business” financial regulation, the Commission has proposed a number of measures for extending the depth of regulation in the Island.

The new Investment Business (Jersey) Law 1998 is supported by a detailed Code of Practice, which covers matters such as financial resources, internal controls and risk management procedures. A similar Code, covering trust companies and company service providers, will be introduced under the Fiduciary and Administration Business Law.

An internal review of the Commission’s Compliance division is also currently underway, and will be completed by December. As part of this process, the Commission is considering whether the adoption of a more risk-based approach to compliance, and a possible shift in the balance between prudential and “conduct of business” supervision, will necessitate the publication of additional rules or guidance for persons registered under the existing regulatory legislation.

### 3.10 Licensing and regulation of trust and company service providers

Accepted, implementation in progress. The **Fiduciary and Administration Business (Jersey) Law** is in draft. This will extend the Island’s high standards of regulation to trust and company administrators, and in doing so will move Jersey ahead of the United Kingdom and most other jurisdictions. The timely introduction of this important and innovative new law will further enhance the Island’s position at the leading edge of financial regulation.

### 3.11 Company regulation changes

#### 3.11.1 *Disclosure of beneficial ownership*

The Edwards Report endorsed Jersey’s long-standing policy of requiring confidential disclosure of ultimate beneficial ownership to the Authorities for *all* new Jersey company incorporations.

The Edwards Report also argued in favour of the routine confidential disclosure to the Authorities of beneficial ownership details in respect of foreign incorporated companies which are administered in the Island. While the Task Force does not consider that routine disclosure in this instance is necessary, it does agree that such details should be maintained by those persons on the Island administering such companies. Such details should be made available to the Authorities in the Island when specifically requested, for example in the context of a criminal or regulatory investigation.

#### 3.11.2 *Audit and disclosure*

The Task Force does not accept that all private companies should be required to prepare and file publicly audited accounts.

The Edwards Report argued that there was a presumption in favour of requiring all limited companies, including private companies, to make financial disclosures in accordance with European Union standards. However, Mr. Edwards also observed that such a requirement might be too great a step without similar action by other centres, both onshore and offshore, recognising that such a requirement went further than existing policy and practice in many countries, including the United States and Canada.

Moreover, since the Report’s publication, the United Kingdom government has published a consultative document which discusses raising the small company audit exemption threshold from its current level of £350,000 turnover pa to £1 million. If accepted, this would represent a shift in United Kingdom policy away from the general European Union standard referred to in the Edwards report.

In the absence of a wider international acceptance of, or move towards, the European Union standard, Mr. Edwards advanced for consideration some possible intermediate options, such as confidential disclosure of abbreviated unaudited financial information to the authorities, either automatically or upon request.

In Jersey, as in many other countries, there are already requirements for those companies which are listed or regulated to prepare and file annual audited financial statements with the Authorities.

Furthermore, there is a statutory requirement for *all* companies to prepare annual accounts. The Authorities have for many years had the power to investigate those companies and to require the production of information and documents under the Companies (Jersey) Law 1991. These powers will be strengthened by the introduction of the

Fiduciary and Administration Business Law, which will give the Commission the power to ensure that those administering companies in Jersey meet the requirements of the Companies Law.

The Task Force is satisfied that these arrangements meet the intermediate measures discussed in the Edwards Report. Moreover, the Task Force shares Mr. Edwards' conclusions with regard to the need for a wider international initiative on the more extensive requirements discussed above and does not therefore propose to introduce them.

### 3.11.3 *Registration of foreign incorporated companies*

The Task Force accepts in principle that members of the public who have been dealing with a foreign incorporated company which is carrying on business in the Island should have the ability to ascertain certain basic details about that company, including its full legal name, its country of incorporation and its business address in the Island.

Much of that information, including the name of the company and its registered office address, is in any case already available on the domestic public register in the company's country of incorporation. Indeed, the public disclosure of such information in no way damages legitimate client confidentiality and is a long-established and widely-accepted principle. This and additional information has, for example, been publicly available in respect of Jersey incorporated companies for many years.

Research into policy and practice in other jurisdictions has highlighted a registration requirement for foreign incorporated companies which establish a place of business, inter alia, in the United Kingdom, the Isle of Man, the Cayman Islands and the British Virgin Islands. In the light of these findings, the Task Force is resolved to ensure that this basic information about foreign incorporated companies which establish a business presence in Jersey can be made available to those who need and wish to know. How this might best be introduced in practice will be the subject of further industry consultation.

### 3.11.4 *Business rescue*

Accepted, implementation in progress. Edwards' conclusions in respect of business rescue provisions have been accepted and are currently being implemented as part of Amendment No. 6 to the Companies (Jersey) Law 1991.

### 3.12 Possible changes in trusts legislation

The Edwards Report's conclusions relating to trusts and trustees were tentatively advanced as "*possible changes or additions that might be considered...*" (12.8.1)

The Commission engaged an acknowledged expert in this field to conduct an independent review of the Trusts (Jersey) Law 1984. Having studied the findings of this review in consultation with leading trust practitioners, the Task Force has concluded that some of the Edwards recommendations were based on a misunderstanding of the current position in the Jersey law, some reflected existing policy and practice, whilst others suggested policy changes which clearly diverge from current international practice.

The Task Force therefore believes that many of Edwards' proposals for reform of the Jersey trust law are unnecessary. However, the Insular Authorities are now in the process of considering, in full consultation with leading industry practitioners, the detailed findings of the subsequent review, and any recommendations arising from this exercise will be incorporated into the future programme of regulatory reform.

### 3.13 Customer protection schemes

Accepted, implementation in progress. The Task Force has accepted the need to strengthen the level of statutory protection available to the Island's customers through the introduction of a Depositors Protection Scheme under the Banking Business (Jersey) Law 1991. The proposed scheme will conform with internationally accepted standards and will sit alongside the existing scheme in place over Recognised Funds under the Collective Investment Fund (Jersey) Law 1988.

### 3.14 Financial Services Ombudsman

Accepted, implementation in progress. The Task Force recommends the introduction of a statutory Ombudsman scheme which will apply to all regulated financial services businesses. The scheme will provide an efficient and cost-effective mechanism for the resolution of disputes between financial services businesses and their customers.

### 3.15 Insurance regulation changes

The majority of Edwards' conclusions in respect of insurance regulation have been accepted. It is now proposed to introduce, inter alia, statutory requirements that insurers draw up annual financial statements in accordance with international Generally Accepted Accounting Principles; that life insurers should submit annually to the regulator three to five year business plans; and that actuaries should endorse the valuation basis in their annual certificates. It is also proposed to extend the existing whistle-blowing obligation for auditors of insurance companies to cover actuaries as well.

The one conclusion that the Task Force has not accepted in relation to insurance business relates to the proposed introduction of separate legislation for domestic and offshore insurance business. The Task Force considers it inappropriate to suggest that there should be different standards of legislation and/or regulation between onshore and offshore finance centres.

The Task Force also understands that its views on the question of separate legislation are entirely consistent with those of the Offshore Group of Insurance Supervisors, which represents most of the offshore finance centres worldwide.

### 3.16 Investment Business regulation changes

**The Investment Business (Jersey) Law 1998** came into force on 1st July 1999. This extends the standard of regulation applied to banks, insurance companies and fund managers to investment managers, dealers and advisers generally. Edwards fully endorsed the introduction of this legislation, and made a number of additional observations designed to enhance it still further. The majority of these have been accepted. Most notably -

- ◆ the Task Force has accepted the proposal to introduce/amend powers under this and the other regulatory laws which will enable the Commission to apply to the Courts for restitution in cases of investor losses or for the disgorgement of unlawful profits;
- ◆ the Investment Business Code of Practice is directly enforceable by the Commission under the civil regulatory regime. Under that regime, the Commission is currently able to refuse or revoke a license or make a public statement about any person who has (inter alia) breached a provision of the Code. It has also been agreed to introduce in due course a civil fining power to complete the Commission's arsenal of regulatory sanctions;
- ◆ the Commission has to date recruited an additional four professional staff specifically to deal with the extension of the regulatory regime to cover investment and fiduciary business.

The Task Force has also accepted the need to remove an anomaly from the legislation which currently prohibits the Commission from responding to overseas regulators' requests for assistance in respect of customers of Jersey regulated businesses, even where those customers are themselves the subject of regulatory action by the requesting authority.

The proposed legislative amendment will not remove the safeguards already in the law to protect customers' legitimate right to confidentiality in their financial affairs. It will bring the Island firmly into line with the other Crown Dependencies, the United Kingdom and with internationally-accepted standards.

The Task Force has not, however, accepted the case for introducing an "arranging deals" provision into the Investment Business Law. In the light of additional research commissioned in respect of this 'technical' recommendation, the Task Force does not accept that the provision is necessary given the type of investment business carried on in the Island.

### 3.17 Possible new Double Taxation or Exchange of Information Agreements

The Insular Authorities, in responding to the suggestion in the Edwards Report that the present Double Taxation Agreement (DTA) with the United Kingdom, which dates from the 1950s, should be replaced by either a modern DTA or a modern Exchange of Information Agreement, have indicated they are ready to enter into discussions with the United Kingdom Government on amending the existing DTA, but without at this stage any pre-conceptions as to the likely outcome of any such discussions.

## 4. **The way forward**

- 4.1 Many of the steps that need to be taken to implement the Edwards Report's conclusions call for legislation and must therefore be considered in the context of the overall legislation programme. The Policy and Resources Committee recommends to the States each year a Legislation Programme which is prioritised in accordance with criteria based on the strategic policy objectives that have been adopted by the States, and the legislation requirements that flow from the Edwards Report's conclusions will be considered within that framework. In this the Insular Authorities are following a course that is matched by the United Kingdom Government in their response to those conclusions in the Edwards Report that called for action from the United Kingdom Government.
- 4.2 The Insular Authorities will continue, where appropriate, to progress the implementation of the conclusions of the Edwards Report. At the same time, the Island will need to continue to have due regard to other developments in international standards, whether arising from pronouncements by the international regulatory bodies or through other international initiatives. It is possible, of course, that such developments might not coincide exactly with the conclusions of the Edwards Review, which in many respects could therefore be superseded in the detail of such initiatives, if not in the underlying objectives.
- 4.3 It also seems extremely likely that international initiatives will increasingly give rise to further programmes of mutual evaluation, whereby individual jurisdictions will be assessed in terms of their compliance with generally accepted international standards of financial regulation and anti money laundering measures. The Task Force is confident that the Island's financial and regulatory standards bear up to the closest scrutiny and strongly supports the introduction of such initiatives to ensure that *all* finance centres are brought under pressure to raise their standards to a common benchmark.
- 4.4 In that regard, the Task Force would welcome further regular independent evaluations of the Island's regulatory standards in accordance with an agreed timetable. In the absence of a current international standard for such programmes, the Task Force would recommend that a review should be conducted every five years.

18th November 1999



**Extract from the Edwards Report**  
**Box 18.2, Principal Measures Discussed in the Report**

BOX 18.2 - Principal Measures Discussed in the Report

The accompanying list includes items already planned by the Island authorities as well as suggestions made in the Report. In almost all cases, final decisions will be for the Island Parliaments.

\*Would require no legislation or only minor legislation.

\*\*Would require major primary legislation or treaty.

<i>Measures</i>	<i>Jersey</i>	<i>Guernsey</i>	<i>Isle of Man</i>
All Crimes Money Laundering (decided)	**	**	
Removal of prosecution time-bar (decided)	*		
PACE law or equivalent (decided)	**	**	
International Co-operation law (decided)	**	**	
Regulation of Director services (decided) (Chapter 11)		**	
Recruitment of extra staff for law officers, police & FSCs (Box 18.1)	*	*	*
Possible structural changes in Fraud and Financial Investigation (Chapter 16)	*		