

**Senate Finance Committee Hearing  
"Offshore Tax Evasion: Stashing Cash Overseas"  
May 3, 2007  
Statement for the Hearing Record  
Submitted by Senator Frank Walker, Chief Minister of the States  
of Jersey**

Chairman Baucus, Ranking Member Grassley, Members of the Committee, I am honoured to provide you with this written testimony on the subject of offshore tax evasion. I do so on behalf of the Island of Jersey which as you may know gave its name to the State of New Jersey. This testimony is submitted in the light of Bills S. 396 and S. 681 and the testimonies submitted to the Committee at the hearing on the 3<sup>rd</sup> May 2007.

What follows sets out what we do, our commitment to international standards including those concerned with transparency and information exchange, how our financial services regime has been reviewed and accepted as compliant with international standards by a number of international organisations, and the extent of our international cooperation.

**Summary**

Jersey is a long standing international finance centre providing a wide range of financial and professional services and in compliance with international standards. **It is no part of Jersey's policy to assist directly or indirectly the evasion of taxes properly payable in other jurisdictions. Such business is actively discouraged.**

Jersey has obtained international recognition of its compliance with international standards, and of its cooperation in the pursuit of those engaged in financial crime, including fiscal crime. Jersey is applying standards on a par and in some areas ahead of those in place in major OECD countries.

Jersey has entered into a tax information exchange agreement (TIEA) with the United States which is in accord with the OECD's model agreement on tax information exchange, and which agreement is being effectively implemented.

The Jersey authorities have developed good relationships with the US administration; not just on tax matters, but on financial crime matters generally.

It is important that the action taken by jurisdictions such as Jersey to comply with international standards and to engage in international cooperation should be recognised, and the good relationship that exists with the United States should not be damaged by unfair discriminatory legislation.

Jersey is keen to maintain and enhance the good relationship it has with the United States and will be pleased to extend that relationship to the Senate Committee if invited to do so.

## **Introduction**

The Island of Jersey is located some fourteen miles from the coast of France and eighty-five miles from the coast of England. It is an Island of forty-five square miles in area with a population of nearly ninety thousand people. The Island's economy traditionally has depended on agriculture and tourism. Now, however, the Island's economy is largely dependent on the provision of a wide range of financial and professional services on a worldwide basis and in compliance with international standards.

The Island is a dependency of what is now the British Crown and has owed formal allegiance to the Kings and Queens of England since 1204. It is self-governing with its own legislative assembly, called "The States of Jersey", consisting of fifty-three members. It has no representation in the Westminster Parliament whose Acts only extend to Jersey if expressly agreed by the Island that they should do so. Jersey is not a member of the European Union ("EU") but has a special relationship with the Union which is defined in a protocol attached to the United Kingdom ("UK") Treaty of Accession to the EU. Exercising the prerogative reserved to the Crown, the UK is responsible for the Island's defence and general international representation. A framework for developing the Island's international identity, recently signed by me and by Lord Falconer on behalf of the UK Government, is attached. It records principles which underlie the good relationship between Jersey and the UK.

The Island sets its own taxes, and its fiscal independence is founded on eight hundred years of custom and usage. Successive Monarchs between the 13<sup>th</sup> and 17<sup>th</sup> centuries granted to the Island freedom from English taxation. The Island receives no financial assistance from the UK and pays its way in all respects in providing its citizens with public services of an acceptable standard comparable with that provided in neighbouring countries. In recognition of the Island's fiscal independence, the British Government has entrusted the Island with the right to negotiate, conclude and perform international tax agreements. The Island's present income tax system has been in place since 1940 and has as its premise the taxation of those who are resident in the Island and thus within its jurisdiction. It presently includes a maximum rate of tax on the incomes of individuals and corporations of 20% for those who are resident for tax purposes, with exemptions and lower tax arrangements available to those on small incomes. In common with the practice in many other countries, including it is understood the United States, by concession non-residents in receipt of Jersey bank interest are not assessed to tax on that income.

Currently the taxing of incomes accounts for nearly 90% of total tax revenues. However the Island will be making significant changes to its fiscal regime in 2008, including the introduction of a 3% Goods and Services Tax, partly to remain competitive in the light of the lowering of corporate income tax rates by other jurisdictions and partly to meet its good neighbour policy in respect of EU member states. All these changes are compliant with the EU Code of Conduct Group on Business Taxation requirements in respect of the removal of harmful tax practices.

## **The Provision of Financial Services**

The Island has provided financial services for non-residents for at least the past fifty years. Those providing financial services over that period have developed considerable professional expertise. The services provided are complementary to those provided by the City of London with which Island-based financial institutions and professionals work extremely closely. These are legitimate services, no different from those performed in London, New York, Tokyo or Frankfurt which can be said to play an important role in facilitating international investment. The range of financial and professional services provided from Jersey is extensive. In the early years of the Island's development as an international finance centre, private banking and the serving of the interests of individuals predominated. The focus has now changed, and the range of activities has expanded and has become much more corporately/institutionally focussed. The main areas of business now include:

- personal and corporate banking services;
- global custody and security services;
- treasury operations;
- mutual fund management and administration;
- trustee services and company administration;
- investment management and advice;
- bond note and securitisation issuance;
- all classes of insurance and re-insurance;
- pensions and employee benefits; and
- accountancy and legal services.

Contrary to the view often held, the business activity undertaken in Jersey does not arise solely because of the Island's fiscal attractions. Examples of business attracted to the Island for non-tax reasons include the use of a trust vehicle for succession purposes or by those who are resident in jurisdictions with a highly unstable political regime and who wish their assets to be held in a politically stable jurisdiction. The review of financial regulation in Jersey undertaken in 1998 by the UK Government ("the Edwards Report" posted at: [www.archive.official-documents.co.uk/document/cm41/4109/4109.htm](http://www.archive.official-documents.co.uk/document/cm41/4109/4109.htm)), with which Jersey cooperated, quoted the following main reasons why business is attracted to Jersey under six main headings:

- Stability – political, economic and fiscal;
- Respectability – selection of business, institutions of stature, comprehensive and up-to-date legislative framework, international regulatory standards;
- Security – secure relationships with the UK and EU, confidentiality for legitimate business through customary law;
- Fiscal – standard income tax rate of 20% and no capital taxes;
- Flexibility – speed of response to market needs, government/industry "partnership", approachability of government; and
- Quality – quality of service reflecting skills/experience of the workforce, the judicial system, high standard of international communication links, proximity to City of London and other European finance centres.

The Island has long taken the view that its long-term future as an international finance centre, upon which the well being of the Island's citizens depends, is best secured by the development of a reputation for quality legitimate business. The Island has never seen the need to enact bank secrecy legislation as other countries have done, and has applied the normal rules of client confidentiality that apply in common law jurisdictions such as the United States.

Jersey has also placed great weight on financial businesses having a physical presence in the Island (i.e., no brass plate banks). The importance attached to a good reputation is also to be seen in the decision taken in the 1970's to licence only banks that are in the world's top 500 banks who also have a concern for their own reputation. At the end of December 2006 Jersey

had forty-six licensed banks holding deposits of £190 billion. Jersey's banking services are used mainly by customers drawn from Europe, Africa and the Middle East. Of the total bank deposits only 11% has a North American origin, much of which is inter-bank and other institutional business.

### **Transparency and Information Exchange**

Jersey is extremely concerned at its inclusion in the initial list of offshore secrecy jurisdictions in the Bill S. 681 introduced by Senators Levin, Coleman and Obama "to restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid U.S. Federal income taxation".

It is stated in the Bill that Jersey has been included in the initial list because it has been previously and publicly identified by the Internal Revenue Service ("IRS") as a secrecy jurisdiction in Federal court proceedings. Jersey has provided the IRS with assistance over the years and has a formal Tax Information Exchange Agreement ("TIEA") with the United States which recognises that "Jersey has long been active in international efforts in the fight against financial and other crimes, including recent efforts against terrorist financing". Jersey would welcome hearing from the IRS on the cases where they have not been able to obtain information from Jersey in respect of Federal court proceedings.

Annex IV of the Organisation for Economic Co-operation ("OECD") report "Tax Cooperation: Towards a Level Playing Field" published in 2006 sets out the status of the legal and administrative frameworks for transparency and exchange of information in the 82 countries reviewed of which Jersey was one. Table A2 in that annex is a summary of the domestic laws that permit information exchange in tax matters. For Jersey the information provided is as follows:

- Fraud Investigation Law – allows for assistance including exchange of information in cases of serious or complex fraud including tax fraud;
- Mutual Legal Assistance Law – allows for assistance including exchange of information in criminal matters, including tax matters;
- Anti-Money Laundering – allows for international cooperation with respect to money laundering which includes the laundering of the proceeds of tax crimes.

Jersey is fully committed to the principles of transparency and information exchange promoted by such international bodies as the OECD, Financial Action Task Force ("FATF") and International Organization of Securities Commissions ("IOSCO").

Third-party endorsements of the Island's compliance with international standards of financial regulation, anti-money laundering and combating financing of terrorism is to be found in:

- The review of the Island's financial regulation undertaken in 1998 by the Edward's Report;
- The FATF style mutual evaluation undertaken in 1999 by a team drawn from the United States, France and Malta which concluded that Jersey was close "to complete adherence" with the then FATF Forty Recommendations;
- The FATF decision in 2000 to exclude Jersey from its list of non-cooperative countries and territories;
- The Financial Stability Forum's ("FSF") decision in 2000 to place Jersey in Group 1 of the Offshore Financial Centres ("OFCs") reviewed. This group included jurisdictions which were described as cooperative, with a high quality of supervision which largely adhere to international standards;

- The International Monetary Fund (“IMF”) report in 2003 when the Island was assessed as part of the OFC assessment programme which concluded that the Island was generally compliant with all the main international standards.

Further evidence of the Island’s commitment to the principles of transparency and information exchange can be found in:

- The signing of a TIEA with the United States in November 2002. To quote Treasury Secretary O’Neill’s statement at the signing ceremony, “The United States and Jersey already have a close and cooperative relationship on law enforcement matters, including criminal tax matters. We are well aware of Jersey’s commitment to cooperation in targeting criminal abuse of the world’s financial systems. This new agreement will formalise and streamline our current cooperation in criminal tax matters and will allow exchange of information on specific requests in civil tax matters as well. This agreement is an important development, and further demonstrates Jersey’s long standing commitment to cooperating with the United States on law enforcement matters and to upholding international standards in this area”;
- Jersey’s current active engagement in responding to two requests for information from the IRS under the terms of the TIEA. This TIEA covers both criminal and civil tax matters, and is in accord with Jersey’s commitment to the OECD in February 2002 to implement the principles of transparency and information exchange enunciated by that organisation and embodied in the OECD Model Agreement on Exchange of Information in Tax Matters. Contrary to the testimony of Avi-Yonah (footnote eleven) the TIEA is fully in accord with the OECD Model Agreement. The TIEA also fully covers the three items referred to in the testimony of John Harrington as essential to the United States when negotiating a TIEA;
- The excellent working relationship, which has continued for many years, between the Law Officers in Jersey and both the Department of Justice (“DOJ”) and the District Attorney’s office in New York (“NYDA”). Assistance has been given to both the DOJ and the NYDA in many cases over the years; examples are the Hanover Bank case where representatives of the Law Officers worked closely with the DOJ in investigating and providing evidence against two UK fraudsters who were convicted of a multi million dollar prime bank fraud in South Carolina following which substantial sums were later confiscated in the United States; the Enron investigation; and more recently an investigation resulting in an indictment being laid against Paolo Maluf by a Grand Jury in New York on March 8 2007 when NYDA Robert Morgenthau thanked the Attorney General in Jersey and his team, commenting that the investigation was conducted through the cooperation of law enforcement agencies across three continents;
- The excellent Jersey-United States relationship which is illustrated by individual asset sharing agreements arising out of cooperation given in criminal matters. On one occasion the Island was in receipt of a cheque for \$1 million delivered personally by the United States Ambassador to the UK as a share of seized assets arising from the pursuit of a money laundering case which was only successful because of information supplied from Jersey; on others, arrangements for sharing have been agreed and Jersey expects to be sending to the DOJ approximately \$1.5 million from the local enforcement of an external confiscation order in a drugs case shortly, once some technicalities have been resolved;
- The International Narcotics Control Strategy Report 2007 produced by the U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs which states “Jersey’s authorities have extensive license to cooperate with

other domestic and international law enforcement and regulatory agencies...the Bailiwick of Jersey has established an anti-money laundering programme that in some instances exceeds international standards....”;

- The acceptance of Jersey for qualified intermediary status. The IRS has approved Jersey’s “know your customer” provisions for the purpose of its rules on withholding tax;
- The support extended by Jersey to the EU in the application of the EU Taxation of Savings Income (Council Directive 2003/48/EC) whereby the Island has entered into agreements with each of the twenty-seven EU Member States;
- The current active negotiation of TIEAs with fifteen jurisdictions, many of which negotiations are now very close to being brought to a satisfactory conclusion;
- The testimony of Jeffrey Owens in which he states that “Jersey and Guernsey have implemented high standards of transparency”;
- Jersey’s acceptance by IOSCO (presently as one of forty-one jurisdictions) as a party to the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information;
- The 34 Memorandum of Understanding entered into by the Jersey Financial Services Commission with other financial service regulators, which include the US Commodity Futures Trading Commission and the US Securities and Exchange Commission;
- An official declaration of 1990 whereby decisions and recommendations of the OECD extend to the Island, and Jersey is in compliance with the OECD’s Codes of Liberalisation of Current Invisible Operations and of Capital Movements.

Jersey is absolutely signed up to the view that international cooperation is essential if those engaged in financial crime, including fiscal crime, are to be successfully pursued. Jersey therefore is an active member of the OECD Sub-Group on Level Playing Field Issues, and is actively involved in the work of the OECD’s Global Forum. Jersey fully supports the view expressed by Jeffrey Owens in his testimony to the Finance Committee when he refers to the future progress needed in a number of areas. Jersey fully satisfies the OECD requirements in respect of these areas and looks forward to other jurisdictions achieving the same standards.

In achieving the desired objective on information exchange it is important that there is information to exchange. As the OECD has stated, having information available on beneficial ownership of corporate vehicles (as that term is defined by the OECD, including companies, trusts, foundations, etc.) is of particular importance. Jersey has established high standards in this respect. A critical point to make is that Jersey requires, and has required for over thirty years, that information on the ultimate beneficial ownership is made known to the authorities before a Jersey company can be incorporated. This information is held confidentially but is available to domestic and foreign investigators under appropriate circumstances in accordance with the law. Furthermore Jersey trust and company services providers cannot be in business without a licence granted by the independent regulator, the Jersey Financial Services Commission, among the conditions of which is that the trust and company service provider has in its possession information on the ultimate beneficial owner of the company, or the trustees/beneficiaries of the trust, which they administer, which information is obtainable by the Jersey authorities. This is in marked contrast to the shortcomings in many other jurisdictions, including some political sub-divisions of jurisdictions, to which shortcomings reference is made in Jeffrey Owens’ submission.

It is in this respect in particular that the term tax haven is one that defies precise definition. The ability of non-residents to incorporate companies and have those companies administered without information being called for on beneficial ownership, and the opportunity for those non-residents forming such companies to be exempt from liability to tax (e.g. in respect of bank interest) in the countries in which the company is formed and administered, is not something that is limited to those jurisdictions that traditionally have been included in FSF, OECD or IMF lists of OFCs or tax havens. For this reason, the Netherlands, the UK and the United States have been identified by some as tax havens, and professionals in such jurisdictions often promote their company formation/administration services on the grounds that they are able to do all that is traditionally associated with offshore centres but from a jurisdiction that does not have the stigma of that description.

Jersey's view, shared by many commentators in the United States and elsewhere, is that a degree of competition in tax rates can be helpful in encouraging investment and wealth creation. The proper pursuit of transparency and information exchange should not be in conflict with the maintenance of fair tax competition. Such competition together with conditions of tax neutrality, political stability and investor protection, can provide a more favourable investment climate generating investment decisions from which many communities can benefit; and, from Jersey's experience, have benefited.

### **Conclusion**

Jersey agrees with Treasury Acting International Tax Counsel John Harrington when he says in his testimony that there is no one-size-fits-all approach when it comes to fighting tax evasion, not least because there is no easy identification of an OFC or tax haven that allows an objective list of such jurisdictions to be compiled. Thus the OECD has stated in its Global Forum Report on Tax Competition, published in 2006, that "If a country chooses to use a list of countries derived from the OECD list [list of tax havens published in 2000], it should do so based on the relevant current facts. Thus, progress made in the implementation of the principles of transparency and effective exchange of information in tax matters should be taken into account by such countries and their legislatures. The 2000 OECD list should be seen in its historical context [the 2000 report described the list as follows: "this listing is intended to reflect the technical conclusions of the Committee only and is not intended to be used as the basis for possible coordinated defensive measures"] and as an evaluation by OECD Member Countries at a particular point in time of which countries met the criteria set out in the 1998 report. More than six years have passed since the publication of the OECD list and positive changes have occurred in individual countries transparency and exchange of information laws and practices since that time." The FSF, which also produced a list of OFCs in 2000, stated in its press release of March 2005 that "with the first phase of the IMF's assessment programme now almost complete, the 2000 list has served its purpose and is no longer operative."

What is required in Jersey's view is for all concerned to focus on the principles of transparency and information exchange and to make sure that through domestic legislation and practice, and information exchange agreements, the principles are fully and effectively applied. Jersey has taken the necessary steps to develop an effective relationship with the United States not just on tax matters but on financial crime generally. It is important that Jersey should be recognised appropriately for the action that it has taken. More particularly it is important that those jurisdictions such as Jersey that have engaged positively with the United States are not disadvantaged by being treated the same as those who have not established such relationships.

It is also important that jurisdictions such as Jersey are not discriminated against by comparison with other jurisdictions engaged in the provision of financial services to non-residents according to some subjective listing under the title of offshore financial centres or tax havens. Such non-discrimination is seen by the Jersey authorities as a key condition upon which the present spirit of cooperation is engendered, maintained and enhanced. To quote from the testimony of Jeffrey Owens "The next year will be crucial to see how far offshore centres are prepared to move away from financial services based on concealment to legitimate financial

services. For those jurisdictions that have already made this move, the international community and individual countries should provide political recognition of this progress and should ensure the further integration of these jurisdictions in the international financial system.” Jersey made that move some time ago and should have political recognition of this move.

The Jersey authorities are keen to maintain and further enhance the good relationship they have with the United States, and will be more than happy to extend that relationship to the Senate Committee if called upon to do so. As stated by John Harrington in his testimony “A healthy information exchange relationship requires us to maintain good relations with our treaty and TIEA partners. Even an ideally drafted agreement is of limited value if the tax authorities do not have a cooperative relationship. For example, if a treaty or TIEA partner believes that the information exchange relationship is not respected or appreciated by the United States, this may have a chilling effect on exchange of information on request or, particularly, on spontaneous exchange of information”. Jersey is determined to work to strengthen the existing good relationship with the United States and is confident that its endeavours will be fully reciprocated because this will be to our mutual advantage.

Submitted 17 May 2007



Framework for developing the international identity of Jersey

Following the statement of intent agreed on 11 January 2006, the Chief Minister of Jersey and the UK Secretary of State for Constitutional Affairs have agreed the following principles. They establish a framework for the development of the international identity of Jersey. The framework is intended to clarify the constitutional relationship between the UK and Jersey, which works well and within which methods are evolving to help achieve the mutual interests of both the UK and Jersey.

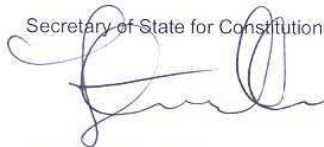
1. The UK has no democratic accountability in and for Jersey which is governed by its own democratically elected assembly. In the context of the UK's responsibility for Jersey's international relations it is understood that -
  - The UK will not act internationally on behalf of Jersey without prior consultation.
  - The UK recognises that the interests of Jersey may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity. This is particularly evident in respect of the relationship with the European Union where the UK interests can be expected to be those of an EU member state and the interests of Jersey can be expected to reflect the fact that the UK's membership of the EU only extends to Jersey in certain circumstances as set out in Protocol 3 of the UK's Treaty of Accession.
2. Jersey has an international identity which is different from that of the UK.
3. The UK recognises that Jersey is a long-standing, small democracy and supports the principle of Jersey further developing its international identity.

4. The UK has a role to play in assisting the development of Jersey's international identity. The role is one of support not interference.
5. Jersey and the UK commit themselves to open, effective and meaningful dialogue with each other on any issue that may come to affect the constitutional relationship.
6. International identity is developed effectively through meeting international standards and obligations which are important components of Jersey's international identity.
7. The UK will clearly identify its priorities for delivery of its international obligations and agreements so that these are understood, and can be taken into account, by Jersey in developing its own position.
8. The activities of the UK in the international arena need to have regard to Jersey's international relations, policies and responsibilities.
9. The UK and Jersey will work together to resolve or clarify any differences which may arise between their respective interests.
10. Jersey and the UK will work jointly to promote the legitimate status of Jersey as a responsible, stable and mature democracy with its own broad policy interests and which is willing to engage positively with the international community across a wide range of issues.

**Signed** 1 May 2007



Secretary of State for Constitutional Affairs



Chief Minister, Jersey