

## **STATEMENTS ON A MATTER OF RESPONSIBILITY**

### **15. Statement of the Chairman of the Economic Affairs Scrutiny Panel regarding draft Foundations (Jersey) Law 200- (P.143/2008):**

#### **15.1 Deputy G.P. Southern:**

I apologise to the Assembly and, in particular, to the Minister for Economic Development for this late notice, but I wish to inform the House that the Economic Affairs Scrutiny Panel wishes to call in for scrutiny the draft Foundations (Jersey) Law 200-, P.143/2008 lodged on 9th September 2008. To his credit, the Minister for Economic Development did, in fact, release a draft to the panel on 1st August 2008. However, we were unable due to work pressures and then to staff departures to fully consider this proposition. However, the panel does have concerns about a move to further expand the range of products that the Jersey financial services industry has on offer at this particularly sensitive time. In particular, it has concerns that the O.E.C.D. (Organisation for Economic Co-operation and Development) is currently investigating the extent of the role played by offshore finance centres in creating special purpose vehicles for the securitisation of debt and the extent to which this has contributed to the current crisis in the credit market. In particular, the German authorities have focused on the practices of Lichtenstein and its use of foundations in particular to facilitate the avoidance or, on occasion, downright evasion of payment of tax by German citizens. The panel wishes to assure itself that the adoption of the draft Foundations (Jersey) Law will not draw undue attention to the Island from the O.E.C.D. and others. The panel is in the early stages of appointing an adviser and believes it can produce its report in the timescale allowed by Standing Order 72 by the required deadline of 23rd February 2009. Accordingly, I am informing the Minister and Members that I intend to use Standing Order 72 to examine this issue.

#### **The Deputy Bailiff:**

Very well.

#### **Senator F.H. Walker:**

Sorry, Sir, I assume as it is a statement it is subject to question?

#### **The Deputy Bailiff:**

Well, I suppose as he has chosen to make it through a statement, yes.

#### **15.1.1 Senator F.H. Walker:**

Would the Chairman of the panel please advise Members when the panel was first advised of the Foundations Law and sent the draft of the law? Secondly, will the Chairman accept that given that timescale, given as I understand it there has been no response from the panel to the Minister for Economic Development at all, and to come forward with an announcement at this stage, when it is planned to debate the law, is an abuse of the Scrutiny process? **[Approbation]**

#### **Deputy G.P. Southern:**

Indeed, to the Chief Minister, I started with an apology. A draft was circulated to the panel on 1st August. We had very little time in August to organise anything. As people know, we tend to go on holiday in August, the entire civil service does. Then we had a workload problem. We had 2 Scrutiny reports to get out, a review of retail trade again, a refresher on that, but then we had, due to pressure of time ... and, indeed, we have lost 2 Scrutiny Officers, one promoted, one left the service in this particular time, so that did not enable us to give this its proper due attention. It is a serious matter and I accept and I have apologised for bringing this particular proposal at this particular time. However, it is of such a serious nature I do not believe we should be letting this go through without proper scrutiny. It is a serious matter at a serious time and that is why I have taken what is perhaps a serious step.

**15.1.2 Senator F.H. Walker:**

Does the Chairman not accept that if it is such a serious matter the very least he should have done or his panel should have done is write a letter in the first week of August or thereabouts to the Minister saying that it would be their intention in due course [**Approbation**] to subject it to scrutiny? Not to respond at all until today, I repeat I would ask the Chairman to confirm whether or not he thinks it is an abuse of process and whether or not he thinks his apology is a totally empty one.

**Deputy G.P. Southern:**

I do not issue empty apologies. It is a genuine apology and I accept that I have been tardy. I accept that entirely. However, as I repeat, it is a serious issue that requires serious consideration, and that belatedly is what it is going to get.

**15.1.3 Deputy R.G. Le Hérissier:**

As a fellow member of Scrutiny I find myself in total disagreement. Would the Chairman of the panel not acknowledge that the abandonment of the report on skills training for Jersey young people in the light of the revival of the committee was a terrible act and that was a much more urgent matter, and would he not secondly admit that the issues here are global issues that have been around a long, long time and if they were a matter of political interest should have been tackled a long time ago?

**Deputy G.P. Southern:**

No, I do not accept either of those statements. The Deputy must be aware of the importance of officer time and officer resource. The fact is that we have lost 2 officers and have been completely stymied, one by promotion, one by a return to private industry, so that responds to that “why”. He knows full well that Scrutiny cannot take place without officers. He should know that well enough. In terms of why now and this being a longstanding issue, on the contrary, on the contrary, the O.E.C.D. are meeting this very day to discuss the contribution of offshore finance centres to the so-called credit crunch and their role in it, and it is being taken forward as we speak.

**15.1.4 Senator P.F.C. Ozouf:**

I have to say I am shocked. Would the Chairman confirm that it is not just simply on 1st August that his panel was made aware of the imminent arrival of Foundation? Would he not confirm that the issue of foundations and the drafting of Foundation has been discussed with his panel on numerous occasions at all briefings where I have sought to ensure that his panel is fully briefed on the legislative programme? Would he also agree that he failed ... I think only one member of his panel failed to turn up to a States briefing on the issue of foundations. Would he not in the light of the question that has just been raised by Deputy Le Hérissier consider his position as Chairman of the Economic Affairs Scrutiny Panel and on the back of this abuse of power of the States Assembly resign from his position? [**Approbation**]

**Deputy G.P. Southern:**

There is absolutely no question of resignation over this issue and, yes, we did send along one member of our panel to that briefing, but yes, notice of intention to deliver a draft is not a draft in front of one, nor does any Scrutiny Panel have with it at all times the relevant expertise to fully analyse what are very complicated documents, high-powered financial documents, at a moment's notice. We need to engage expertise to do it. We cannot just say: “Oh, well, it looks all right to me.” That is not proper scrutiny. I am now in a position, I believe, to be able to do that and will do it as soon as I can.

**15.1.5 Senator P.F.C. Ozouf:**

Would the panel Chairman accept that frankly his arguments in favour of pulling this piece of legislation at this late stage are simply not good enough? Foundations have been approved by this Assembly in terms of the outline of the fact that we are bringing forward a foundation in a business plan, they have been communicated in my own Economic Development Affairs Scrutiny Panel and that this message that the Deputy is sending out today will send a shockwave through the financial services industry that one Member supported by a couple of other panel members recently engaged in electioneering is going to be able to bring effectively the future development of our finance industry to a halt. Does he not understand the implications of what he is doing?

**Deputy G.P. Southern:**

I fully understand the implications of what I am about to do, and that is to belatedly, admittedly, get on with proper scrutiny of a complex issue. I believe the Minister for Economic Development exaggerates beyond all reason when he talks about shockwaves running through the industry. We are talking about a delay until 23rd February as prescribed by our own Standing Orders and under the powers given to me; absolutely, totally normal.

**The Deputy Bailiff:**

I am sorry, Senator, you have had 2 questions; we have been here for 10 minutes and I see 2 others.

**15.1.6 The Connétable of St. Brelade:**

I would like to ask the Chairman to acknowledge the fact that the Scrutiny Panel are not unanimous in this decision.

**Deputy G.P. Southern:**

Yes, I acknowledge that and I accept your reservations. The Constable has explained his reservations to me and I understand them. Nonetheless, however, it is a 4 to one vote.

**15.1.7 Deputy P.V.F. Le Claire:**

I find it remarkable coming in to listen to what has been proposed at this juncture. Does the Deputy not appreciate that a delay until February when he may not even be returned to the Assembly at this late stage in a law, given the circumstances that the world is in right now in matters of confidence for the finance industry ... what real scrutiny can be achieved under these conditions and what real scrutiny can be achieved if the Deputy is to face an imminent vote of no confidence, based upon this rash decision that he has made today? If he has not made it today, why was this statement not prepared for Members when he was preparing his 13th question to the Minister for Social Security? **[Approbation]**

**Deputy G.P. Southern:**

The Deputy talks about an impending motion of no confidence; bring it, Sir. I am confident that I am doing it right. I am taking exactly the right procedure in this. This is a serious matter and it requires serious scrutiny. Belatedly - and I have apologised for that - it will happen. Let us scrutinise this, let us not draw the world's attention, the O.E.C.D's attention, on to Jersey at this particular time without checking that what we are doing is absolutely the correct way forward.

**15.1.8 Deputy P.V.F. Le Claire:**

Would the Deputy not agree with me that bringing attention to the issue is something that he has done in quantity today?

**Deputy G.P. Southern:**

The Deputy must surely see the point of Scrutiny is to scrutinise and that is what we are doing.

**Deputy R.G. Le Hérisier:**

On a point of procedure, can we tie the hands of a yet to be elected Scrutiny Panel?

**The Deputy Bailiff:**

No. The current Chairman of the Scrutiny Panel will be asked, if the principles of the law are adopted, whether he wishes to call it in for Scrutiny and he is entitled to say so.

**15.1.9 Deputy I.J. Gorst:**

I am absolutely flabbergasted. The Chairman, in his opening statement, proves that he neither understands the finance industry nor the products that it avails itself of. He confused “regulation” and “prohibitive jurisdiction” with “product” and he also tried to extrapolate what has gone on in the rest of Europe. I believe that the Chairman and his panel obviously have no idea about what they are doing and I call upon him to resign. How can he scrutinise something that he knows nothing about? **[Approbation]**

**Deputy G.P. Southern:**

The Scrutiny Panel will of course engage the appropriate advice; that is the simple answer. In particular I am drawn to the powers given under Article 32 and I certainly would like to be discussing with the Attorney General in some depth how those apply, because they seem to give extensive powers to this foundation.

**Deputy I.J. Gorst:**

Sir, if he says that he needs to call professional advice, on what advice has he made this decision?

**The Deputy Bailiff:**

Deputy, I am sorry, the 10 minutes allowed under Standing Orders has expired.

**15.1.10 Senator F.H. Walker:**

Sir, may I ask a procedural question, it is procedural. We are told - and you quoted the article - that the Chairman of the Scrutiny Panel has the right to say he wants this referred; do the States have any influence over or any powers in this issue at all, or do we merely have to give way to what is very clearly a highly unpopular decision?

**The Deputy Bailiff:**

I am afraid that under the Standing Order, which was passed by this Assembly, if a matter is called in by the Scrutiny Panel, then that is it.

**15.1.11 Senator M.E. Vibert:**

Sir, we often suspend Standing Orders. Is it possible to suspend Standing Orders to have further discussion on this, and is it also possible to suspend Standing Orders so that this does not go ahead?

**The Deputy Bailiff:**

Well, let me take those one at a time. It is open to Members if they wish with Standing Orders to extend the 10 minute period. Are you proposing that?

**Senator M.E. Vibert:**

I would like the answer to the second question as well, please.

**The Deputy Bailiff:**

I would like to think about that one. That would need exploration.

**15.1.12 Deputy P.V.F. Le Claire:**

May I ask, Sir, during your consideration of it, in my understanding I was going to raise this point myself. It is a shame Senator Perchard is laughing, because it is a serious issue, give us a break. Is it possible that under the various Standing Orders, the privileges of the States might be considered in your determination? Also, where there are matters that would gravely affect the Island to its detriment, we have been informed on previous occasions the States are able to make a decision, and the Bailiff has ruled on a number of occasions the States should be masters of their own destiny. In this event, Sir, it would seem pretty evident that 99 per cent of the States' Members do not feel this is a sensible course of action by the Chairman, and I think that we need to really make a States decision to stop his action or bring a vote of no confidence in him before the end of the day.

**The Deputy Bailiff:**

I will consider the matter, but can I only say this, just as an introduction. Whatever the strength of feeling of Members, the States has agreed that a Scrutiny Panel should be able to call in a matter for Scrutiny. If a habit develops, if it is possible, of suspending that Standing Order and therefore overruling it, then in fact the majority, even if by one, will at all times be able to prevent something being called in for Scrutiny, which I would have thought was not in accordance with the intention of the Assembly when it introduced the Standing Order in the first place. It did not say: "By majority", it said: "If the Chairman calls it in."

**15.1.13 Senator P.F.C. Ozouf:**

Sir, I have great sympathy with your remarks. The difficulty is that I find myself in an exceptional position, having notified the Scrutiny Panel of my intention to propose legislation for it to be debated, offering numerous briefings the opportunity of discussing it with the panel. At no moment has there been any communication to the Minister of the intention of the Scrutiny Panel Chairman. That is why I believe that there is certainly a feeling among Members that this is an abuse of procedure. May I suggest that the Panel Chairman has not exchanged one word, one word with me as Minister out of courtesy in relation to this matter. If he believes that it is of such constitutional and Island importance, would he at least agree to meet with me either after the sitting this evening or first thing before tomorrow morning, that we may attempt to deal with any concerns that the Panel Chairman has? As Deputy Gorst perfectly said, I think the Panel Chairman is hopelessly confused about some of these issues. All of these issues have been resolved, they have all been extensively consulted upon with industry, we have brought in experts from outside of the Island, we have had extensive discussions with law officers in the industry, et cetera. I believe that there is nothing, but nothing, that the Panel Chairman and, indeed, any Member of this Assembly, would have to deal with in this, and could I ask for some time, certainly overnight, in order to discuss with the Panel Chairman that we may resolve this issue. Otherwise I fear for the ability of this Assembly to hold Standing Orders in such exceptional circumstances.

**The Deputy Bailiff:**

Well, would it be sensible for this matter ... we are not at this matter yet and in fact the Chairman does not have to take his decision until the matter is proposed and if the principles are adopted, although clearly he has given an indication of what he proposes to do. Would the Assembly agree that this be put down the list so that assuming we do not finish our business today, this matter comes on tomorrow and we will see if discussions help overnight? If not, then the Chairman will take whatever decision his panel wishes to take tomorrow morning. Does that seem a sensible way or proceeding?

**Senator P.F.C. Ozouf:**

If the Panel Chairman will give the undertaking to start communicating immediately.

**The Deputy Bailiff:**

Chairman, do you agree that you will meet with the Minister and discuss the matter?

**Deputy G.P. Southern:**

Starting immediately, Sir.

**The Deputy Bailiff:**

Does the Assembly agree than that we will defer that matter until the appropriate place on the list? Very well, and in the meantime I will give consideration to the question of suspending Standing Orders, but I think we should press on for the moment. Now, there was one matter I wanted to inform Members of that has lodged. It is the Waterfront Enterprise Board Limited Appointment of Director Amendment lodged by Senator Shenton. It is a matter which is due; the main proposition is due for debate at this meeting. Senator, I do not know whether you wish to say anything at this stage or simply deal with this when we get to it.

**Senator B.E. Shenton:**

We will deal with it when we get to it, thank you.