



JERSEY FINANCIAL SERVICES COMMISSION

From the office of the Director General

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Chief Executives
Of Trust Company Businesses.

Our Ref.: DC/JL

24 October 2006

Dear Chief Executive,

Financial Services (Jersey) Law 1998 ("the Law") - Article 2(4)(b), namely acting or fulfilling the function of or arranging for another person to act as or fulfill the function of director or alternate director of a company

I am sending this letter to the Chief Executives (or equivalent) of all regulated trust company businesses who are licensed to conduct the above trust company business.

The Commission has amended its policy regarding the audit requirements for private debt issuing vehicles. It is no longer a Commission policy requirement (although other regulations or laws may require such audits) for Jersey private company special purpose vehicles ("SPVs") to be subject to an annual audit. The Board of Commissioners considers that the audit of such vehicles is not required for regulatory reasons. The new policy may be obtained from the Commission's website www.jerseyfsc.org.

One argument put forward for retaining the audit requirement was the positive effect that an audit has of focusing the mind of a company director on his or her responsibility for ensuring that proper accounting records have been kept, for preparing financial statements, for safeguarding the company's assets, and for taking reasonable steps to prevent and detect fraud and other irregularities. With the audit requirement now removed, it is important that company directors should be reminded of this responsibility. This letter is intended to fulfil that purpose. In particular, directors of SPVs are reminded of their obligations under Part 16 of the Companies (Jersey) Law 1991, as amended.



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In light of the above I ask you to remind those in your institution who act or fulfil the role of director to SPVs to have due regard to section 3.1.9 of the Trust Company Business Codes of Practice. For ease of reference I have copied the relevant section from the codes.

3.1.9 *“if providing services defined in sub-paragraph (b) of paragraph (4) of Article 2 of the Law (namely acting or fulfilling the function of or arranging for another person to act as or fulfill the function of director or alternate director of a company): -*

Or

if providing services defined in sub-paragraph (c) of paragraph (4) of Article 2 of the Law (namely acting or fulfilling the function of or arranging for another person to act as or fulfill the function of a partner of a partnership): -

3.1.9.1 *where arranging for another to act, the registered person should take reasonable steps to ensure that those acting understand their obligations under the relevant law; or, where the registered person, its officers or employees are acting, the registered person must ensure they are suitable, competent and understand their duties under the relevant laws;*

3.1.9.2 *be able to demonstrate that reasonable care has been taken to have knowledge of the activities of the companies or partnerships for which they act as or arrange for another to act as director or partner, and any material changes thereto;*

3.1.9.3 *have adequate procedures to ensure that, where appropriate, relevant documentation is subject to legal review”.*

The Commission treats failures of directors to understand their obligations very seriously, since it has a statutory responsibility to protect the reputation of the Island and investors’ interests. The Commission has various powers at its disposal to use if material or repeated failures of directors’ duties and responsibilities are discovered. In particular, the Commission may consider using its powers of direction to suspend a Jersey regulated trust company from forming and servicing SPVs if it is found not to have properly fulfilled its responsibilities for acting or fulfilling the function of a director or arranging for another person to perform that function.



The Commission will, as part of the normal on-site examinations programme, review the conduct of directors in respect of their duties and responsibilities.

Yours sincerely

A handwritten signature in cursive script that reads "David R Carse".

David Carse
Director General