

PM/SC/105

COUNCIL OF MINISTERS

(44th Meeting)

11th April 2016PART A

All members were present, with the exception of Deputy S.G. Luce of St. Martin, Minister for the Environment and Deputy K.L. Moore of St. Peter, Minister for Home Affairs, from whom apologies had been received

Senator I.J. Gorst, Chief Minister  
 Senator L.J. Farnham, Minister for Economic Development, Tourism, Sport and Culture  
 Deputy K.L. Moore of St. Peter, Minister for Home Affairs  
 Deputy R.G. Bryans of St. Helier, Minister for Education  
 Senator Sir P.M. Bailhache, Minister for External Relations  
 Senator A.K.F. Green, M.B.E., Minister for Health and Social Services  
 Deputy A.E. Pryke of Trinity, Minister for Housing  
 Deputy E.J. Noel of St. Lawrence, Minister for Infrastructure  
 Deputy S.J. Pinel of St. Clement, Minister for Social Security  
 Senator A.J.H. Maclean, Minister for Treasury and Resources  
 Connétable D.W. Mezbourian of St. Lawrence, Assistant Minister for Home Affairs

In attendance -

Senator P.F. Routier, M.B.E., Assistant Chief Minister  
 Senator P.F.C. Ozouf, Assistant Chief Minister (via telephone link)  
 J.D. Richardson, Chief Executive, States of Jersey  
 M.H. Temple, Q.C., H.M. Solicitor General  
 G.C. Powell, C.B.E., Adviser – International Affairs, Chief Minister’s Department  
 J. Moynihan, Director – Financial Services, Chief Minister’s Department  
 C. Keir, Assistant Director - Ministerial Support and Communications  
 P. Monamy, Clerk to the Council of Ministers

Note: The Minutes of this meeting comprise Part A only.

Exchange of Notes between the Government of the United Kingdom and the Government of Jersey in respect of the sharing of beneficial ownership information: discussion.

A1. The Council discussed with the Adviser – International Affairs, together with the Director – Financial Services, Chief Minister’s Department, a report prepared by the former regarding the sharing of beneficial ownership information with the United Kingdom Government.

Having noted the background to the present position, the Council recalled that since 2013 the U.K. Government had been seeking to obtain the agreement of the Overseas Territories and the Crown Dependencies on matters relating to the transparency of beneficial ownership information. It was recognised that in this regard Jersey was in the unique position in already having a Central Register of beneficial ownership information.

The Council noted that following lengthy discussions, the U.K. Government had presented to the Overseas Territories and the Crown Dependencies an Exchange of Notes and Technical Protocol for signature which sought a commitment to the

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establishment and retention of a Central Database of beneficial ownership of companies. In Jersey's case there was no requirement to establish such a database because one already existed.

It was recognised that indicated in the documentation was the fact that Jersey had an existing Central Database, and that this would be different from the position in the documents for all the other territories. Whereas Jersey had sought to see its leading position in this respect better reflected in the documents to be signed, the U.K. Government wished to see the documents worded as much the same as possible for all the territories to ensure that there could be no claim from any of the jurisdictions that there was not a level playing field and therefore the reference to Jersey's position was limited to paragraph 4 of the Exchange of Notes and references in the Technical Protocol to the existing Central Database.

The Council noted that H.M. Attorney General had responded to concerns that the commitment being entered into could run the risk of public exposure of information which was not public in Jersey. The Attorney General had suggested that such concerns would be overcome in the event that the U.K. Government were to confirm that it would legislate to put beyond doubt that section 44 of the Freedom of Information (FOI) Act prohibited disclosure under the Act when it was prohibited by any enactment, and cross-referred to paragraph 7 vi of the Technical Protocol which provided that the parties would ensure the security of requests and any information given by "criminalising any disclosure."

The Adviser – International Affairs outlined that these matters had been raised with the Island's Finance Industry and its response notified to the United Kingdom authorities. Whilst recognising the risks arising from Jersey signing the proposed agreement, the industry considered that the risks inherent in Jersey not signing were potentially more significant. Consequently, the view which had been adopted was that the balance of advantage lay in the Island proceeding to sign the agreement, and thereafter subsequently addressing the public disclosure issue risk issue separately.

The Minister for External Relations, having expressed his thanks to the Attorney General for his prompt attention to the matter over the preceding weekend, indicated that International Tax was a policy area shared between the Chief Minister and the Minister for External Relations and that because the latter had reservations as to the wisdom of signing the agreement, the matter fell to be determined by the Council of Ministers. Senator Bailhache suggested that the U.K. was seeking an agreement because it wanted to compel the Overseas Territories (and Guernsey and the Isle of Man) to establish central registries and to yield up the information contained in them. Having outlined the rationale for his concerns, the Minister for External Relations indicated that essentially he considered that the issue went to the confidentiality of the affairs of *bona fide* clients, which was a key part of what Jersey offered. Two separate but related points were: (1) that the automatic provision of beneficial ownership information was something new which would be confined to the U.K. and its dependent territories, with no other country having committed to the automatic (no discretion) provision of such information; and (2) that the inward disclosure of information through FOI requests would negate what Jersey believed to be a central register that was not open to public scrutiny. The Minister considered this second issue to be a matter of great concern as it could be very damaging to trust in financial services businesses in Jersey, and indeed to the Island itself.

The Minister for External Relations accordingly asked that his dissent be recorded to the recommendation that the Council should support the signing by the Chief Minister of the relevant Exchange of Notes.

The Chief Minister, having confirmed that the Council acknowledged the views held by the Minister for External Relations, suggested that it was desirable for Jersey to sign the agreement and then be in a position to set out precisely why it was that the Island was prepared to sign, namely that, of all the Overseas Territories and Crown Dependencies, it alone had already had in place since 1989 a Central Register of beneficial ownership through which it had been providing adequate, accurate and current beneficial ownership information supported by the effective regulation of Trust and Company Service Providers. The risks associated with not signing the agreement were that the Island would move from being a leader in the field, to being portrayed as a jurisdiction which trailed behind all the others; thus losing the advantages it had achieved over many years.

The Adviser – International Affairs confirmed that whereas the U.K. Government was reliant upon the provisions of the FOI Act, H.M. Revenue and Customs (HMRC) had previously committed to challenging any requests which might arise under FOI. It was emphasised that whilst the exchange of information envisaged under the agreement would be automatic in 2017, this would also be the position under the international Common Reporting Standard on automatic exchange of information to which Jersey was committed. Thus, the proposal essentially represented ‘business as usual’ for the Island, with the main difference in approach being that of the shorter timelines under which it was expected that information would be exchanged. The Chief Minister further emphasised that whereas information was presently exchanged on the basis of the exercise of discretion on the part of the Island’s authorities, such discretion would in any event be removed upon the advent of the bringing into force from 2017 of the Common Reporting Standard.

The Minister for Treasury and Resources, having secured assurances that Jersey Finance had consulted extensively with the Island’s industry regarding the potential impact of the new agreement on the Island, accepted that the down-side associated with Jersey not signing the agreement was more significant than the down-side arising from proceeding to signature.

Senator Ozouf, Assistant Minister to the Chief Minister confirmed that he was aware that amongst others, the Cayman Islands and the British Virgin Islands had been examining the position regarding FOI issues, and that all parties had agreed that not signing the agreement would be significantly detrimental to the interests of the Overseas Territories and the Crown Dependencies. He suggested that it would not at this time be appropriate to oppose the U.K. Government on this issue, particularly as the local finance industry had indicated that it wished Jersey to sign the agreement, and would undoubtedly be extremely concerned if it failed to do so. The Chief Minister outlined aspects associated with consideration of the matter in Guernsey, given that a general election was imminent.

A number of Ministers expressed concern at the late receipt of papers relating to this matter, given the importance of the subject matter and the need to study the documentation in detail. The Minister for Economic Development, Tourism, Sport and Culture questioned whether the recent publicity associated with the ‘Panama papers’ (whereby the release to the world’s media of millions of confidential documents held by Panamanian law firm Mossack-Fonseca which revealed details of hundreds of offshore trust and company structures, including trails to world leaders and public officials, had focussed attention on the issue of potential tax avoidance by wealthy residents in the U.K. and elsewhere) had hastened moves to seek the signature of the present agreement. The Adviser – International Affairs reported that hitherto the U.K. Government had in any event sought to resolve this matter by mid-March 2016 and the delay in the agreement being circulated was due to the negotiations with the U.K. being protracted. The timing of the signing was

influenced by the wish of the U.K. to have an agreement ahead of the Anti-Corruption Summit to be held in London on 12th May 2016. It was confirmed that, as with other international agreements, the present beneficial ownership information agreement would remain in force until rescinded by the parties to it.

The Council accordingly decided by a majority that it supported the signing by the Chief Minister of the Exchange of Notes between the Government of the United Kingdom and the Government of Jersey in respect of the sharing of beneficial ownership information.

The Adviser – International Affairs was directed to take the necessary action.