

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 3rd JUNE 2014**

Question

Will H.M. Attorney General advise members how Article 123 of the Planning and Building (Jersey) Law 2002 is applied in practice and, in particular state –

- (a) whether Article 123, which is contained in Part 9, ‘Administrative Provisions’ of the Law, is a substantive offence in its own right under the Law under which a person can be charged in the Magistrate’s Court or whether the provisions of the Article only comes into play when a body corporate or limited liability partnership has been found guilty of another provision of the Planning Law, such as Article 7; and,
- (b) whether a body corporate and a natural person ie. a director of the same body corporate, can be charged with an offence under Article 7 of the Law at the same time, and, if this is the case whether it breaches the English precedent relating to separate legal personal liability laid down by the House of Lords in *Saloman v A Saloman & Co Ltd* (1897) AC 22, which has been followed by the Jersey Courts?

Answer

- (a) Article 123 Planning and Building (Jersey) Law 2002 (the Law) does not, in itself, create any criminal offence. It is a provision of the Law which extends criminal liability for offences under the Law committed by a limited liability partnership and a body corporate to senior members of the partnership or body corporate where it can be proved that an offence under the Law was committed with the consent or connivance of or attributable to the neglect of that person.

For an individual person to be charged with an offence under the Law, it does not require the partnership or body corporate to have been already convicted.

- (b) It is therefore the case that charges may be brought simultaneously against a partnership or body corporate and an individual person under Article 7 and indeed other provisions of the Law. Article 123 of the Law provides a statutory exception to the separate legal entity principle.