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NO ACCOUNTING FOR TAX HAVENS

Association for Accountancy & Business Affairs

Shedding light on darker practices
Working for an Open and Democratic Society

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NO ACCOUNTING FOR TAX HAVENS

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NO ACCOUNTING FOR TAX HAVENS

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EXECUTIVE SUMMARY

All over the world governments are struggling to provide decent public services. Ordinary people pay ever-increasing taxes but get worse public services. Rather than paying their fair share of taxes, major corporations and wealthy individuals escape their social obligations by locating in offshore tax havens. Companies such as Enron, Newscorp, Elan, Exxon, Northern & Shell Group, Portland Investment, Microsoft, General Motors and others have used tax havens to shave their tax bills. By plugging the leakage of tax revenues to tax havens, the UK government could raise up to £85 billion extra in tax revenues, large enough to fund schools, hospitals, pensions, public transport and social infrastructure. Offshore tax havens stunt the economic/social potential of developing countries by enabling transnational companies to siphon off some US$50 billion a year in tax avoidance/evasion. Around one-third of the world's Gross Domestic Product (GDP) at some stage passes through offshore tax havens. Around US$6 trillion of assets are estimated to be held in offshore tax havens, yet none are known for any advances in science, education, philosophy or human rights. The merely shuffle cash around to create financial instability, dodge taxes and cheat people.

Secrecy, poor regulation and inadequate law enforcement in offshore tax havens is a magnet for drug traffickers, money launderers and criminals. More than US$1.6 trillion a year is estimated to be laundered, mostly through tax havens that guarantee secrecy, ask no questions and rarely co-operate with international inquiries. The institutionalised corruption is destroying lives everywhere. Many of the offshore tax havens are British Crown territories and are promoted and defended by the UK government.

Tax havens, like Jersey, sit right on Britain's doorstep. With a population of 87,000, the island is the home of some £400 billion of footloose capital. Jersey is effectively run by big business. It rents out its legislature to big business, which writes its own laws. Jersey has never had a general election in its entire history. It does not have the usual checks and balances, or separation of the legislative, executive and judicial functions. It has no written record of major parliamentary debates and adequate consumer protection laws. Anyone speaking out is clobbered and ostracised. Members of Jersey's Parliament who dare to ask uncomfortable questions are threatened with indefinite suspensions.

People everywhere need to challenge the privileges of tax havens and the companies that are hiding there.

CHAPTER 1
TAX HAVENS DAMAGE PEOPLE

There is widespread public concern about the worsening provision of public services and quality of life in Britain. Queues for hospitals remain long. Nurses are poorly paid. Patients are dying in waiting rooms and on hospital trolleys because beds cannot be found. Roads are gridlocked and the railway system is unreliable and poorly maintained. Public expenditure on education is the lowest since the early 1960s[1]. Schools cannot find teachers prepared to work for poor pay. Two-thirds of the children aged 11 to 14 do not have access to a textbook for their homework and almost half share them during lessons (Daily Mail, 29 May 2001, p. 32). Some 15% of children aged 15 to 21 are functionally illiterate (The Observer, 19 August 2001, p. 5). According to the Royal National Institute for the Blind (Daily Mail, 30 October 2001, p. 30), between 17 and 22 per cent of school-age children have poor eyesight, but have not had an eye test. The incidence of brain cancer amongst children is 36% higher than in the 1950s and the rate of acute lymphoblastic leukaemia has gone up by one-third (Daily Mail, 18 December 2001, p. 22). Britain has become the TB capital of Europe. In 1999, there were 6,143 cases compared to 2,141 in 1984. England and Wales have one lung specialist for every 119,000 people, compared to a European average of one for 60,000 patients (Daily Mail, 24 October 2000, p. 24).

Pensions for the elderly and social welfare benefits for the disabled are amongst the lowest in the European Union. Many cannot afford central heating or proper insulation for their homes. According to Help the Aged, some 20,000 elderly people die each year due to cold-related illnesses (The Guardian, 28 December 2001, p. 9). The unemployment benefit in Britain is lower than elsewhere in Western Europe and fewer people out of work in Britain receive unemployment benefits. The unemployed in Spain receive 77% of the country's average earnings. In Britain, unemployed persons only receive 30%, and this is available for only six months, after which various social assistance benefits can be obtained, but they are low enough to leave many in a poverty trap. In Sweden and Denmark, benefits adding up to 60% of the average wage can be claimed for up to five years.

The UK government could address these social problems, but is unwilling or unable to tackle them, claiming that it cannot make the required investment in public services because the tax revenues are insufficient. The government could adopt progressive taxation policies and tax the rich more; tax the speculative

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[1] For 1998 and 1999, spending on education fell to 4.5% of the GDP, the lowest since the early 1960s (The Guardian, 4 September 2001, p. 1.

transactions of the stock market casino, or tax the billions of pounds that escape to offshore[2] tax havens through a variety of tax avoidance/evasion schemes. Instead, governments are more concerned to appease a wealthy and global corporations. They have done little to check the power of tax havens.

Armies of accountants[3] and lawyers, charging £400-£500 an hour, devise tax avoidance and evasion schemes to enable major corporations and the rich to avoid UK taxes. Their trade is advertised in the financial press and in airline magazines. They assist in the setting up and fronting of bank accounts, shell and nominee companies in tax havens. In tax havens, banks which are no more than "closets with computers" (Financial Times, 26 May 1998, p. 7) can be formed for a capital of just £500 (Euromoney, 1 Feb 2002) and move money around the globe, with ease. Shell companies can be formed with no fuss and bank accounts can be opened with e-mails and minimal checks. Tax havens are only too willing to register pop stars, wealthy individuals and major corporations as local taxpayers in return for a fee, or low tax rates and thus enable them to opt out of taxes from their home country or countries where they substantially trade.

Consider the case of News Corporation, the corporate empire of Rupert Murdoch. For the four years to 30th June 1998, it generated pre-tax profits of A$5.4 billion but paid tax of only A$325 million, an effective tax rate of only 6% (The Economist, 20 March 1999, pp. 83-84). A major reason for this is the use of offshore tax havens with artificially low taxes. The Murdoch empire operates from a web of some 800 subsidiaries, many registered in offshore tax havens, such as the Cayman Islands (UK Crown territory, area 100 sq. miles, population 36,000), Bermuda (UK Crown territory, 100 sq. miles, population 61,000), the Netherlands Antilles and the British Virgin Islands (UK Crown territory, population 12,000). These places ask no questions, promise secrecy and have no requirements for public filing of meaningful financial information.

In Britain, the tax burden on the wealthy elite and corporations has been declining. The top rate of income tax has been reduced from 83% to 40%. The corporation tax rate has been reduced from 52% to 30%, the lowest in British

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[2] Offshore means countries that allow corporations, trusts, banks and other businesses to be established within their territorial jurisdiction on the condition that they conduct business only with parties (companies, firms, individuals) who are not citizens of that locality or domestic businesses operating inside that territory i.e. they are "offshore".

[3] Offices of Ernst & Young and Coopers & Lybrand (now part of PricewaterhouseCoopers) were raided by Inland Revenue as part of its criminal investigations into tax avoidance schemes, often involving offshore companies (The Times, 20 October 1997, p. 48).

history. The capital gains tax for higher taxpayers has been reduced from 40% to 10% - half the level in the USA. The overall corporate tax burden in Britain is lower than that in Spain, Japan, Belgium, France, Italy or Sweden. This has still not dissuaded the rich from finding novel ways of reducing their tax obligations.

In Britain, the Murdoch empire includes newspapers such as *The Sun*, the *Sunday Times*, *News of the World* and *The Times* and the satellite television station BskyB. A trawl through the 101 subsidiaries of the UK holding company Newscorp Investments for an 11-year period shows that the business had profits of some £1.4 billion, but paid little or no British corporation tax. At the going British corporation tax rate of 30%, Newscorp Investments should have paid tax of more than £350 million, large enough to abolish tuition fees for university students (The Guardian, 21 July 2001, p. 1), to finance seven new hospitals, or build 50 secondary schools, or 300 primary schools (The Economist, 20 March 1999, p.83-84). By making use of offshore tax havens, Newscorp Investments paid virtually no corporation tax in Britain. A secret international task force of investigators, involving tax investigators from Australia, UK, Canada and the USA, was set up to examine why Newscorp pays virtually no tax. The politicians fearful of a backlash in the Murdoch owned newspapers backed-off and did nothing (The Independent, 4 February 1998, p. 1 and 2).

Newscorp has not done anything illegal. It is certainly not alone in using offshore tax havens to lighten its tax bills. Many major UK companies use offshore tax havens to cut their tax bills and social responsibility. Richard Desmond owns a huge publishing and sex empire. His publications include the *Daily Express*, *Sunday Express* and the *OK!* magazine. His two main UK holding companies Northern & Shell Group and Portland Investment Limited are owned by trusts in Guernsey, a Channel Islands tax haven. For the period 1992 to 1999, their combined turnover was £301 million, with gross profits of £91 million and net profits of £5.6 million. The audited accounts show that the companies paid a total of £200,000 in tax, an effective rate of only 3.6%, one-tenth of the 30% UK corporate tax rate (The Observer, 24 December 2000, p. 18).

Legal or not, the ability of transnational companies (TNCs) like Newscorp, Portland Investments and many others to use tax havens in this way creates a serious distortion to the domestic and global market place. It seriously undermines local communities, businesses and national tax policies. As Christensen and Hampton (2000) put it, "The ability of TNCs to structure their affairs via tax havens provides them with a significant tax advantage over their

nationally or locally based competitors. Local competition, no matter whether it is more efficient or innovative than its TNC rival, will be competing on an uneven field. The logic of this uneven competition requires either that all businesses ultimately move offshore in order to compete on a level basis, or that onshore tax authorities adjust their tax regimes to place a greater burden on other factors of production (particularly labour) and onto consumption."

The US Virgin Islands and Barbados have some 3,600 US corporations sheltering there to shave their tax bills and thus compete on advantageous terms with their competitors. Companies such as Boeing, Caterpillar, Chevron, Daimler-Chrysler, Eastman Kodak, Exxon, Enron, General Motors, Microsoft and others, have set up skeleton companies in offshore havens to enable them to slash their tax bills (Rugman, 2000, pp. 22-23). The troubled drugs company Elan used subsidiaries based in Bermuda to make US$1 billion debt disappear from its balance sheet and boost its profits by 64%, but could not stop the company from going into bankruptcy (The Guardian, 8 February 2002, p. 25). By creating nearly 900 subsidiaries in offshore tax havens in places such as Cayman Islands, Turks and Caicos, Mauritius, Bermuda and Barbados, Enron wiped out its American taxes and reduced taxes on its overseas operations in India and Hungary. In the US, Enron paid taxes in only one of the years from 1996 to 2000 (New York Times, 17 January 2002). Its opaque corporate structures located in offshore havens resulted in publication of fictitious accounts. In December 2001, Enron filed for bankruptcy. Its 20,000 employees lost their jobs, savings and pensions.

In the US, nearly a quarter of the top 500 companies paid no tax in 1998 (New York Times, 17 January 2002; Daily News, 18 January 2002). Most tax avoidance/evasion schemes involve the use of offshore companies, trusts, artificial transactions and clever financial engineering. As one tax expert put it, “I have never come across any reason for people to set up an offshore trust other than to avoid UK tax. The people who used them saved very substantial sums” (The Times, 10 July 2000).

Offshore tax havens may provide useful financial services to companies, but their secrecy and poor regulation is also a magnet for drug-traffickers, moneylaunderers, fraudsters and footloose corporations. (Hampton, 1996; Organisation for Economic Co-operation and Development, 1998; United Nations Office for Drug Control and Crime Prevention, 1998). Offshore tax havens are implicated in numerous scandals. According to the United Nations,

"The common denominator in money-laundering and a variety of financial crimes is the enabling machinery that has been created in the financial havens and offshore centres".

Source: United Nations Office for Drug Control and Crime Prevention, 1998.

Tax Havens or your health, education, pension and family

Tax havens are a bolthole for major corporations and the rich elite enabling them to evade/avoid taxes, responsibilities and regulation in their host countries. They enable major corporations to hold societies to ransom and encourage corruption and degradation of the quality of life in other jurisdictions. In the name of 'free markets' the World Trade Organisation (WTO) supports them. Ordinary people in places far away from the tax havens pay a heavy price for the policies of the tax havens.

In the early 1990s, Venezuelan bankers used some 3,500 offshore corporations in Aruba, Curacao and elsewhere to loot banks in Venezuela, resulting in the collapse of one-half of the banks in that country, and a major disaster for the people, their savings, investments and pensions[4]. Germany is estimated to be losing some US$15 billion in tax revenues annually to undeclared personal savings held in offshore bank accounts (Christensen and Hampton, 1999). Following the collapse of communism, Russia has been encouraged to embrace market capitalism and facilitate movement of capital. For every dollar of inward investment during the 1990s, it lost between ten and twenty dollars to offshore accounts held by a wealthy elite (Christensen and Hampton, 1999). The US is estimated to be losing some $70 billion of tax revenue[5] each year due to offshore hidden assets, large enough to finance free healthcare for all US citizens. A report by Deloitte & Touche, taking account of tax avoidance schemes run by companies and wealthy individuals, estimates that Europe may be losing £100 billion a year of tax revenues (Financial Mail on Sunday, 25 November 2001, p. 10). The UK government has failed to publish any meaningful statistics, but some estimate that Britain may be losing around £85 billion (The Times, 3 September 2000) a year in tax avoidance/evasion (that amounts to a lot of hospitals, schools and pensions). A large part of this is siphoned away through offshore tax havens in Jersey, Guernsey, the Isle of Man and former British colonies and protectorates in the Caribbean.
The use of offshore tax havens by global corporations is depriving developing

[4] http://www.senate.gov/~gov_affairs/071801_psimorgenthau.htm
[5] Evidence given by US Senator Carl Levin to the Permanent Subcommittee on Investigations on 18 July 2001(http://levin.senate.gov/floor/071801cs.htm);

countries of some $50 billion of tax revenues each year[6], large enough to free them from foreign aid, rising debt and poverty. According to Oxfam

> "Tax havens provide companies and wealthy individuals with a way to escape their tax obligations. This limits the capacity of individual countries to raise revenue through taxation, both on their own residents and on foreign-owned capital. This undermines the ability of governments in poor countries to make vital investments in social services and economic infrastructure upon which human welfare and sustainable economic development depends. It also gives those TNCs which are prepared to make use of international tax avoidance opportunities an unfair competitive advantage over domestic competitors and small and medium size enterprises.
>
> The offshore world provides a safe haven for the proceeds of political corruption, illicit arms dealing and the global drugs trade, thus contributing to the spread of globalised crime and facilitating the plunder of public funds by corrupt elites. This contributes to increasing criminality and hampers the development of transparent budget processes in poor countries.
>
> The offshore system has contributed to the rising incidence of financial crises that destroy livelihoods in poor countries. Tax havens and OFCs [Offshore Financial Centres] are now central to the functioning of global financial markets. Currency instability and the rapid surges and reversals of capital flows to developing countries have become defining features of global financial markets in recent years and have contributed to financial crises. Following the recent crisis in East Asia, the Indonesian economy underwent a severe contraction and the number of people living in poverty doubled to 40 million".
>
> **Source**: Oxfam (2000), pp. 1-2.

It is estimated that in 1999, corrupt political leaders stashed away US$20 billion in Swiss bank accounts, which ask no questions (The Economist, 16 January 1999). In 1997, the Pakistani authorities tried to sequester the assets of £940 million of a former premier, spread out in nine countries, including Switzerland. Part of the money was alleged to be a bribe from a Swiss company *Cotecna Inspection SA*, a wholly owned subsidiary of *Societe Generale de Surveillance*, a company that helps developing countries to avoid fraud and evasion of taxes (Financial Times, 23 September 1997). In Mexico, the former President's brother has been convicted of taking large bribes from drug traffickers. The

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[6] This does not take account of tax evasion, under reporting of profits or the use of transfer pricing to siphon off profits and tax obligations.

proceeds were laundered through banks based in Switzerland. The assets frozen in Switzerland amounted to $132 million. More accounts were probably held under assumed names (The Economist, 16 December 1995).

This monograph consists of six further chapters. Chapter 2 shows the corrosive effect of tax havens that are enabling major corporations and a wealthy elite to escape taxes and avoid their social responsibility. Trillions of dollars are stashed away in tax havens, protected by secrecy and authorities that won't co-operate, or grudgingly co-operate, with investigations on money laundering, drug trafficking and tax avoidance/evasion. Countries are losing billions of pounds in tax revenues that could easily finance schools, hospitals, transport, pensions and public services to improve the quality of life. Yet rather than dealing with the trade of tax havens, British governments have nurtured and protected them.

People don't have to look far for tax havens. Jersey, part of the Channel Islands, is only a forty-five minute flight away from London. An island of 87,000 people boasts financial deposits of some £400 billion. Chapter 3 looks at the role of Jersey in depriving many people of a decent quality of life. The UK protects it. To present a respectable face to the outside world, occasionally the UK government needs to be seen to be doing something. Chapter 4 focuses upon the UK sponsored inquiry into Jersey's system of financial regulation. It found that Jersey lacked even the most basic institutional structures. This prompted the Jersey government to introduce some minimalist reforms. The poverty of regulation also raised questions about Jersey's machinery of government. Chapter 5 looks at this and notes that in its entire history Jersey has never had a general election. Its government is captured by big business. International observers have noted that "[offshore tax havens] enact laws with the sole purpose of getting around the laws of other countries (a process known as 'regulatory degradation'). These microstates, whose international sovereignty is vague or legally doubtful, sell their sovereignty and their law to the highest bidder" (The Guardian, 2 May 2000). Chapter 6 shows that the Jersey government has hired itself out to accountancy firms. It enacted the Limited Liability Partnership (LLP) legislation at the behest of Ernst & Young and Price Waterhouse to enable them to reduce their liabilities to stakeholders injured by poor audits. The auditing industry used Jersey's laws as a lever to squeeze liability concessions from the UK government. In common with other tax havens, Jersey is interfering in regulatory and tax matters of other jurisdictions. Chapter 7 responds to some of the PR hype about tax havens. It concludes that tax havens are damaging the lives of people all over the world.

CHAPTER 2
TAX HAVENS AND THEIR TRADE

Sun, Sand, Sailing, Skiing and Secrecy

"Modern economic crime - the kind that ruins lives and destabilises countries – necessarily involves money laundering, which in turn, requires bank secrecy. You cannot avoid money laundering if you have bank secrecy. It is inappropriate for international lawyers and bank regulators, especially in the offshore banking system, to defend in the abstract that which is in reality used to corrupt the public and private lives of major industrial nations." (John Moscow, Deputy Chief of Investigative Division, New York District Attorney's Office, quoted in Cahill (1997).

Since the 1980s, the number of offshore tax havens has doubled from about 30 to 60. Some focus on the provision of traditional trust and company administration, whereas others offer more specialised services, involving banking, corporate consultancy, structured financial transactions, and insurance and mutual fund administration. The secrecy, poor regulation, artificially low taxes and lack of public accountability in tax havens facilitates economic uncertainty, instability, crime, flight of capital and damage to citizen-state contracts all over the world. US corporations and rich have deposited some $800 billion in the Cayman Islands alone (or some US$20 million for each person living there), representing nearly 20% of all the deposits in the USA[7]. Assets stashed away in offshore havens have increased from an estimated US$200 billion in 1983 to an estimated US$6 trillion (The Observer Review, 2 April 2000, p.1), nearly ten times the value of all companies quoted on the London Stock Exchange. Much of the money passes through shell companies, which conceal the destination of cash and the identity of its true owners.

Almost one-third of the world's Gross Domestic Product (GDP) passes through tax havens at some stage (Oxfam, 2000). Yet none of the tax havens has any recognisable form of industry. They are rarely associated with any advances in science, mathematics, engineering, technology, education, research and development, social welfare or human rights. The value-added component of a transaction being routed through, for example, the Caymans Islands, does not lie with any intellectual or other activity performed in Georgetown, Grand Cayman. It lies instead in the tax benefits, or in the secrecy space afforded by routing the transaction through the offshore circuits (Hampton and Christensen, 2002).

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[7] Robert Morgenthau to the Permanent Subcommittee on Investigations on 18 July 2001 (http://www.senate.gov/~gov_affairs/071801_psimorgenthau.htm)

Places like Aruba, the Bahamas, Bermuda, the Cayman Islands, Gibraltar, Guernsey, Switzerland, the Isle of Man, Jersey, Guernsey, Liechtenstein Malta, Mauritius, Netherlands Antilles, Seychelles and the British Virgin Islands masquerade as holiday resorts providing sea, sand, gambling casinos, ski slopes, cheap booze, idyllic beaches and duty free shopping citadels. But their trade enables major corporations, banks, investors, bank depositors and the downright dishonest to avoid/evade laws and taxes of their home countries.

Places like the Cayman Islands have no income tax, corporate, inheritance or property taxes. Its revenue is primarily derived from 20% import duty and facilitating secretive bank accounts for the rich. Its capital George Town is the world's fifth largest banking centre. It boasts nearly 600 banks and trust companies, including 47 of the world's largest 50 banks, though only 50 actually have a physical presence there. Only 31 banks are authorised to trade with the residents of the Cayman Islands. The island has some 45,000 registered companies whose only business is outside the country. Long Term Capital Management, a business which speculated on stock and financial markets and collapsed with billions in debts is incorporated in the Caymans but managed out of offices in Connecticut (The Times, 22 July 2000). To prevent investors from losing their money and creating a domino effect, the US Federal Reserve spent some US$3.5 billion to bail it out.

The British Virgin Islands benefit from the benevolence of Sir Richard Branson and his Virgin empire. The low tax Islands do not facilitate any financial information about the companies registered there. The Islands play host to a number of trusts and Sir Richard's corporate empire. PricewaterhouseCoopers (PwC), the world's largest accountancy firm, audits scores of quoted British companies. It routinely issues press releases calling others to account, and one of its former partners is the Chairperson of the Accounting Standards Board (ASB), an organisation concerned with the financial disclosures of British companies. But the firm is headquartered in Bermuda, a place that thrives on secrecy and little is known about the finances and the structure of PwC.

The tiny island of Sark[8] does not have any major industry and does not permit motor cars on its single road (The Guardian, 20 November 1998, p. 4), but its 575 residents hold more than 15,000 nominee company directorships between them. (UK Home Office, 1998, para 11.2.3). One Sark resident is a director of 2,400 international companies. Sark sells degrees from non-existent universities for US$900 each (The Observer, 21 September 1997, p. 18). The rent-a-director

[8] Women received equal rights only in 1999.

operations are geared to shuffling money and hiding the true ownership of companies, all for a fee, of course. Anguilla (a UK Crown territory), measuring 35 sq. miles, with a population of 12,000 has 10,000 plus registered companies and almost anyone is welcome to form a company, with secrecy guaranteed. Gibraltar has some 28,000 offshore companies on its register and does not require them to file accounts. Much of the business of the government of Gibraltar has been conducted through secretive companies (UK House of Commons Public Accounts Committee, 1998). Millionaires can secure residence and citizenship by paying a maximum of £20,000 in taxes (The Times, 7 August 2000). One-third of the depositors at the Isle of Man branch of the fraud ridden bank, BCCI, failed to come forward to claim compensation of up to £15,000, opting to remain anonymous, in case questions were asked about their monies.

Belize is best known as the home of conservative peer Lord Michael Ashcroft. The Belize government granted a 30-year lucrative tax concession to Carlisle Holdings, the company operated by the Tory peer. The company has little trade in Belize. It provides staffing, cleaning and security services to corporate and municipal organisations, including some Hollywood studios. Carlisle's tax-free status in Belize has saved the company an estimated £13.7 million since 1997 (Financial Mail on Sunday, 20 January 2002, p. 5; The Guardian, 25 July 2001, p. 10). Belize 'economic citizens' passports have been sold for $50,000 (The Guardian, 14 July 2001). Companies in Belize do not have to publish any financial information about their accounts, shareholders or directors. Belize is associated with cocaine smuggling and money laundering. According to some observers, "Trusts in the offshore haven in Central America are among the most secretive financial instruments in the world, making Belize the ideal place for today's buccaneers to bury their treasure" (The Times, 25 November 1999).

Hear No Evil, See No Evil, Speak No Evil

Offshore tax havens facilitate worldwide corruption and are implicated in numerous frauds (House of Commons International Development Committee, 2001). More than $1.5 trillion a year (roughly equal to the Gross Domestic Product of France) is estimated to be laundered, much of it through tax havens that ask no questions and rarely co-operate with international regulators (Mitchell, Sikka and Willmott, 1998, Financial Action Task Force, 1999). Fraud occurs both onshore and offshore. The difficulty is that the offshore places are poorly regulated and lack the institutional structures to deal with it. The preoccupation with secrecy makes investigation and prosecution especially

difficult since many of the offshore havens are dependent upon international finance which values secrecy. Complex corporate structures and a labyrinth of transactions, misleading trails, nominees and uncooperative regulators are encountered in the processes that seek to trace the monies. In the words of a former assistant director of the UK's Serious Fraud Office:

> "Tax havens are little more than booking centres. I've seen transactions where all the decisions are taken in London but booked in the tax havens. In my experience, all you get in return is obstruction of legitimate investigations"
>
> **Source**: Accountancy, December 1998, p. 21.

The activities of tax havens affect people everywhere. For example, offshore companies in Switzerland and Gibraltar, established by UK chartered accountants were used to pay bribes to officials to secure cable-laying contracts for telephone and television (Serious Fraud Office Report 2000/2001, pp. 36-37). In another case involving Gibraltar, former City broker Lewis Daulby and Lee Rosser, one-time precious coins dealer, set up Cavendish Wine Merchants in 1994. It offered private investors opportunities to buy stocks of alcohol products as an investment. Investors were tempted with promises of very high returns (18% per annum) which never materialised. The business cash was transferred to Gibraltar and a new company was registered in the Dutch Antilles. Daulby and Rosser were sentenced to prison for five and seven years respectively for fraud (Serious Fraud Office Report 2000/2001, pp. 31-34). Switzerland's secrecy and concerns for the 'private' interests of the rich enabled the Nazis to stash away their gold for more than 50 years (The Times, 30 September 2000.). Former Nigerian dictator General Sani Abacha stashed away $4 billion by using banks in Switzerland and London (The Times, 15 October 1999; 5 September 2000). On one occasion his wife was detained while trying to depart Saudi Arabia with 38 suitcases full of foreign currency.

A British banker in Monaco confessed to forging the signatures of high profile clients to raid almost £7 million from their private accounts at Monaco's British owned HSBC Republic Bank (The Mail on Sunday, 16 September 2001, p. 47). The theft took place over a period of 18 months, but the bank only became aware when some of the clients complained. Monaco based Red Mafia has used banks in New York to launder £6 billion of hot money (The Times, 7 February 2000). Offshore companies were also used in the ingenious Ostrich farming fraud. People had been persuaded to invest in the project by claims of high demand for ostrich meat, feathers, egg-shells, hides and related products. The

company operated from Newark but much of the money was siphoned off via offshore companies. The directors were convicted of fraud (Serious Fraud Office Report 2000/2001, pp. 39).

Henri de Castries and Claude Bebear, present and previous chief executives of AXA, the French insurance group, were freed on bail of FFr2m (£180,000) each after being placed under formal investigation into an alleged tax evasion scheme in Luxembourg (Financial Times, 15 June 2001, p. 7). The Isle of Man claims to have no secrecy laws, but banking licence holders have a duty of confidentiality to their customers (The Times, 28 September 2001, p. 31). Lichtenstein played host to the crooked tycoon Robert Maxwell. Cyprus enabled the Polly Peck chairman Asil Nadir to flee Britain and avoid answering questions about alleged frauds. More than £17 million of taxpayers' money has disappeared into a black hole following the collapse of a 1600 employee Tyneside company owned by an operation based in the Cayman Islands (Financial Mail on Sunday, 25 November 2001, p. 5).

Authorities in the US are investigating whether the Bank of New York, at the centre of a money laundering inquiry, was used as a conduit for a US$200 million scam. The money appeared passed through three commercial banks in the US and Europe before ending up in an offshore account in the Channel Islands controlled by a Russian commercial bank (The Times, 24 August 1999, p. 2). In December 1999, BBC Television's *Panorama* programme showed that a Russian man referred to as 'the most dangerous gangster in the world' used Channel Islands based companies to launder money arising from fraud, trafficking in arms, heroin, nuclear arms, fake antiques, theft and prostitution (The Observer, 5 December 1999, p. 26). The Russian economy has been crippled by the flight of some £16.5 billion each year to tax havens (The Times, 9 June 2000). The US Treasury claims that some "$70 billion left Russia in 1998 alone for offshore accounts in Nauru[9], which has 10,000 people, one main road and 400 banks"[10]. Banks in London and the Isle of Man have been part of a very elaborate US $7 billion money laundering scam (The Times, 18 February 2000). The Marshall Islands (measuring 30 miles long and 400 yards wide) is rife with the Russian Mafia and its money-laundering scams (The Times, 30 September 2000). In July 2001, the US authorities secured indictments in a $6 million fraud in the export of meat products from the US to Russia, in which a Russian company incorporated in the Island of Niue (Niue is a Polynesian atoll,

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[9] Nauru is located in the South Pacific. It measures eight square miles, requires no disclosures and has no taxes (The Guardian, 14 July 2001).
[10] http://www.cnn.com/2001/World/asiapc/auspac/06/25/nauru.laundering/index.html, accessed on 23 August 2001.

with a population of 1,800) played a major part[11]. Western Somoa has been linked with money laundering scams (The Guardian, 14 July 2001).

In 1997, the US authorities convicted A.R. Baron & Co. and 13 of its former officers and employees for running an organised criminal enterprise[12]. Baron was what is commonly known as a “bucket shop”, pushing questionable stocks and specialising in market manipulation, unauthorised trading in customers accounts and countless other methods of taking advantage of innocent investors. Baron's illegal activities over 5 years cost investors more than $75 million. The lead defendant in the Baron case used Liberian shell companies and accounts in the Channel Island of Jersey to trade in the stock the firm was underwriting, a direct violation of U.S. securities laws. He also sheltered his illegal profits -- from tax authorities, creditors and the Bankruptcy Court --in a Cook Islands trust[13]. A New York lawyer drew up the papers for Mid-Ocean Trust Co. in Rarotonga, the Cook Islands, to act as the trustee. The affairs of the trust were, however, managed in New York by the so-called "protector" of the trust, the lead defendant's father. Mid-Ocean Trust did business in New York through one of the largest banks in Australia, which had branches in Rarotonga and New York, and which refused to honour a New York subpoena on the grounds that to do so would violate Cook Islands bank secrecy laws.

In another case, the US authorities convicted the company, Meyers Pollock, and 37 individual defendants for corruption and securities fraud. In this case, shell companies and offshore bank accounts were used. Promoters used these offshore vehicles to trade illegally in their own stocks, to "paint the tape" -- that is to generate fictitious trades to drive up prices, and cheat on their taxes.

In 1996, the US regulators concluded a case involving the bribery of bank officers in U.S. and foreign banks in connection with sales of emerging markets debt, transactions that earned millions for the corrupt bankers and their co-conspirators. In this case, a private debt trader in Westchester County, New York, formerly a vice president of a major U.S. bank, set up shell companies in Antigua with the help of one of the “big-five” accounting firms. Employees of the accounting firm served as nominee managers and directors. The payments arranged by the accounting firm on behalf of the crooked debt trader included

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[11] Evidence given to the United States Senate Permanent subcommittee on Investigations by Robert Morgenthau on 18 July 2001 (see http://www.senate.gov/~gov_affairs/071801_psimorgenthau.htm)

[12] Evidence given to the United States Senate Permanent subcommittee on Investigations by Robert Morgenthau on 18 July 2001 (see http://www.senate.gov/~gov_affairs/071801_psimorgenthau.htm)

[13] The Cook Islands are a New Zealand protectorate in the South Pacific.

bribes paid to a New York banker in the name of a British Virgin Islands company, into a Swiss bank account; bribes to two bankers in Florida in the name of another British Virgin Islands corporation and bribes to a banker in Amsterdam into a numbered Swiss account. As all the profits were realised in the name of the offshore corporations, almost no taxes were paid.

In 2000, a Manhattan jury convicted Sante and Kenneth Kimes, a mother and son team, for murdering an elderly Manhattan widow to gain control of her expensive townhouse. The US authorities found that to arrange for the payment of filing fees and taxes on a forged deed to the townhouse, the pair drew on funds held in a brokerage account in Bermuda in the name of The Atlantis Group, a shell company. The money, which was part of the proceeds of a separate fraud committed in Las Vegas, came to Bermuda by way of an account established by the defendants at Swiss American Bank in Antigua. It was Swiss American (a bank that was neither Swiss nor American) that helped the Kimes to set up the Atlantis Group shell company in Antigua.

Tax havens obstruct inquiries even when their laws permit them to make disclosures. The secrecy space that tax havens provide is of prime importance to their clients and is defended at all costs. As Luc Freiden, the treasury minister of Luxembourg put it, “for us the exchange of information is incompatible with banking secrecy” (Sunday Times, 21 May 2001). In the case of the Bank of Credit and Commerce International (BCCI), which was involved with drug money laundering, the illegal shipment of arms, and bribery of government officials, the majority of money transfers went through BCCI Overseas, chartered in the Caymans Islands. When the US authorities subpoenaed BCCI bank records they met a stone wall. A BCCI official in New York to whom a grand jury subpoena was issued refused to produce any records, claiming Caymans bank secrecy. The US investigators were told that they had to invoke the Mutual Law Enforcement Assistance Treaty (MLAT) between the U.S. the Caymans. The US investigators acted upon this advice and were then told by the Caymans Attorney General that the records would be produced to the Department of Justice, but only on the condition that they not be made available by the U.S. government to state and local prosecutors -- including, of course, the New York County District Attorney's Office, which had sought them in the first place. In the end, the US investigators made some headway, after securing co-operation from the UK’s Serious Fraud Office and the Attorney General of the Caymans. As a result, the US investigators got some, but not all, of the records.

Sometimes the problems continue even after the authorities get their hands on

the evidence. In 1996, the U.S. Department of Justice came into possession of a tape containing computerised records of a defunct Caymans bank, Guardian Bank and Trust Company. The bank was started by John Mathewson, a businessman from Illinois. Years after opening a numbered Swiss bank account whilst vacationing in the Caymans, he was persuaded by a Caymans banker to start his own bank. According to Mathewson, his application for a bank licence asked for little more than his name, address and previous bank history. The bank was set up and used to launder money for its depositors, 95% of whom were U.S. residents. Fake invoices to enable US citizens and corporations to disguise deposits were used. The government of Cayman sought to block the release of banking information and refused to help the FBI to decode computer records (The Times, 4 August 1999, p. 16). The official Cayman liquidators of the bank (two partners in another major world-wide accounting firm) brought a suit in the U.S. District Court in New Jersey seeking the return of the computer tape to the Caymans. In their brief, the liquidators argued that disclosure of the contents of the records to, among others, the U.S. Internal Revenue Service would "Have a significant negative impact on the integrity, confidentiality, and stability of the financial services industry of the Cayman Islands. …. The confidence of the offshore financial community in the privacy afforded to legitimate account holders of Cayman Islands offshore banks is at the heart of the Territory's financial services industry and economy, as a whole. …. Thus, not only would the Bank be irreparably injured by the government's retention of the Tape, but the international bank and Eurocurrency industries of the Cayman Islands (and, indeed, the economy of the Territory), could suffer irreparable injury as well". After decoding the tape without the help of the Caymans government, the US authorities discovered that the Guardian Bank's U.S. depositors had $300 million offshore, hidden from tax authorities, litigants and creditors. In view of his help to the US authorities, Mathewson was given a five year suspended prison sentence and said, "I have no excuse for what I did in aiding US citizens to evade taxes, and the fact that every other bank in the Caymans was doing it is no excuse" (The Times, 4 August 1999, p. 16).

In another investigation (in 2001), the US authorities obtained indictments charging a British solicitor and magistrate and a Canadian lawyer, a Queen's Counsel, with establishing a network of shell corporations and bank accounts in bank-secrecy jurisdictions, including Liberia and Belize, to assist their clients in violating securities, banking and tax laws in the jurisdictions where they lived. The defendants paid a Liberian diplomat, among others, to serve as nominal owners of the companies and to sign blank documents used in the fraud. Among the clients of this enterprise was a New York plastic surgeon, who, when one of

his patients died on the operating table, decided to put his assets offshore to render himself judgement-proof. Such activities are covered by offshore lawyers and accountants coyly term “asset protection” in the their promotional literature.

SUMMARY AND DISCUSSION

The race to provide no/low taxes, secrecy and regulation hopping has serious consequences for all citizens. The people that provide massive income, consumers, workers, markets and niches for the offshore registered companies miss out on large amounts of tax revenues. The rich can buy any amount of healthcare, luxury and education. The honest citizens are faced with harsher choices. They can either miss out on crucial services (e.g. healthcare, education, social security, unemployment benefits, and public transport) or pay even higher taxes. The paradox is that the so called decent, upstanding and philanthropic citizens, who make donations to high profile charities, give enormous rewards to accountants and lawyers to devise tax and regulation avoidance schemes. They go to extraordinary lengths to ensure that they pay as little tax as is legally possible in the war against poverty, social exclusion, poor hospitals, schools, roads and overseas aid projects. For this the rich and corporate barons are given honours and public accolades.

It is tempting to conclude that money laundering, tax avoidance/evasion and related corruption is the product of some distant regimes. Most of the proceeds pass through major financial centres, such as London and New York. The US government used BCCI to launder money and fund covert activities abroad. Most of the tax havens are under the control of Western governments. Many are British Crown Dependencies, or Overseas Territories, who oil the wheels of the City of London. They are promoted and protected by governments to appease corporations and a wealthy elite that finances political parties and institutions. With Nigeria’s attempts to locate the billions looted by its former dictators, its High Commissioner to London argued that “the British system protects British institutions and consequently the money launderers put their money in England. The result of this is that up till now Nigeria has not received the assistance of British authorities because the British authorities claim that the Nigerian judicial criminal authorities are unable to press charges against all the people who we have claimed help to commit a lot of crimes in Nigeria, and who have deposited their loot in the British banks. ….. we can raise help from countries like Switzerland, Luxembourg, France, even Jersey, who co-operate with Nigerian authorities on this, but not the British …….” (UK House of Commons International Development Committee, 2001, p. 256).

Some have argued that Mutual Law Enforcement Assistance Treaties (MLATs) can form the basis of securing information from offshore havens. Such treaties, in practice, have had little success in tackling offshore secrecy and tax avoidance/evasion. They rarely tackle tax crime, which in turn is intertwined with other matters. In the early stages of investigations, full details of the cases being investigated are not known and comprehensive requests for information and co-operation cannot easily be made. Various countries put competing interpretation on the wording of the treaty and in the process hold up the information. The delay is often sufficient to enable some to escape the inquiries. For example, the US investigators noted that whilst they were investigating a financial institution, the bank accounts were transferred from New York to Switzerland to conceal the distribution of funds[14]. Indeed, many trust deeds and company articles of associations include so called "flight clauses" that require trustees and company administrators to transfer assets to a different jurisdiction at the first hind of investigations. When the US authorities issued a subpoena they were told to proceed in accordance with the processes outlined in the MLAT. The processes can take more than a year and meantime the leads dry up, the witnesses disappear and more financial webs are woven. One response to the antisocial activities of any tax haven is that it

"should be treated a bit like a rogue state; it should be ostracised until it agrees to conform. I don't think it would be as difficult as many people imagine to close down most of the tax loopholes that exist on an international level. We would have a more effective world framework of corporate responsibility and we should push for this ..... the British have a particular responsibility for tax havens because so many are under our jurisdictions".

Source: Hutton and Giddens, 2000, p. 38.

Rather than closing tax havens, the British government has been protecting and nurturing them. The clamour for deregulation in the City and governmental circles is all geared to secure secrecy, lax regulation and easy mobility of capital, with dire consequences for ordinary people. The British government has rarely accepted responsibility for the conduct of tax havens under its jurisdictions. To present a respectable face to the world, it occasionally prods them to introduce minimalist reforms. This is exemplified by the case of Jersey. The next chapter draws attention to some of the activities of Jersey, a British Crown Dependency.

[14] http://www.senate.gov/~gov_affairs/071801_psimorgenthau.htm

CHAPTER 3
JERSEY: MONEY RULES

Those living in stable economies and surrounded by all the home comforts often end up believing that tax havens are banana republics in distant places. In fact, many are British Crown Dependencies (or British Overseas Territories) and are actively protected and nurtured by the UK government. A good example of this is Jersey, which is part of the Channel Islands. Jersey has been criticised by the Organisation for Economic Co-operation and Development for harmful tax competition (OECD, 1998). It is located 14 miles (20 km) from the coast of France and 100 miles (160 km) south of mainland Britain, and is just a forty-five minutes flight from London. The island has a population of nearly 87,000 (Jersey Evening Post, 23 October 2001) and a total area of 45 square miles, (9 miles x 5 miles) or 116 km square. The British government is responsible for its good governance (Morris and Campbell, 2000).

Jersey in Global Economy

Since the 1960s, Jersey has actively adopted measures to turn itself into an offshore tax haven (Hampton, 1996). Though a small island, it is now the home of some 40,000 registered companies (and numerous unregistered trusts), the large majority of which are tax-exempt or subject to special non-resident tax regimes (Home Office, 1998). It boasts financial deposits of some £400 billion, but many of the businesses are “brass plate” operations formed to avoid taxation in other countries. There is no requirement for companies to publish audited accounts and the general public has little idea of the affairs of companies operating from there. It offers 20% income tax, but in reality the wealthy can negotiate a far lower effective rate of tax, or devise schemes to avoid any payment. It has no inheritance or capital gains tax, and allows full tax relief on mortgage and other loans, which is fuelling spiralling house prices, but enables wealthy people to borrow huge sums for investment in the UK and elsewhere and take full advantage of Jersey tax relief on their borrowings.

Agriculture and tourism once dominated the Jersey economy, but have increasingly been displaced by the finance industry[15]. Agriculture is supported by direct/indirect government subsidies and makes little contribution to tax revenues. The tourism sector is in rapid decline[16] and probably amounts to less

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[15] "Finance has eaten away at this Island [Jersey] like the first little black and white computer game, Pacman, to the detriment of other Island staple industries” (Jersey Evening Post, 31 October 1998, p. 11).

[16]Jersey European Airways has decided to abandon any visible link in its name

than 15% of the GDP. Jersey government's statistics for 1999 show that direct employment in financial and legal activities (the latter is predominantly engaged in provision of financial services) is 11,660, including the 5,700 people directly employed by the banking sector. The finance industry provides more than 60% of the gross revenues (a 1997 study estimated it to be around 90% of the GDP).

Jersey is neither part of the UK nor a member of the European Union. It is not subject to any British and/or European Union laws. Under the constitutional arrangements (Kilbrandon Commission, 1973):

> "the United Kingdom Government are responsible for defence and international relations of the Islands, and the Crown is ultimately responsible for their good government. It falls to the Home Secretary to advise the Crown on the exercise of those duties and responsibilities. The United Kingdom Parliament has the power to legislate for the Islands, but it would exercise that power without their agreement in relation to domestic matters only in most exceptional circumstances".
> "[The UK] Parliament does have power to legislate for the Island without their consent on any matter in order to give effect to an international agreement"
>
> **Source**: Hansard, House of Commons Debates, 3 June 1998, cols. 471 and 465.

The UK has negotiated a special status to enable Jersey to enjoy favourable trading terms with the EU without the commensurate social, economic and political obligations. The direct financial contribution from Jersey to the UK is minimal. The Home Office Minister informed Parliament that "Jersey's contribution is to pay for the maintenance of a Territorial Army Unit in the Island, the Jersey field Squadron and Royal engineers. The total cost was £1,500,000" (Hansard, House of Lords Debates, 27 January 1999, col. 153).

Jersey; A Pariah State

Jersey has been labelled a 'pariah' state (Jersey Evening Post, 30 October 1998, p. 2). It is not difficult to see why. In common with other tax havens, Jersey has a history of facilitating secrecy, tax avoidance/evasion and lax public accountability (de Smith and Brazier, 1994; Stuart, 1996; Home Office, 1998; Hampton and Christensen, 1999). Its secrecy enabled Polly Peck chairman, Asil Nadir, to transfer huge sums of money to other jurisdictions and thus thwart the work of law enforcement agencies (Killick, 1998). Jersey is implicated in money laundering (Mitchell et al., 1998). Yet its regulators did not investigate

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to Jersey. British Airways has cancelled flights from Jersey to Heathrow.

the matters, or publish any independent reports.

Organisations and bank accounts based in Jersey have been used to finance extremist organisations (The Guardian, 26 September 2001, p. 8). Companies and bank accounts in Jersey were used by directors and advisers of the Facia Group (trading as Sock Shop, Salisburys, Oakland Menswear, Red or Dead, Truform, Saxone and Freeman Hardy Willis) to commit fraud and launder money (Serious Fraud Office Report 2000/2001, pp. 34-35). In 1998, a currency trader and a tax adviser working for Touche Ross were found guilty on 11 counts of frauds totalling some £15 million[17]. An Arab sheikh has been held liable for US$450 million for conspiracy to defraud while head of a Middle-Eastern investment office in London. A court case in London heard that he defrauded a Spanish investment company and the monies have been traced to trusts in Jersey (Jersey Evening Post, 21 August 2000). Jersey based company, Mahonia, is implicated in the opaque financial transactions involved in the collapse of the US energy giant Enron (Financial Times, 14 January 2002)

Some £200 million of the cash stolen by the former Nigerian dictator, General Abacha, went through banks in Jersey (The Guardian, 5 October 2001, p. 12). Jersey has been involved in the Bank of Credit and Commerce International (BCCI) frauds, the biggest banking fraud of the twentieth century (Mitchell et al, 2001). However, it does not have a good record (though in recent years, under pressure, this is improving) of co-operating with international regulators combating fraud. As the New York Assistant District Attorney pursuing frauds by the now defunct BCCI put it, "My experience with both Jersey and Guernsey has been that it has not been possible for US law enforcement to collect evidence and prosecute crime. In one case we tracked money from the Bahamas through Curacao, New York and London, but the paper trail stopped in Jersey and Guernsey ……. It is unseemly that these British dependencies should be acting as havens for transactions that would not even be protected by Swiss bank secrecy laws[18]" (The Observer, 22 September 1996, p. 19).

Jersey's respectability continues to be questioned by revelations that highlight the ineffectiveness of its regulations and the 'capture' of its government by big business. The Bank of Cantrade debacle highlighted the cosy relationship between the regulators, politicians and civil servants (Accountancy Age, 15 October 1998). The root of the Cantrade affair was a fraud perpetrated by Robert Young, a British foreign-exchange dealer, and the Swiss Bank Cantrade,

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[17] http://news6.thdo.bbc.co.uk/hi/english/newsid_70000/70348.stm; accessed 28 August 2001.

[18] In the carrot and stick policies operated by the hegemons, Jersey is also praised for its occasional co-operation (Financial Times, 9 April 1999, p. 13.)

part of the UBS group. The fraud, involving losses of some US$26 million, revealed systemic failures on the part of Jersey's authorities. These failures included the absence of even the most basic background checks on Robert Young when he initially applied for a licence to set up business in Jersey, through to the Island's regulatory body, the Finance and Economics Committee (FEC) deciding not to authorise an investigation into the affair. The FEC apparently acted on the advice of the Island's Attorney General, who was concerned that such investigation "might compromise Bank Cantrade's commercial position". Bank Cantrade subsequently admitted to having been "criminally reckless" concerning misleading statements made to investors (Hampton and Christensen, 1999). According to a leading Jersey Advocate, Philip Sinel, the cosy relationships with politicians were a major factor in the Finance & Economics Committee's (FEC) failure to investigate the Cantrade frauds (letter to the Batonnier, 16 July 1998).

In 1999, the International Monetary Fund (IMF) launched an investigation after £30.4 billion of Russian money turned up at a small obscure Jersey company called Fimaco (Financial Times, 12 February 1999, page 2). Fimaco was established for Russian clients in 1990 and administered by law firm, Ogier & Le Cornu, although in practice very little was done locally. Michael Birt, one of the partners in the firm, was (until 1994) one of the directors of Fimaco. His role was nominal. But the same Michael Birt subsequently became the Island's Attorney-General and is currently its Deputy-Bailiff. Despite being a director of the company, Mr. Birt has denied any knowledge of the affairs of Fimaco. The director of Jersey's Financial Services Commission claimed that whilst Fimaco had done nothing illegal, it helped to "pull the wool over the eyes of the IMF[19]".

In 1999, following a request from the US government, Jersey froze the assets of a James Blair Down. The US$210 million related to money allegedly made by Blair Down and others through a Canadian lottery ticket reselling scheme, which targeted mainly elderly US citizens (Jersey Evening Post, 5 March 1999, p. 3). A Jersey based company has been implicated in a multi-million pounds arms deal that led to the massacre of thousands of African civilians. The company used an offshore account with Barclays Bank to finance the arms deal with Pascal Lissouba, the former President of Congo-Brazzaville (Jersey Evening Post, 30 November 1999). An Essex based company director used Jersey based company, St. Brelade Organisation Limited, and bank accounts to defraud the public (Accountancy Age, 3 March 2000). After a complaint from a senior British banker, Jersey police launched an investigation into irregularities at Cater Allen Bank Jersey (Financial Times, 3 September 1999, p. 9).

[19] http://jerseyeveningpost.com/99_09_28/news7.html.

Summary and Discussion

Jersey is an international tax haven with a reputation for facilitating flight of capital and global financial instability by providing secrecy and artificially low taxes for the rich and major corporations. According to a member of Jersey's Parliament, some "wealthy residents have admitted to him that they have not paid income tax for a number of years" (Jersey Evening Post, 29 August 2001). Jersey has been criticised by the OECD for harmful tax competition and has been implicated in numerous financial scandals, some of which are highlighted above. None of this prompted the Jersey government to review its system of financial regulation or the structure of its political institutions. Its response is usually to deflect attention by referring to other havens, claiming that Caymans Islands and Malta have poor regulation of money laundering, and that Ireland charges even lower taxes (The Guardian, 25 August 2000).

Despite the £400 billion financial deposits, ordinary people in Jersey have rarely had a good deal from the tax haven status. There is no 'unemployment benefit' for the unemployed and "there appear to be large numbers of people who are having difficulty in paying for even the necessities of life" (Jersey Evening Post, 29 September 2001). Some "10,000 Islanders are living in relative poverty .... double the number estimated in 1996" (Jersey Evening Post, 12 February 2002). Since 1992, the local levels of pollution have increased by 11% (Jersey Evening Post, 10 January 2002). Seasoned observers note that "even minimal levels of consumer protection is conspicuous by its absence", and that the "Jersey consumer has long had a rough deal at the hands of certain unscrupulous businesses" (Jersey Evening Post, 9 January 2002). Jersey has done little to prevent "powerful companies from blackmailing the public" (Jersey Evening Post, 15 September 2001. Much of the housing is beyond the reach of the younger generation. Rather than relating the sky-high house prices to the influx of footloose capital, xenophobic politicians blame immigrants even though Jersey actually prevents them from entering the housing market (see chapter 5).

Criticisms of Jersey are also criticisms of the UK government. It is responsible for the good governance of the island. Stung by regular scandalous disclosures, pressures from the US (over the BCCI scandal) and the impending blacklisting of Jersey by the OECD, the UK government sensed that it needed to be seen to be doing something. It mounted an investigation of the system of financial regulation in Jersey. The next chapter examines this investigation.

CHAPTER 4
FINANCIAL REGULATION IN JERSEY

Left to its own devices, Jersey's political establishment has done little to check poor regulation or co-operate with international authorities chasing delinquent money. Over the years, Jersey has received an occasional kick from external organisations to enable it to present a veneer of respectability. One such kick was received in 1998 when the UK government, without any prior negotiations, ordered a review of Jersey's system of financial regulation[20], a move welcomed by Members of Parliament in the UK. Pressures for the UK government to act had been mounting (Morris and Campbell, 2000). These included concerns about money laundering in the Channel Islands and the Bank of Cantrade fraud in Jersey (Hampton and Christensen, 1999). Jersey hired out its legislature to accountancy firms Ernst & Young and Price Waterhouse (now part of PricewaterhouseCoopers) to enable them to dilute their liabilities by enacting the Limited Liability Partnership (LLP) legislation and hold the UK government to ransom (Cousins et al., 1998). The anticipation of a possible blacklisting of Jersey by the Organisation for Economic Co-operation and Development (OECD, 1998) and a demand by the Public Accounts Select Committee that the UK government clean up the Crown Dependencies (UK House of Commons Public Accounts Committee, 1998). The Jersey establishment normally responds to such external pressures by claiming that the UK is interfering in its internal affairs[21] (Financial Times, 22 January 1999; Morris and Campbell, 1999; Morris and Campbell, 2000).

The Edwards Report

The review ordered by the UK Home Office was carried out by Andrew Edwards, formerly a Director and Deputy Director at the UK Treasury and Chairman of the Whitehall Principal Finance Officers' Committee (Home Office Press Release, 20 January 1998). He was asked to "assess the contribution made by the current laws and systems to the economic well-being of the Islands themselves and of the United Kingdom". His terms of reference were to

[20] The investigation also covered the entire Channel Islands and the Isle of Man.
[21]This often leads to calls for Jersey to declare its independence from the UK (for example see the Jersey Evening Post, 22 March 1999, pp. 8-9). Whether an island of 87,000 can survive in the global economy without the protection of a hegemon is open to debate.

“review with the Island authorities their laws, systems and practices for: regulating banking, insurance and financial service business and collaborating with overseas regulators, deterring, investigating and punishing financial crime, including money laundering and fiscal offences, particularly cases with an international dimension”

Source: UK Home Office Press Release, dated 20 January 1998.

There were no public hearings for the Edwards investigations. The written or oral evidence submitted to it is not publicly available. Under pressure from the Jersey authorities, Andrew Edwards did not look at the system that facilitates tax avoidance/evasion for footloose capital. He ignored the social costs of Jersey’s role as a finance centre, even though the terms of reference mentioned ‘economic well-being of the Islands themselves and the United Kingdom’. The civil service and courts play a crucial role in the drafting, enactment, implementation and enforcement of regulation. Yet they too were excluded from the inquiry.

The UK government gave no undertaking to publish any detailed report, though a UK Home Office press release stated that “Although this is an internal review, we intend to publish a summary of its main findings” (press release dated 20 January 1998). In September 1998, AABA received a copy of an earlier draft which had already been made freely available to Jersey elites to enable them to censor and rewrite it, but was denied to others. In the interests of public information, AABA decided to make it freely available by placing it on its web site. Much to the consternation of the Jersey establishment, extracts from the draft report appeared in the press (The Guardian, 26 September 1998, p. 1, 14 and 22; Sunday Business, 27 September 1998, p. 6; Financial Times, 12 October 1998, p. 9; Sunday Telegraph, 1 November 1998; Jersey Evening Post, 26 September 1998, p. 1; 5 October 1998, p. 1-2; 6 October 1998, p. 6; The Isle of Man Examiner, 6 October 1998, p.1; Guernsey Evening Press, 6 October 1998, p. 1; Manx Independent, 9 October 1998, p. 5; The Money Laundering Bulletin, October 1998, p. 1 and 4). The UK government decided to publish the report in November 1998 (UK Home Office, 1998).

The report, crafted in civil service language, largely endorsed the status quo and contained few reform proposals. Edwards classified Jersey as in the “top division” of offshore finance centres without making any comment about whether this was good or bad. An open criticism would have acknowledged that Britain had failed to provide good governance of the island, and that the

existence of tax haven like Jersey encouraged flight of capital and forced British people to pay higher taxes. The initial leaked version of the Edwards report was considerably more critical than the published report but was watered down following behind the scenes lobbying by Island politicians and civil servants (Willoughby, 1999; Morris and Campbell, 2000). The report fell short of requiring public disclosure of the beneficial ownership of offshore companies and the individuals lurking behind offshore trusts. It was warmly received by Jersey's ruling establishment. The tentative nature of the Edwards report is "perilously close to a whitewash" (Morris and Campbell, 1999, page 63).

Edwards reported that Jersey lacked even the most basic financial regulation. For example, it did not have independent regulation of the financial sector, adequate consumer protection laws, complaints investigation procedures, ombudsman, requirements for public filing of company accounts, co-operation with external authorities and much more. Edwards was particularly concerned to find that Senator Frank Walker, President of Jersey's Finance and Economic Committee was also the main regulator. In anticipation of criticisms from Edwards of its system of financial regulation, Jersey formed, an allegedly independent regulatory body, the Financial Services Commission (FSC) in 1998. Senator Frank Walker remained its chairman until external pressure forced his replacement (Financial Times, 30 July 1998, p. 11).

The Edwards Report (UK Home Office, 1998) made some modest proposals for reform. These are:

- All Crimes Money laundering legislation
- Removal of prosecution time-bar
- International co-operation legislation
- Regulation of director services
- Changes in Trust Law legislation
- Regulation of nominee companies and directors
- Registration of companies
- Information agreements with other authorities
- Licensing and regulation of trust companies
- Financial Services Ombudsman
- Need for companies to publish information about their affairs
- Fighting money laundering

We look at some aspects below:

(a) Institutional Structures, Objectives and Policies

Edwards criticised the extant regulatory institutions which were sparsely staffed and could not avoid conflict of interests. They simultaneously acted as promoters, defenders, prosecutors, regulators and judges. This is exemplified by the fact that the regulatory structures were headed by the President of the Finance Committee, Jersey's equivalent of the Finance Minister. Edwards called for independent regulation on the basis that it is "better performed by suitably qualified independent professional people than by politicians or government officials with other axes to grind"(para 6.2.6). Edwards called for dedicated enforcement units with proactive powers. He recommended the introduction of depositor protection schemes to mitigate investor losses and the creation of a Financial Services Ombudsman scheme to resolve consumer disputes.

With acknowledged financial deposits of some £400 billion, Jersey is a substantial international offshore tax haven. Yet remarkably, at least until 1998 (just before the Edwards review), it was regulated by a small unit within the civil service. In anticipation of criticisms from Edwards, Jersey created the independent Financial Services Commission (Financial Services Commission (Jersey) Law 1998). A commitment has been made to hiving off a promotional role to a separate distinct body (Jersey Financial Services Commission 1998). A separate enforcement department has been created within the Commission entrusted with responsibility for all enforcement matters and co-operating with overseas' regulators (Jersey Financial Services Commission, 1999). But the FSC is full of political appointees. Genuine consumer representation is conspicuous by their absence. The majority of Jersey based representatives are composed of the retired Chief Adviser to the Jersey Government, with the remaining three drawn from the Island's legal, accountancy and banking "pinstripe" infrastructure, which earns its living off and is consequently in a client relationship with the offshore finance industry. At least the Chairman of the Commission is no longer President (Finance Minister) of the Finance and Economics Committee and proprietor of the Island's only newspaper, the *Jersey Evening Post*.

(b) Consumer Protection

Jersey has historically failed to provide basic standards of consumer and investor protection characteristically found in onshore jurisdictions, preferring instead to opt for unenforceable codes of good practice. As a result Jersey has earned itself a reputation for poor merchandise and shoddy service, as the following quote from an article entitled 'Beware of Bargains' shows: "Welsh holidaymakers have been duped in India and the Far east, and according to consumer chiefs, one of the worst places for getting ripped off is the Channel Islands, especially Jersey. According to the Cardiff Consumer Advice Centre "Our trading standards colleagues (in Jersey) are helpful, but they only have a watered-down version of our consumer laws." (South Wales Echo, 13 July 1995). A similar watering down process applied to Jersey's investor protection regime."

Edwards suggested two consumer protection measures (Home Office, 1998). First, the introduction of comprehensive depositor protection schemes to mitigate investor losses should a financial institution collapse. In principle, such schemes are valuable in providing consumers with a safety net (Page and Ferguson, 1992; Cartwright, 1999) but in the context of an offshore finance centre such as Jersey there are serious issues which Edwards does not deal with. For the high net worth individuals depositing funds with financial institutions the maximum payout under any scheme would, as Edwards at least acknowledges, be “drops in the ocean”. Since a large amount of money in Jersey is avoiding/evading taxes in other jurisdictions, the indiscriminate use of a depositor protection scheme is morally indefensible. If depositor protection schemes *are* to be introduced they ought to be targeted so that those with the ill-gotten gains are not protected.

In its reaction to the Edwards proposals, Jersey realised its vulnerability and signalled its acceptance of the principle of depositor protection (States of Jersey, 1999). Its initial proposals (Jersey Financial Services Commission, 2000a) display the usual concern for the wealthy and the offshore finance industry and indifference towards ordinary Jersey citizens. The proposals are indiscriminate in that protection is extended to *all* private individuals, irrespective of personal wealth, as well as tax avoiders/evaders. Moreover the scheme would extend to non-residents anywhere in the world and protect deposits in *any* currency. It is churlish to deny that there will be considerable benefits of a depositor protection scheme for working people on Jersey, who for too long have been denied a modicum of protection for their savings found in

most developed systems of financial regulation. Secondly, Edwards suggested a distinct Financial Services Ombudsman scheme to facilitate a low cost way of resolving disputes.

(c) Secrecy

Responding to concerns about footloose corporations, Edwards recommended careful vetting of company registration applications to "nip potential problems in the bud" (UK Home Office, 1998, para 19.7.2 and see generally: paras 10.6.1-10.7.3). On the specific issue of beneficial ownership, Edwards supported full disclosure in principle, albeit subject to preservation of confidentiality (para 10.8.3). The disclosure of beneficial owners (and shadow directors) is a vital weapon in the fight against financial crime and money laundering (para 10.8.7 and see generally paras 10.8.1-10.8.12). Jersey does not require companies to file audited financial information and regards this as a key magnet in attracting footloose international capital. Edwards recommended that "all limited companies … be required to keep audited accounts and to file them publicly, with much abbreviated requirements for small companies"(para 10.10.7). Edwards also applied this principle to asset holding companies, especially given the high risk that such companies could be exploited as vehicles for money laundering by non-residents (paras 10.10.10 -10.10.11).

Jersey (and many other tax havens) permits the use of nominee directors in respect of companies incorporated elsewhere and thus conceals the identity of the owners. Edwards suggests a three pronged attack. First, a regime of licensing and supervision applying the criterion that only "fit and proper" persons in terms of integrity, solvency, competence and track record be permitted to act as nominee directors. Secondly, a Code of Conduct for Directors which would, inter alia, require them to be aware of who owns the company, the nature of its business, its financial position and to have full and up to date information and ensure that the company is not being used for illegal purposes. Thirdly, as a general principle Directors should be obliged to refrain from holding an unreasonable number of Directorships, though no specific ceiling should be set. Annual returns would be required from those providing Directors' services specifying the ownership, place of incorporation and principal activities of the companies they serve as Directors (para 11.2.19).

Jersey's ruling elite is not happy with the proposals. In any case, Codes do not give enforceable rights and are not mandatory. Jersey's establishment is not keen on the public availability of audited company accounts and reform of

offshore trusts. This is despite the fact that the proposals refrain from posing hard questions about the use of offshore companies and trusts to avoid taxes and conceal criminal enterprise. Jersey's political establishment has rejected this proposal outright as going beyond existing policy in many jurisdictions (States of Jersey, 1999).

In relation to offshore trusts Edwards essentially endorsed their continued use as vehicles for tax avoidance shrouded in secrecy, confining himself to a series of measures designed to safeguard the interests of beneficiaries. Despite this endorsement of a dubious and lucrative source of income for the island, Jersey proceeded to slap Edwards down depicting his proposals as based on misconceptions of Jersey law and hence "unnecessary"(States of Jersey, 1999). Rather than more stringent direct regulation of companies and trusts, Jersey wants to licence corporate and trust services providers and require them to accept a Code for the sound conduct of business. It proposes to empower the States Finance and Economics Commission to require audited accounts and enable the Commission to monitor legal requirements designed to deter money laundering (Investment Business Jersey Law 1998 as amended by the Draft Financial Services (Extension) (Jersey) Law 2000). Everyone knows that compliance with the Code cannot be publicly monitored. Given Jersey's history of doing little, the proposals are no more than window dressing.

(d) Money Laundering and Financial Crime

Jersey has attracted persistent criticism in recent years for its complacent attitude towards money laundering and financial crime generally and compounded this by poor co-operation with overseas' regulatory authorities. Edwards suggested three major reforms: the enactment of "All Crimes" money laundering legislation; a general law facilitating co-operation with overseas' law enforcement agencies; and the creation of multi-disciplinary Financial Crime units composed of police officers, customs officers, revenue officials, lawyers and accountants with a dedicated budget (UK Home Office, 1998).

Under international pressure, Jersey has enacted the "All Crimes" money laundering legislation (The Proceeds of Crime (Jersey) Law 1998) which, on paper at least, will considerably facilitate international co-operation by Jersey in the pursuit of financial crime generally (Draft (International Co-operation) Jersey Law 2000). Of course legislation is one thing, the efficient detection and pursuit of financial crime is quite another. A Financial Crime Unit has been established but it falls a long way short of the blue-print specified by Edwards:

it is a *police* unit composed of ten police officers, one customs official and a financial analyst to deal with financial flows of £400 billion. The Unit was created by the administrative amalgamation of the Fraud Investigation Unit and the Commercial Branch of the States Police. Other than the fact that the proposal to create the Unit was approved by the States Home Affairs and Finance and Economic Committees, there appears to have been no public debate on Jersey regarding this partial implementation of what was arguably Edwards most radical and innovative proposal.

Despite these criticisms, Jersey's politicians and regulators are under the international spotlight and need to be seen to be running a well regulated offshore finance centre. To encourage the politicians, some international accolades have been handed out. For example, Jersey has received the endorsement of the G7s Financial Action Task Force as a co-operative jurisdiction in the fight against money laundering. It has been awarded a " Group 1" jurisdiction rating by the G7s Financial Stability Forum on the basis of its co-operation with other jurisdictions and the quality of its regulation (Pratt, 2000). These international endorsements need to be treated with a degree of caution. In the first place, the Financial Stability Forum evaluation was not specifically focused on financial crime; rather it examined financial stability programmes generally in onshore jurisdictions with extensive offshore finance centre dealings. Secondly, the influential US Bureau for International Narcotics and Law Enforcement Affairs has designated Jersey a jurisdiction of "primary concern". This means "the volume of money laundering continues to be substantial and continued vigilance and effective enforcement by the government is essential to successfully combat money laundering" (US Department of State, 1999). So there continues to be concern that significant money laundering activity is taking place on Jersey; concern albeit tempered by the Bureau's praise by stating that "Jersey has developed a comprehensive money-laundering regime and has clearly demonstrated the political will to ensure that its financial institutions and services industry is not used to launder money. Jersey's key to success in preventing its offshore financial sector from being used to launder money will be in the continued force with which it implements the new legislation and regulations" (US Department of State, 2000).

SUMMARY AND DISCUSSION

In common with other tax havens, Jersey seduces people with duty free shopping, sun, sand and beaches. Yet it is engaged in a deadly trade that robs

ordinary people. The status of Jersey and its economy has changed, but its political landscape has failed to keep pace with it. Often change had to be imposed upon Jersey from the outside, as exemplified by the Edwards Report. The report, whilst careful not to be overly critical of the government of Jersey and its oversight by the UK, noted that Jersey lacked even the most basic characteristics of good regulation. These included the absence of consumer protection laws, an ombudsman, transparency and structures to combat financial crime. In the face of resistance and private manoeuvring by the Jersey elite, the investigation delivered less than what it promised. Edwards failed to examine the use of offshore companies and trusts for secrecy, tax avoidance and their exploitation for abusive and criminal purposes. He also failed to look at what *The Economist* described as the "close relationship between the legislature and the judiciary. On Jersey, for instance, the Bailiff is both Jersey's chief judge, the Speaker of its parliament, and in effect the head of the state" (The Economist, 28 November 1998)

Privately, the Jersey establishment has been reassuring key players about the limits of the Edwards investigation and the manner in which the Jersey government will operate. In a letter to a significant player in Jersey, the President of the Finance & Economics Committee explained that

> "the terms of reference of the review [Edwards Review] do not extend to tax matters other than tax crime"
>
> **Source**: Letter to Mrs. N. Adamson of Nigel Harris and Partners, dated 27 September 1998).

Jersey's Attorney General wrote,

> "I wish to emphasize that, as required by the statute, I will need to satisfy myself that there is indeed a suspected offence involving serious or complex fraud and that there is good reason for exercise of my powers under the statute [Investigation of Fraud (Jersey) Law 1991]. In particular I will not permit fishing expeditions or make orders in terms which are wider than I consider necessary for the purposes of investigation".
>
> **Source**: Letter to Mrs. N. Adamson of Nigel Harris and Partners, dated 25 September 1998.

Despite the well-orchestrated public relations hype (Jersey Evening Post, 16

March 2000, p. 1; 21 March 2000, p. 8-9), Jersey has failed to fully implement many of the recommendations contained in the Edwards Report. These include statutory audits for major companies[22], public filing of information by Limited Liability Partnerships, independent complaints procedures for bank depositors, an ombudsman, reform of trusts and disclosure of the ownership of foreign companies based in Jersey. The end result of this 'cherry-picking' has been a minimalist reform project triggered by the UK Government, but implemented by the Jersey elite on its own terms (Mitchell and Sikka, 1999; Morris and Campbell, 2000). The Edwards investigation took some of the heat off the UK Government which has been confronted with mounting criticism in supranational forums (such as the EU, OECD and G7) regarding harmful tax competition of its dependencies. The criticism is, however, unlikely to go away as Edwards was not permitted to look at the tax haven status of Jersey (Home Office, 1998; Morris and Campbell, 2000).

The Edwards Review and its aftermath provides compelling support for the argument that progressive change on Jersey only happens if external pressure is placed on the Island's business-political establishment. The pressures forced Jersey to introduce some face-saving measures (States of Jersey,1999) while claiming to have been actively considering others (e.g. the Ombudsman mechanism) "for a number of years"(Jersey Financial Services Commission, 2000b; and see UK Home Office, 1998). Jersey has introduced some measures for consumer protection, an ombudsman scheme and measures to tackle money laundering and financial crime. They do not, however, represent some new dawn in Jersey's politics. Fundamental change has been successfully resisted: for the Jersey establishment, at least so far as financial regulation is concerned, it is pretty much business as usual. Despite the new measures, Jersey remains implicated in scandals. The French government has complained that Jersey is implicated in money laundering (The Guardian, 12 May 2000). The finger has been pointed at Jersey for facilitating banking secrecy and cash handling services to Osama bin Laden (Jersey Evening Post, 24 September 2001; 28 September 2001; 16 October 2001) and former Nigerian dictator, General Sani Abacha (Jersey Evening Post, 8 March 2001, p. 2). A Jersey bank account has been the focus of a major political scandal in Brazil involving a presidential candidate who is alleged to have embezzled US$200 million (Jersey Evening Post, 1 September 2001). The antidotes to money laundering, tax avoidance/evasion and secrecy are freedom of information, debate, democracy, accountability, good government, transparency and social responsibility. These are in short supply in Jersey. The next chapter provides some details of Jersey's machinery of government.

[22]http://www.jerseyeveningpost.com accessed on 23 November 1999.

CHAPTER 5
JERSEY'S MACHINERY OF GOVERNMENT

Governing Jersey

Pressures from external agencies (UK Home Office 1998, United Nations Office for Drug Control and Crime Prevention, 1998; Organisation for Economic Co-operation and Development, 1998) and increasing public awareness of the role of offshore havens in loss of tax revenues, money laundering, secrecy, drug trafficking and degradation of regulation, have all focused attention on Jersey's machinery of government (Jersey Evening Post, 7 July 1998, p. 3). However, Jersey's ruling elite, working in tandem with the UK government, has always been able to stifle the nature and scope of the inquiries. It is adept at presenting a respectable face to the outside world whilst ensuring that the changes to institutional structures and political culture are absolutely minimal. An example is the investigation by the Kilbrandon Commission (1973) that sought to examine the constitutional relationships between the Channel Islands and the United Kingdom. In a dissenting memorandum, Lord Crowther-Hunt and Professor A.T. Peacock wrote,

> "We cannot accept the constitutional recommendations our colleagues make about the Channel Islands and the Isle of Man. This is because although our terms of reference also required us to examine 'the economic relationships between the United Kingdom and the Channel Islands', there has in fact been no such examination. As a Commission, we do not know, for example, the extent to which these off-shore islands have developed, and are still further developing, as 'tax havens' either for United Kingdom citizens or international companies. Without such information (and we consider an urgent enquiry should be mounted to get it) we do not believe one can make any worthwhile pronouncements on their future constitutional relationships with the United Kingdom. We, therefore, make no such pronouncements".

Despite considerable economic change and international scrutiny, Jersey's system of government has gone through little change and its machinery of government is poorly equipped to satisfy the concerns of people troubled by its tax haven activities. It is captured by the finance industry and Jersey lacks the most basic institutional structures. As a member of the Jersey States [Jersey's Parliament] put it,

"For over a century Jersey's ruling elite has had an unchallenged monopoly of power ...... With no clear division between the legislature, judiciary and executive there is an absence of checks and balances"

Source: The Independent, 22 November 1998, p. 23.

A former senior civil servant said that

"the Island had no real democracy, the States could no longer govern effectively, politicians and civil servants lacked an understanding of economic fundamentals, and government incompetence 'smacks of corruption' to most ordinary residents"

Source: Jersey Evening Post, 6 April 1999.

The Wall Street Journal noted that,

"Jersey is an Island that until two decades ago lived off boat-building, cod-fishing, agriculture and tourism. It is run by a group who, although they form a social and political elite, are mostly small business owners and farmers who now find themselves overseeing an industry of global scope involving billions of dollars. By and large..... they are totally out of their depth"

Source: Wall Street Journal, 17 February 1996.

The most noticeable features of Jersey's political landscape are the absence of general elections, the overlap of business and governmental interests, concentration of power and the absence of checks and balances commonly found in liberal democracies. It could be argued that some of these 'close relationships' and 'captures' are inevitable because Jersey is a small Island. However, it is precisely because Jersey is a small island that it needs to have the utmost transparency, openness and accountability so that any undue influence can be highlighted and subjected to social scrutiny.

Jersey has a single chamber Parliament, the States of Jersey, located in its capital St. Helier. There is no second chamber to look independently or sceptically at government policies. The States of Jersey consist of 53 directly or indirectly elected members, plus representatives of the Crown. There are 12 Senators, 29 Deputies and 12 Constables. Jersey's 12 Senators are elected on the Island wide basis for a six-year term, and half of these retire every three

years. The Island is divided into 12 Parishes. The 29 Deputies are elected for a three-year period on a constituency basis. The 12 Constables are the civic heads of one of the Island's 12 parishes. They are not elected on any common electoral cycle. Each Constable heads the Honorary Police of his/her parish, having a team of volunteer unpaid Centeniers, Vingteniers and Constable's Officers who help the ordinary police force to enforce law and order. The roles and constituencies of various elected representatives overlap. More than a dozen elected persons can represent the same individual in the Jersey States. Recent elections show that voter apathy is high. In the 1999 elections, some areas had a turnout of just 1% (Jersey Evening Post, 22 November 1999, p. 10) and some Members of the States were returned unopposed (Jersey Evening Post, 3 November 1999).

The UK Crown appoints the Lieutenant Governor, the "military commander" of the Island. His role is now reduced to that of liaison between the Crown and the Jersey States. He is, nevertheless, entitled to sit in the Jersey States (usually to the right of the Bailiff, but on a seven-inch lower chair) and speak. Under the constitution he has a right of veto if Crown interests are involved. Jersey States also has other Crown appointees, such as the Bailiff (always a male lawyer), the Deputy Bailiff, the Solicitor General, the Attorney General and the Dean of Jersey (head of the Anglican Church in Jersey). The Bailiff, the Deputy Bailiff and the Dean are permitted to speak on political matters[23] (thereby exerting influence) but are not formally allowed to vote. The Greffier of the States, appointed by the Bailiff, acts as a Clerk of the State.

Nepotism and apparent conflicts of interest are not uncommon. For example, the Bailiff Sir Philip Bailhache, besides being the Speaker and the President, is also the President of the Royal Court. He is a leading judge on the Island. He hears major legal cases and represents Jersey on economic and external relations matters. His brother, William Bailhache, is the Attorney General and prosecutes cases in the courts presided over by the Bailiff. In sharp contrast to the legal principles established by the January 1999 House of Lords' judgement in *re Pinochet*[24], the Bailiff claims that "there is no risk of bias by his presiding in a prosecution that has been brought by his brother, the Attorney-General" (Jersey Evening Post, 16 March 2000. p. 4). The Bailiff's role has been problematised by the judgement of the European Court of Human Rights in the case of *McGonnell v The United Kingdom* which argued that who has a direct interest in

[23]For example, during the Jersey States debate (May 1998) on the insolvency provisions of the LLP law, the Bailiff complained that he did not receive copies of a commentary circulated by Prem Sikka.

[24] Full judgement can be found at http://www.parliament.the-stationery-office.co.uk/pa/ld199899/ldjudgmt/jd990115/pino01.htm.

the passage of legislation should not judge any case concerning the application of that legislation.

Jersey does not have political parties and the machinery that goes with them. Individuals seeking to be elected do so as independent candidates rather than as members of political parties though some candidates form mutual alliances. Unlike the UK, candidates/parties are not entitled to equal free access to radio or television. There appears to be no control over the expenses of the election candidates. Candidates are not allowed to have free mail shots for their election manifestos. The election manifestos mostly deal with local issues rather than national. These manifestos seem to be more about 'personality politics'[25] than about the deeper issues confronting Jersey. The independent election candidates are no match for those with close connections with big business as it can always find someone to distribute the election leaflets. In reality the most organised party, 'big business', rules the roost by supporting, funding and promoting its favourite candidates. Jersey's senior politicians skew the balance of power very much in favour of organised business rather than the citizens. For example, during the October 1999 elections, the Finance and Economics Committee President, Senator Frank Walker, wrote a letter to the Presidents of various business associations (not sent to trade unions) urging them to use their influence and weight to secure votes for election candidates who will maintain the Island's economic stability and understand international issues.

Jersey does not have full-time legislators even though its legislative load has increased. Most members of the Jersey States are part-time, with businesses to run. To oversee the £400 billion sloshing around, members of the Jersey States are entitled to a salary of £27,781 and expenses of £9,276 to cover telephone, postage and transport costs (State of Jersey, 2001; Jersey Evening Post, 28 November 2001, p. 2). As part-time legislators, they have little time to undertake any research and/or analysis of government policies, or be able to compare them with the policies adopted in other jurisdictions. They are poorly resourced and lack secretaries and researchers to support them in their efforts to scrutinise the policies of the executive. They could be advised and briefed by pressure groups and new social movements (e.g. environment, trade unions), but pressure groups are not well organised. Campaigners for change are easily ostracised by the ruling elite. Jersey's only newspaper, the *Jersey Evening Post* (JEP), is under the control of a senior member of the government, with considerable economic and political interests. The local radio and television,

[25]For example, one Constable (elected unopposed) claimed that he "enjoyed low-water fishing and was well known in the farming community. He was known in the Island for his award winning dahlias" (Jersey Evening Post, 12 October 1999, p. 4)

also find it easier to follow the official line and rarely subject the government to critical scrutiny. All this suits big business and makes Jersey effectively a single Party state, with big business the only Party.

Instead of a Cabinet system of government, Jersey is governed by a Committee system. Each Committee (e.g. the Finance and Economics Committee) has a President (usually a Senator) who is the visible face of power. Everyone is effectively a minister or part of the executive. Due to these arrangements, Jersey has no official 'Opposition' in parliament and little effective scrutiny of legislation, policies or the government. Members of one Committee are generally reluctant (though there are some exceptions) to critically scrutinise legislation proposed by another. There are no equivalent to US Senate hearings or the UK Parliamentary Select Committees to scrutinise legislation or the executive. Dissent is rare and is usually marginalised. Votes of 'no confidence' or motions of censure in any Committee are rare, as is the example of an entire Committee resigning (or forced to resign) over an issue. The Committees exercise most of the power, at least in name. The public has little leverage. It cannot attend their meetings, examine their agendas, minutes or policy papers. There is no 'freedom of information' legislation and the various Codes of Practice that do exist are designed to deny any legally enforceable rights for the people. There is no written record of parliamentary debates relating to major laws. The penny-pinching Jersey States requires people to pay £10 for each audiocassette of the parliamentary debates, a definite barrier to wider dissemination of information.

Most Jersey politicians are in business. They lobby for business and promote business interests. They draft, refine and pass legislation. They have also sat on regulatory bodies, effectively acting as 'gatekeepers' adjudicating on complaints and malpractices. Politicians sit on the boards of the companies that they are supposed to regulate. For example, Senator Frank Walker was a director of Barclays Bank and simultaneously President of the Finance and Economics Committee (FEC). He has also been the chairman of the Financial Services Commission (FSC), an authority responsible for regulating banking practices. In the Bank of Cantrade episode, one time President of the FEC, Senator Pierre Horsfall had been a non-executive director of the Bank. Such overlapping positions are indicative of the deeper cultural and accountability problems in which conflicts of interests have been institutionalised. Anyone 'rocking the boat' is vulnerable to attack by the Jersey Evening Post and ostracised.

A fundamental principle of liberal democracies is that all citizens are equal.

However, this does not appear to be the case in Jersey. Despite paying taxes, acquiring voting rights and holding Jersey passports, individuals face restrictions upon their economic and social conduct. For example, Jersey exploits the economic and social contribution of its migrant labour (mainly from the Mediterranean and Eastern European countries) but denies them important human rights, such as the right to rent or buy housing (as distinct from other forms of property) until a 'qualifying period' of (ten years if their work is essential, e.g. doctors), or eighteen-years otherwise is completed (Jersey Evening Post, 16 February 2002). Some of migrants are forced to live in accommodation which is "not up to a standard, yet workers were being charged high rates for it" (Jersey Evening Post, 7 March 2001, p. 1). Anyone letting property to non-qualifying residents without government approval is prosecuted and fined (Jersey Evening Post, 31 July 2000). Jersey's discriminatory policies amount to a system of 'apartheid', and are designed to exclude migrant workers from claiming full economic, social and political citizenship. Even in cases, where migrant workers marry local citizens (qualified residents), they remain subject to the ten/eighteen year rule. Thus, if a marriage breaks up before the end of the ten/nineteen year cycle, the migrant worker (who may also have children born in Jersey) is not considered to have achieved residential status and permitted to rent/buy housing. Jersey's restrictions breed fear, silence, exploitation and exclusion. This is in sharp contrast to multi-millionaires (you need at least £10 million in the bank to settle in Jersey) settling in Jersey who do not face any qualifying period restrictions.

Response of the Jersey Establishment

For years Jersey's ruling elite took no steps to reform its political institutions. Its response to a critical external gaze has been to deny that there is any problem. Debate is stifled by demonising reformers (Jersey Evening Post[26], 19 June 1996, p. 17; 22 October 1998, p. 8; 31 October 1998, p. 11), by suspending reformers from the States of Jersey[27] (Mitchell and Sikka, 1999) and by abusing them with labels such as the 'enemies of the state'[28]. The Jersey government has also

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[26]For example, in an editorial (6 October 1998), the JEP castigated critics (e.g. AABA) of the Jersey government for using the internet to advance their arguments. Yet a few days later, the launch of the JEP web site was accompanied by fanfare without any hint whatsoever about the ideological construction of the news appearing in the JEP and/or its web site.

[27]As in the case of Senator Stuart Syvret, during the 1996 parliamentary passage of the Limited Liability Partnership legislation.

[28]A phrase repeated during the Parliamentary proceedings on 19th May 1998 when Jersey sought to pass the insolvency provisions relating to LLPs. 95 pages

sought to stifle pressures for change through increased expenditure on political lobbying (Sunday Business, 15 November 1998, p. 1 and 5; Mitchell and Sikka, 1999). Other tactics have included attempts to pressurise the editors of academic journals and persuade them to reject papers that are critical of Jersey's politics (Mitchell, Sikka and Willmott, 1999). As a result, Jersey has failed to modernise its government, its institutions and its politics.

External exposure has, however, worried the finance industry which wants the government to be more effective in countering it. As a spokesperson for Jersey's finance industry put it,

> "First and foremost there has been demand to more effectively respond to the threat posed by external sources. It began primarily with the UK government and its announcement on Edwards and the review that followed. Since then, there has been the Financial Action Task Force, the European Union, the United Nations, and of course the OECD. There were also other 'thorns in the side' of the industry, including Austin Mitchell, MP, various university professors who seemed to have spent an inordinate amount of time studying the threats posed to the world from offshore jurisdictions, New York Police authorities, new pressure groups such as Attac, and at one time even past and present members of the States of Jersey! ..... this has forced a rethink both by government and the industry".
>
> **Source**: http://www.thisisjersey.com/finance/finance_30.html, accessed on 1 October 2001.

In the words of a PricewaterhouseCoopers partner, "it is apparent that outside pressures have a far greater impact on the [finance] industry than was previously the case and, therefore, how our government responds to that pressure is of increasing importance" (http://www.thisisjersey.com/finance/finance_16.html, accessed on 17 September 2001)". When the finance industry barks, Jersey's ruling establishment follows its orders. The question is how to respond. Some suggested (Jersey Evening Post, 30 June 1998) that a Royal Commission, with powers to collect public evidence and formulate institutional choices should be formed. Jersey's ruling elite opposed independent investigation, arguing that

> "this would be an open invitation to people like Austin Mitchell and others who have no particular love for Jersey institutions to interfere in our process of government. ..... A Commission would be foolish, but doing nothing would also be foolish ......"

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of legislation were passed in less than 30 minutes..

Source: Jersey Evening Post, 7 July 1998, p. 3.

The dilemma facing Jersey is captured by an editorial comment in the Jersey Evening Post, which noted that the ruling elite might say that

"our political structures are fundamentally sound and imply that any difficulties are caused by the shortcomings of individual Members [of Jersey States], but a more widespread view is that the States desperately needs to be better equipped to deal with the 21st century"

Source: Jersey Evening Post, 30 June 1998.

So, on 2nd March 1999, the States of Jersey formed a 'Review Panel on the Machinery of Government' under the chairmanship of Sir Cecil Clothier[29]. Its terms of reference were:

"to consider whether the present machinery of government in Jersey is appropriate to the task of determining, co-ordinating, effecting and monitoring all States' policies and the delivery of all public services; including - the composition, operation and effectiveness of the States' Assembly; the composition, operation and effectiveness of Committees of the States; the role and respective responsibilities of the States, the Committee and the Departments in achieving an efficient and effective strategic and business planning and resource allocation process; the role of the Bailiff; the transparency, accountability and democratic responsiveness of the State's Assembly and Committees of the States; and whether the machinery of government is presently subject to checks and balances sufficient to safeguard the public good and the rights of individuals....".

Source: States of Jersey (2000), p. 5.

The pressures for change are mostly from the outside, but the Panel's 'terms of reference' precluded it from examining "the constitutional relationship between the Bailiwick and the United Kingdom; and the constitutional relationship between the Bailiwick and the European Union". The contradictions in the Panel's 'terms of reference' are further highlighted when it is noted that whilst

[29] Other members of the Panel are Sir Kenneth Bloomfield, Sir Maurice Shock, Professor Michael Clarke, Mrs. Anne Perchard, Mr. John Henwood MBE, Advocate John Kelleher, Advocate David Le Quesne and Mr. Colin Powell OBE.

excluding a review of the constitutional relationship, they seek to review "the role of the Bailiff". This highly politicised position is filled by the UK government rather than by the people of Jersey. Any change to the role of the Bailiff will necessarily change the constitutional relationship with the UK.

The Panel's 'terms of reference' also required it to consider, "whether the machinery of government is presently subject to checks and balances sufficient to safeguard the public good and the rights of individuals ...". Without considering the role of the judiciary and the civil service, it is difficult to see how an effective evaluation of the machinery of government could be made. One of the weaknesses of the Edwards Report was that it did not look at the role of the judiciary and civil service, a crucial aspect of the enactment, enforcement and interpretation of legislation. The same is once again excluded from consideration.

The narrow scope of the 'terms of reference' also ignores the practical realities. Jersey is a UK Crown Dependency, rather than an independent nation. For all practical purposes, all Jersey legislation has to be approved by the Privy Council, effectively the UK Home Office. The Lieutenant Governor, appointed by the Crown, can veto Jersey legislation. The UK also has the overall responsibility for its 'good governance', and international and defence matters, in particular. In a global world, the distinction between 'internal' and 'external' affairs is increasingly blurred. Jersey's senior officials routinely call upon the UK to "protect Jersey's international interests" (Jersey Evening Post, 26 November 1999, pp. 1 and 2). They also wine and dine UK politicians and hire lobbyists to extract concessions from the UK government (Sunday Business, 15 November 1998, p. 5).

To set the right example, the Panel should have insisted upon holding public hearings and invited people to refer to their own experience of the machinery of government. Somewhat belatedly, after nearly 12 months of its operations, the Panel decided to hold one public meeting and even then people were not permitted to refer to government policies to illustrate their arguments about the need for change (Jersey Evening Post, 17 May 2000, p. 2). All the evidence submitted to it has not been made publicly available. Instead, the Panel has passed the buck to the Jersey States, arguing that it is up to the States to decide whether the evidence submitted to the Panel should be published. The Review Panel was concerned with "the transparency, accountability and democratic responsiveness of the States' Assembly and Committees of the States". However, there has been no transparency about the appointment to the Panel

itself. The Panel was not representative of the people. Of the nine members of the Panel, only one was female. Jersey's many social constituencies (e.g. young versus old, urban v rural, agriculture v finance centre, middle class v working class, trade union v employers) were not represented on it. There has been no information about the politics that restricted the Panel's terms of reference.

Under international gaze, the Clothier Committee recommended that Jersey

- Reduce the size of the States from 53 Members to between 42 and 44.
- Scrap the States Committee system.
- Create seven new departments of government, each led by a Minister.
- End the Bailiff's political role and replace him in the States with an elected Speaker.
- Remove the Constables from the States.
- Scrap the distinction between Senators and Deputies, with all representatives to be called Members of the States of Jersey (MSJ).
- Require all election candidates to produce policy statements.
- Create a Council of Ministers, led by a Chief Minister.
- Establish better checks and balances by setting up scrutiny committees of backbench Members, meeting in public, to monitor the new "Ministries".
- Form a Public Accounts Committee and appoint an Auditor-General.
- Appoint an Ombudsman to investigate maladministration complaints.
- Strengthen the parish assemblies with a more formal structure.
- Create a streamlined civil service, headed by a Chief Secretary to the Council of Ministers.
- Establish more open government through discussion documents
- Have Chief Minister's Question Time, a States Hansard and better access for the media.

There are concerns that the proposed reforms are driven by the desire to enhance the power of the finance industry rather ending its corrosive influence and make Jersey a clean, democratic and open society. This position seems to be advocated by the Clothier Committee.

"Because of its post-war development as a modern financial services centre, Jersey today has amongst its population an unusually high proportion of well qualified business and professional people. In most cases, the nature and extent of their other commitments would deter them from seeking election to the States, but the more open pattern of policy determination we envisage here would afford them a better opportunity to contribute if they wishes to the development of public policy, through the submission of evidence or even as special advisors to Scrutiny Committees".

Source: States of Jersey (2000), p. 39.

Nevertheless, there is a possibility that the proposed reforms, if implemented, would go a long way towards making Jersey's politics democratic, open and accountable. Despite the fanfare, the recommendations of the Clothier Committee are yet to be implemented.

SUMMARY AND DISCUSSION

Jersey is under pressure, mainly from the outside, to reform its government. Its relationship with the UK and Europe remains anomalous. Whilst the UK has decided that its future is in the European Union (EU), Jersey wants to remain outside. The world is dividing into trading blocs, but Jersey wants the benefits of the EU without making the necessary contributions, e.g. in terms of revenues, ending harmful tax competition, banking secrecy, etc. Jersey wants the UK to fight for its economic interests, but at the same time wants to resist the imposition of the UK requirements. It wants to facilitate secrecy, tax avoidance and regulation avoidance, yet at the same time give the impression that it is above these things. It wants economic prosperity, but at the same time resist demands for greater transparency. Jersey's political establishment is clearly facing an identity crisis.

In its entire history, Jersey has not had a 'general election'. Neither Parliament nor the executive has ever been dissolved in its entirety. The public has no way of expressing its judgement on the conduct of the entire government. In the absence of a written constitution and the conflict of interests, the roles of Ministers have multiplied. In the absence of political parties, the big business's interests masquerade as the 'public interest'. Jersey lacks intermediate institutions, electoral accountability, independent judiciary, openness and public accountability. Yet this system is home to an offshore financial centre handling billions of pounds and making only a minimal contribution to Jersey's people. It

forces up their cost of living (e.g. housing), but does not spread the benefits beyond a tightly knit group of financially motivated individuals. A central issue facing Jersey is whether this antiquated domestic regime is capable of combining regulation of this powerful visitor with democratic practices.

Jersey's recent history shows that the impulse of the ruling elite is to do little to dilute its power. Pressures for institutional change, as evidenced by the Edwards Report and the Human Rights legislation (Hansard, House of Commons Debates, 3 June 1998, cols. 464-475; Jersey Evening Post, 17 April 1998, p. 5) had to come from outside the island. The changes have enabled Jersey to present a respectable face to the outside world (for example, see Financial Action Task Force, 2000). Yet the ruling elite remains more committed to preserving its powers rather than embracing democracy, accountability and openness.

The Clothier proposals provided another 'kick' to the Jersey establishment. In response, the Jersey establishment is squabbling. The Bailiff wants to hang on to his power and the Senators, the Deputies and Constables want to maintain their position, and some worry about the financial cost of the change (Jersey Evening Post, 10 February 2001; 15 February 2001; 4 April 2001; 11 October 2001; 27 November 2001; 29 January 2002). Jersey's ruling elite is not happy about any freedom of information or even the formation of a special committee to scrutinise the plans for implementing the Clothier proposals (Jersey Evening Post, 28 November 2001, p. 4). So far none of the Clothier proposals have been introduced. As usual, Jersey will be selective about the reforms that it introduces. Even if some reforms are introduced, they are unlikely to curb the collusive relationship between Jersey and international capital. Jersey's legislature has been adept at selling itself to international capital to enable it to escape regulation in other jurisdictions. The next chapter provides evidence of this by referring to the Limited Liability Partnership (LLP) legislation.

CHAPTER 6
LEGISLATURE FOR HIRE

Jersey lacks democratic checks and balances, an invigilating press, critical academics and pressure groups. In this environment Jersey diversified its portfolio by facilitating 'regulation hopping' for businesses facing public responsibilities in other jurisdictions. It hired itself out to accountancy firms Ernst & Young and Price Waterhouse (now part of PricewaterhouseCoopers) and enacted the Limited Liability Partnership (LLP) legislation drafted by the firms. This legislation gave the firms protection from negligence lawsuits, but did nothing for those suffering from audit failures (Morris and Stevenson, 1997). The hope was that many other businesses would also desert the UK mainland and shelter in Jersey to avoid public accountability and responsibility.

Regulation Hopping

In view of the audit failures at Atlantic Computers, BCCI, Barings, Barlow Clowes, British & Commonwealth, DeLorean, Levitt, Maxwell, Polly Peck, Sound Diffusion, and many more, accountancy firms were facing lawsuits from injured stakeholders. They had already squeezed liability concessions from the UK government, including the right to trade as limited liability companies (Companies Act 1989) and also enable companies to buy insurance for directors and officers (Section 310, Companies Act 1985). Auditor liability to third parties is severely limited by the House of Lords decision in *Caparo Industries plc v Dickman & Others [1990] 1 All ER HL 568*, which stated that auditors do not owe a 'duty of care' to any individual stakeholder injured by their failures. Not content with that the industry pushed for proportional liability and a 'cap' without any commensurate accountability obligations (Cousins et al., 1998). The UK's Law Commission rejected these demands as being against the public interest (Department of Trade and Industry, 1996). So the auditing industry decided to use Jersey as a lever to force concessions out of the UK government (Cousins et al, 1998; Financial Times, 26 September 1996, p. 7).

The processes of 'regulation hopping' began in 1995 when the Director of Jersey's Financial Services Department met (6th June 1995) Mr. I James, a partner in the local law firm of Mourant du Feu & Jeune to discuss the proposals developed by the London law firm Simmons & Simmons who were acting on behalf of major accountancy firms. The Director discussed the proposals with the President of the Finance and Economics Committee and the Attorney-General. Subsequently, Mourant du Feu & Jeune formally wrote to the President

of the Finance & Economics Committee.

> "My firm has been working with the UK partnership of Price Waterhouse (PW) and English solicitors, Slaughter and May, to find a method of obtaining some limited liability protection for the partners' personal assets without completely restructuring PW's business and losing the cultural benefits of a partnership. After considerable research in a number of jurisdictions the most favoured solution would be the introduction of Special Limited Partnership Law in Jersey which would give the partners of a partnership registered under that law limited liability whilst permitting them to take part in the management of the Special Limited Partnership. ….
>
> … PW's objective therefore is to find a means by which its partnership can have limited liability whilst retaining the characteristics of a partnership. PW with its advisers has investigated a wide number of jurisdictions for this purpose. …. PW's executive are satisfied that Jersey has all the necessary characteristics which makes it a suitable jurisdiction in which to register their UK partnership if appropriate legislation was passed by the States within the course of the next year.
>
> ….. We are therefore seeking support of your Committee for the introduction of a Special Limited Partnership Law in Jersey during 1996. We appreciate that this is a very short time scale and that there are many other legislative matters which have a high priority for the States of Jersey. We would therefore propose that, based on a draft law prepared by Mr. David Goldberg QC for PW, this firm in close co-ordination with the Financial Services Department, will work with PW and Slaughter and May in order to prepare a draft law for consideration by your Committee during December this year with a view to it being debated in the States in January/February 1996. We would also propose that we would prepare any necessary subordinate legislation required in connection with the Special Limited Partnership Law.
>
> … in the event that your Committee is minded to support this proposal it would be very important for PW and I believe, Jersey's finance industry, that the correct messages are sent to the media. I would therefore suggest ….. that States of Jersey's PR firm, Shandwicks, are instructed to coordinate the publicity together with PW's own PR people."
>
> **Source**: Letter from Mourant du Feu & Jeune to President of the Finance & Economics Committee, 9 October 1995.

Jersey's senior Law Draftsman was not happy with the draft LLP legislation. It did not meet the local requirements and felt that he lacked the time and resources to correct it. He complained that it was like "getting a completed crossword and being asked to write the clues" (Jersey Evening Post, 26 February 1997). Nevertheless, on 30th October 1995, Jersey's Finance & Economics Committee considered the draft law and confirmed that it would be prepared to sponsor the legislation in order to place it before the States. On 23rd November 1995, Mr. I. James held consultations with Senator R.R. Jeune, a consultant to Mourant du Feu & Jeune, and informed him of the nature of the project. The negotiations were being conducted in utmost secrecy. The President of the Finance and Economics Committee had decided that "the Act and papers should not be circulated to the Policy and Resources Committee for reasons of confidentiality …." (States of Jersey, 1997, p. 16). Most members of the Jersey States had little idea of the deals done behind closed doors. On 11th December 1995, the States of Jersey, Ernst & Young and Price Waterhouse simultaneously issued press releases announcing the proposed legislation. The draft Bill was formally printed on 21st May and circulated to members of the Jersey States on 25th May. It appeared on the floor of the House on 2nd July 1996.

The Bill gave major firms considerable liability concessions by diluting the traditional principle of 'joint and several liability' and limiting the liability of partners. To secure the liability concessions, all that the accountancy firms had to do was to pay an initial registration fee of £10,000 and thereafter an annual fee of £5,000 per annum, a low enough price for multinational accountancy firms. The Bill contained no public accountability requirements although the eventual Act required firms to file names and addresses of each partner with the Jersey authorities. There was not even a requirement for the firms to state on their letterheads and invoices that they were registered in Jersey. In particular Article 9(2) stated that "Subject to the partnership agreement, it shall not be necessary for a limited liability partnership to appoint an auditor or have its accounts audited". The Act contained no provisions for regulating audit firms and investigating errant auditors. It offered no rights to audit stakeholders. It contained little, if any, provisions relating to the possible insolvency and bankruptcy of the LLPs (these aspects were introduced in May 1998).

Following discussions with major accountancy firms the Jersey government acceded to the demands to 'fast track' the LLP Bill (i.e. for Parliamentary processes the Bill was to leap-frog the legislation already announced and was to

be allocated fairly minimal debating time). Senior Jersey politicians assured accountancy firms that the Bill would simply be "nodded through" (Accountancy, September 1996, p. 29). These assurances were not accompanied by any commensurate obligations to citizens, consumers or stakeholders, whether in Jersey or outside (Cousins et al., 1998). Concerned about the apparent haste in enacting legislation that relatively few people claimed to understand, Deputy Gary Matthews, a member of the Jersey States sought advice from outside the Island. Using this information, he challenged the sweeping liability concessions for accountancy firms and their consequences for people suffering from audit failures. He proposed some amendments (see States of Jersey, 1997, p. 21) and raised the level of the debate.

Consequences of Prostitution

This debate was unwelcome and unexpected, but raised concerns about Jersey prostituting its legislature to all comers. As a consequence, the Parliamentary passage of the LLP legislation became slower (Financial Times, 7 August 1996, p. 6). Jersey's political establishment took exception to the extended scrutiny and consequential delay in passing the LLP Bill. Opponents of the Bill were criticised for seeking advice from individuals outside the Island (Jersey Evening Post, 19 June 1996, p. 17; Manx Independent, 5 July 1996, p. 1). They were described as "enemies of the state"[30]. An organised hate campaign was launched against Gary Matthews. His wife and children were threatened and his life was made generally miserable. He could not find work in Jersey. In the October 1996 elections, the establishment fielded 'business candidates' against him and campaigned under the banner, 'Don't rock the boat'. Gary Matthews lost his seat in the States and was eventually driven out of the island.

The opposition mobilised by Matthews ensured that the proposed legislation would not have a smooth ride and Jersey soon became embroiled in an unprecedented political crisis. On 2nd July 1996, the Jersey States approved (by a vote of 25 to 19) the draft of the Law, subject to detailed scrutiny later on. Six members of the States walked out in protest as somewhat unusually the Bailiff gave the Attorney-General (not elected by the people) permission to address the States over the legal implications of the proposed legislation. In the event the Attorney-General did not address parliament, but Senator Stuart Syvret questioned whether the intention was to influence the political scrutiny of the

[30] [30]A phrase repeated during the Parliamentary proceedings on 19th May 1998 when Jersey sought to pass the insolvency provisions relating to LLPs. 95 pages of legislation was passed in less than 30 minutes. Most of this time was used to attack Prem Sikka who had distributed notes on the shortcomings of the LLP insolvency provisions.

Bill. The Bailiff admonished him. Another Deputy (Derek Carter) felt that it was 'distasteful' to invite two accountancy firms to draft the law. At this point, Senator Reg Jeune, consultant to Mourant du Feu & Jeune, intervened to support the proposed legislation.

At the next sitting on 23rd July 1996, Senator Syvret claimed that Senator Jeune had a financial interest in supporting the legislation as the initial discussions about using Jersey for the LLP legislation were advanced by the law firm Mourant du Feu & Jeune and its client Price Waterhouse. Syvret claimed that the incident 'reeked of sleaze' and suggested that Senator Jeune should refrain from taking any further part in the debates. The Bailiff admonished Senator Syvret. On 30th July, the Bailiff asked Syvret to apologise for his comments. Syvret refused and was ordered to leave the Jersey States. At the next meeting on 3rd September, Jersey States voted by 36 to 3 to 'name' Syvret after he again refused to withdraw his comments. At this point, the Bailiff decided that Syvret's suspension from the Jersey States should remain in effect until he apologised and withdrew his allegations against Senator Jeune. Syvret wanted to read out a personal statement but was not allowed to. The Bailiff also used his prerogative powers to silence attempts to speak by Deputies Gary Matthews and Bob Hill. At the next sitting on 23rd September 1996, Syvret again tried to make a personal statement but was denied. The Bailiff now stated that Syvret was "indefinitely barred" from the House. Syvret called for a States committee of inquiry into the affair. Meanwhile Syvret widened the debate by talking to the Financial Times, Sunday Business, the Wall Street Journal and BBC Television (*Newsnight*, 14 November 1996).

On 15th January 1997, the Bailiff's consultative panel met and discussed the possibility of permanently expelling Senator Syvret. The Greffier of the States was sent to London to research procedures for indefinite expulsion, but the House of Commons Clerks told him that the Commons would not expel a member in such circumstances (Mitchell and Sikka, 1999, p. 8). The UK Home Office, responsible for good governance of the island, was asked to intervene. Its public position was that the "Home Secretary was satisfied that Senator Syvret's suspension was within the powers of the States and was accordingly lawful ….. Home Secretary could find no grounds for taking any action" (letter from Home Office to Austin Mitchell, 7 February 1997).

On 14th January 1997, a proposition from Deputy Simon Crowcroft, designed to allow Senator Syvret (who had been expelled on 30th July 1996) to return to the House without any further punishment or apology, was not allowed on the

agenda by the Bailiff. On 17th February 1997, a Jersey States Committee (State of Jersey, 1997) met in private to hear evidence (the Committee had members who had already supported the LLP Bill and voted against Syvret) about the events leading up to the introduction of the LLP law and concluded that many mistakes were made. The eventual report vindicated the position adopted by Gary Matthews and other critics. However, the committee only convened after the October 1996 elections. With a smear campaign against him Matthews had already lost his seat.

With mounting public criticism and international visibility, the States of Jersey (on 18th February 1997) invited Syvret to put his side of the story and asked him to attend the House on 4th March. On 28th February 1997, an Early Day Motion in the UK House of Commons tabled by Austin Mitchell and supported by Labour and Conservative MPs asked that Stuart Syvret be restored to the Jersey States. On 4th March 1997, Syvret returned to the House to make his statement. He refused to withdraw his earlier remarks. The House censured Syvret by 45 votes to 2. On 18th March Syvret formally returned to the House. In July 1997, he launched a legal action against the Bailiff for breach of his human rights. Needless to say, the Jersey establishment was not going to permit any of that. Subsequently, Syvret took his case to the European Court of Human Rights.

The initial LLP Bill was completed several months behind schedule in late 1996 and sent for the Royal Assent. Despite objections from 82 members of the UK House of Commons (Early Day Motion No. 100, dated 30 October 1996), the Privy Council approved it (Sunday Business, 3 November 1996, p. 8; Accountancy, December 1996, p. 11). However, due to the shortcomings of its insolvency provisions, the Bill could not be formally enacted. To maintain pressure on Jersey and the UK government to give liability concessions to accountancy firms, the firms continued to claim that they were keen to locate in Jersey (Financial Times, 25 September 1996, p. 11; Accountancy, November 1996, p. 19). In 1998, despite serious shortcomings of the proposals, Jersey finally added the insolvency provisions to the legislation (Jersey Evening Post, 20 April 1998, p. 8-9). To apply pressure on the UK government, Ernst & Young said that it was "actively considering" locating in Jersey (Accountancy Age, 4 June 1998, page 9). Some observers noted that Ernst & Young and Price Waterhouse "want to keep the threat of moving "off-shore" as a cosh with which to threaten the [UK] government if it fails to come up with a workable LLP law" (Financial Times, 11 June 1998, p. 11).

In November 2000, the president of Jersey's Finance and Economics Committee

informed Jersey States that “no LLP has been registered” (Jersey Evening Post, 29 November 2000). In practice, there never was any possibility that major firms would shut-up shop, give up their state guaranteed monopoly of external auditing, sack all their clients and staff and open up new businesses in Jersey. To do so would have invited enormous complications with the UK employment, taxation and other laws. At best, they were looking for ‘brass plate’ operations whilst retaining their statutory monopolies and lucrative fees in the UK. International concerns about money laundering, secrecy and harmful tax made Jersey a major liability and even the “brass plate” from major firms did not materialise. The major aim of the auditing firms was to secure LLP concessions in the UK.

Major accountancy firms also cultivated links with New Labour, just like Enron’s auditors, Arthur Andersen, did to secure government contracts. The Party’s spokesperson on accountancy matters, Stuart Bell, was very enthusiastic for the introduction of LLP legislation in the UK and regularly met partners of major firms. New Labour’s business manifesto for the 1997 general election promised to introduce LLPs, though it remained silent on doing anything for the millions who suffer from audit failures. Stuart Bell failed to secure a government position after the May 1997 general election and within days became a consultant to Ernst & Young. In 1999, Peter Mandelson, the Secretary of State for Trade & Industry resigned as a result of public revelations about his finances. Within days, he too became a consultant to Ernst & Young. In 2000, the UK’s version of LLP legislation was passed through parliament and became the Limited Liability Partnership Act 2001. Ernst & Young became the first firm to take advantage of it and PricewaterhouseCoopers soon followed. Ernst & Young senior partner boasted, “it was the work that Ernst & Young and Price Waterhouse undertook with the Jersey government ….. that first concentrated the mind of UK ministers ….. I’ve no doubt whatsoever ourselves and Price Waterhouse drove it [LLP legislation] onto government’s agenda because of the Jersey idea” (Accountancy Age, 20 September 2001).

SUMMARY AND DISCUSSION

Jersey does not have political parties. In reality, it is ruled by a single party of big business. Encouraged by the lack of any restraint from British government, Jersey diversified its portfolio from secrecy, money laundering, tax avoidance/evasion into ‘regulation hopping’. As exemplified by the LLP legislation episode, major firms can draft their own laws and the Jersey government promises to simply nod them through with minimal scrutiny. Such

arrangements benefited the accountancy firms, keen to enjoy the UK's statutory monopoly of external auditing, but unwilling to accept liabilities arising out of their own shortcomings.

A favourite tactic of the Jersey establishment is to attack and ostracise dissenters and reformers. During the LLP debate, individuals like Gary Matthews and Stuart Syvret were discharging their proper responsibility and questioning a piece of legislation that was being 'fast tracked' and nodded through, all for the benefit of big business. The establishment did not like that. Gary Matthews and his family were driven off the island. Stuart Syvret, an elected representative of the people, was silenced by threats of indefinite expulsion from the Jersey States, a punishment unheard of in any democratic society. These are not the only tactics.

In a sworn affidavit relating to the Bank of Cantrade scandal, Jersey Advocate Philip Sinel questioned the role of the Bailiff, Deputy Bailiff, Attorney General and the Solicitor General. He also expressed concerns about the partiality of Jersey's Royal Court. The response of the Jersey government was to silence him by charging him with professional misconduct. It backfired and Jersey government had to pay costs of £100,000 (Jersey Evening Post, 30 May 2000).

Jersey's establishment does not like scrutiny of its shady practices and will go to enormous lengths to silence criticisms. After researching the politics of Jersey Austin Mitchell and Prem Sikka wanted to increase public awareness of its practices and submitted a paper titled, "*Jersey: Auditors' Liabilities versus People's Rights*" (Mitchell and Sikka, 1999) to *Political Quarterly* for publication. Unknown to the authors, a director of Shandwicks, the PR firm that spins for the Jersey's establishment, contacted the editor because "we had picked up on the grapevine that you [the editor] might have received an article for publication" (Letter from Chris Savage (Shandwicks director) to Tony Wright (editor of *Political Quarterly*), dated 23 March 1999). Possibly, taking this uninvited inquiry as a signal for further, less benign moves, the editor persuaded the publishers to obtain a legal opinion on the paper. With minor revisions the paper (Mitchell and Sikka, 1999) was published. Such a publication could always create possibilities for more. On 22nd February 1999, Shandwick, advisers to the Jersey government, wrote a letter of protest to the editor of *Political Quarterly*, alleging that the paper contained a mixture of "factual inaccuracy and muddled information". When invited to list the inaccuracies and muddled information, Shandwick's director declined (Letter dated 23 March 1999).

Tax havens and their spin doctors are very adept at finding ways of attacking their critics. In 1998, The Guardian newspaper published an article from Austin Mitchell (Mitchell, 1998). It was critical of financial regulation and the standards of government of Jersey (and the whole of the Channel Islands). Eventually, a very indignant response appeared, claiming that article was "not only intemperate but lacked any factual basis" (The Guardian, 16 July 1998, p. 21). The lengthy letter carried the signature of the Vice-President, States of Guernsey Advisory and Finance Committee. Unknown to the author(s) of the letter, someone had given the game away to the newspaper. The Guardian received a package showing numerous earlier drafts of the letter that a public relations firm Bell Pottinger (headed by Tim Bell, subsequently Lord Bell) had been busy advising the island's politicians (for the then fee of between £2,000 and £10,000) on how best to discredit critics (The Guardian, 16 July 1998, p. 20).

The UK is responsible for good governance of the Crown Dependencies. Yet where money and boltholes for the rich and major corporations are concerned, it tolerates institutionalised corruption. Jersey's establishment regularly wines and dines the UK Home Office and Foreign Office ministers, civil servants and leading parliamentarians to advance its interests. It hires 'spin doctors' to give good news and place stories through friendly journalists, most notably in The Times and the Financial Times (Mitchell and Sikka, 1999). All this helps Jersey to present a veneer of respectability. Britain preaches democracy to other nations, but right on its own doorstep, just 45 minutes flight away, Jersey is run for the benefit of the wealthy and their patrons. None of this has drawn action or indignation from the UK government.

CHAPTER 7
SUMMARY, CONCLUSIONS AND RECOMMENDATIONS FOR REFORM

Summary and Conclusions

Tax havens are oiling the wheels of globalisation. Transnational corporations use tax havens to avoid/evade taxes and regulation in host countries. Tax havens are part of the world disorder that facilitates secrecy, poor regulation and co-operation with international authorities prosecuting financial crime. They are involved in many scandals and have deprived millions of people of savings, investments, jobs, homes and decent public services. With major corporations and the wealthy avoiding/evading taxes, ordinary people are paying higher taxes for worsening public services. Transnational corporations are using tax havens as a lever to demand deregulation everywhere. Their demands are disabling elected governments from pursuing socially responsible economic policies.

Tax havens have vast wealth flows, but lack the most basic of regulatory structures. With almost £400 billion of financial deposits, Jersey does not have any major indigenous industry. The case of Jersey also shows that tax havens are ruled by a close-knit political oligarchy that does the bidding for international finance. There are no general elections, opposition in parliament, critical press, freedom of information or anything else. Jersey is effectively ruled by the party of big business. Jersey spends more than £250,000 on spin-doctors to paint a rosy picture and attack dissenters. In such an environment, critics are easily silenced and banished from the island. Rather than using its political energies to tackle in-built corruption, Jersey's political elites rent out their legislature to international business and willingly became a lever to enable major accountancy firms to squeeze liability concessions from the UK government.

The final responsibility for the good governance of many tax havens rests with the UK government, since many are based in the UK Crown Dependencies or Overseas Territories. Apart from the occasional kick (e.g. the Edwards report), the UK government does little. It actually protects the tax havens and advances their economic interest. For example, it has negotiated special trading terms for Jersey for its trade with the EU, without Jersey accepting any of its edicts on money laundering, banking secrecy, tax avoidance/evasion or anything else.

We are well aware that the tax haven regimes hire spin doctors to attack critics

and have friends in major corporations, press, parliament and governments. They construct novel arguments to maintain their privileges. So let us look at some of the most touted questions and statements.

Statement 1 – Offshore tax havens, like Jersey, serve a useful purpose as a conduit for capital into the UK economy. Therefore, they should be left alone.

Answer 1- Inward investment into the UK or EU member states has no need to route itself via tax havens other than where it is seeking to obtain an unfair tax or regulatory advantage, or where it wants to avoid disclosure of its provenance. Much of this capital is being laddered through successive tax havens for money laundering purposes. A significant proportion is flight capital in transit from the emerging economies, e.g. Russia, Brazil, Indonesia and Nigeria.

A large proportion of the capital that flows through the global money markets via offshore is not seeking long-term investment opportunities, but is engaged in speculative ventures such as currency trading, take-overs, futures trading, land speculation, insider trading, and evading taxes and exchange controls.

Tax haven facilities and tax regimes which provide preferential treatment to non-resident individuals and corporate entities drive the effective tax rate levied on the income/profit of mobile activities significantly below the tax levels in other countries. This tax competition can be economically harmful in a number of ways. For example, by shifting the tax burden from mobile activities, e.g. financial services, to less mobile sectors, e.g. manufacturing, and from capital to labour and other resources; by distorting financial and real investment flows; by undermining the integrity and equity of tax structures ("taxes are for the little people"); by discouraging taxpayer compliance; by increasing the administrative burden of revenue collection.

It has been argued that low tax regimes act as a useful deterrent to high tax governments in other jurisdictions. Such an argument touches upon profound matters concerning the right of a sovereign (or non-sovereign) state to organise its affairs in a way which interferes with the democratic process of other states – the right to tax being a crucial part of the democratic process. Most tax havens ringfence key aspects of their tax regime from the local economy. For example, Jersey trading companies are not eligible for exempt company status, and the international business corporation facility, which provides for effective tax rates of less than 2 per cent on profits. This is available exclusively to businesses which do not conduct any trading activity on Jersey.

Statement 2: It is not fair to blame offshore tax havens for being low tax areas and therefore attractive to wealthy individuals and global corporations.

Answer 2 – The Channel Islands and the Isle of Man have been identified as tax havens by the OECD, i.e. no/low effective tax rates, ringfencing of tax regimes, lack of transparency, lack of effective exchange of information. Over the past decade, some have actively introduced changes such as exempt company status, the international business company status, enacting legislation at the behest of major businesses (e.g. LLP legislation in Jersey). Local legislation allows for punitive measures to be taken against those who disclose information. There is no effective protection for whistle-blowers, or consumer protection laws.

Statement 3 - Even if tax havens are engaged in harmful tax competition, is it not the case that the Crown Dependencies (CDs) enjoy political and fiscal autonomy and the UK Government and other external bodies do not have the right to interfere in either of these areas?

Answer 3 - The UK Government has responsibility for ensuring the good governance of the CDs. It therefore follows that the UK Government is ultimately responsible at the international level if its territories engage in socially and economically harmful tax competition and other anti-social activities. The fact that the UK Government has abdicated its responsibilities does not negate its right to adopt protective measures against harmful tax practices.

The OECD (1998) states that "countries that have particular political, economic or other links with tax havens [should] ensure that these links do not contribute to harmful tax competition and, in particular, that countries that have dependencies that are tax havens ensure that the links they have with these tax havens are not used in a way that increase or promote harmful tax competition (recommendation 17)" It also states that "At a minimum these ties should not be used to assist the relevant countries or dependencies in engaging in harmful tax competition. Also, countries that have such ties should consider using them to reduce the harmful tax competition resulting from the existence of these tax havens." (para 153). Furthermore the Crown Dependencies are de facto members of the OECD by virtue of their relationship to the UK. It therefore follows that the OECD guidelines for dealing with harmful preferential tax regimes in member countries apply to these CDs.

Statement 4 - Is it fair to blame offshore finance centres for money-laundering and fiscal crimes which are global in their nature? Is it not the case that the regulatory regimes in Jersey are broadly comparable to the UK system?

Answer 4 - A regulatory regime is only as effective as its enforcement. The secrecy arrangements facilitated by the offshore world do not easily enable regulators to collar either the criminal or the crime. The extensive laddering of transactions through offshore trusts and companies, combined with the non-disclosure of beneficial ownership and control (through the use of nominees and proxy shareholders/directors) creates a secrecy space which is virtually impossible to penetrate without extensive and rapid co-operation from the authorities in all of the jurisdictions concerned.

The cultural shift of the past quarter century has engendered a degree of ambivalence towards financial crime. Bending the rules for personal gain is regarded as acceptable business (e.g. Jersey's Cantrade scandal, Barings, BCCI, Maxwell, Guinness, Resort Hotels, Enron). Jersey and other tax havens occasionally seek to make headlines by taking high-profile actions against ‘rogues’, but Edwards (UK Home Office, 1998) reveals that the Jersey Financial Services Commission was under-resourced in terms of staff numbers and relevant experience. That still remains the case.

Statement 5 - If the Crown Dependencies were no longer able to provide tax haven and offshore finance centre activities, these activities would move to even less acceptable offshore centres, e.g. Sao Tome, Netherlands Antilles, etc. Is it not preferable to keep these activities closer to home where they can be more closely scrutinised by the UK authorities?

Answer 5 - An ethically bankrupt argument. What is required is a co-ordinated global effort to eliminate harmful tax competition. The current position is that many of the tax havens are located in Crown Dependencies or UK overseas territories. Their very existence suggests that the UK government encourages their activities. Importantly, places like Jersey have marketed themselves as premier finance centres, and as such are widely perceived to be the final rung of the money-laundering ladder. Paradoxically this perception makes Jersey and Guernsey even more attractive to money launderers. According to Richard Syvret, now retired CEO of Jersey’s Financial Services Department, “any jurisdiction with a reputation as good as Jersey’s is going to find itself more and more attractive to the criminal element.” (*BBC TV - Close-Up ‘Storm in the Haven’* 14th November 1996.

Statement 6 - What right does the UK or the European Union (EU) have to prevent private individuals and companies from using tax havens to establish tax efficient arrangements to protect the value of their assets?

Answer 6 - The use of the term 'efficiency' by tax planners provides an interesting illustration of how words can be used to form opinion. The reality of tax havens is that they are used by wealthy individuals and corporations to establish vehicles which enable them to avoid/evade tax in places where they either reside or undertake business activity. Whilst tax avoidance is legal and tax evasion is illegal, neither is ethical or efficient in the economic sense. Both involve free-riding on the public facilities funded by ordinary citizens. Both distort investment patterns by shifting the tax burden away from capital to less mobile tax bases, such as labour, property and consumption. Both contribute to moral and social corrosion by discouraging the compliance of all taxpayers.

At worst, tax avoidance and evasion can cause the complete failure of liberal states, as evidenced by the Venezuelan and Russian experiences. Tax avoidance is a fundamentally anti-democratic activity, in that it is used by individuals and companies to undermine the integrity and the citizens' contract with the state. It is not acceptable for tax havens to justify their free-riding activities by seeking to legitimise tax avoidance.

Reforming Tax Havens

Major nations have powers to shackle tax havens. For example, after the September 11th, 2001 attacks on New York, the US government wanted information on the financial links of Osama bin Laden and his organisation. The trail pointed to the Bahamas. When a Bahamas bank refused to open its records, the U.S. had it cut off from the world's wire transfer systems and the bank changed its mind within hours (Daily News, 18 January 2002). However, the same political will is absent when Western governments deal with tax avoidance/evasion, banking secrecy and regulation hopping. One possible reason is that too many major corporations are using tax havens to slash their tax bills. The same corporations are also funding political parties and institutions. For example, since 1990, Enron has given away US$5.9 billion in political contributions (The Observer Business, 3 February 2002, p. 8), including donations to the presidential election campaign of George W. Bush. It contributed £38,000 to the 1998 Labour Party conference. None asked any questions about Enron's affairs. As one commentator put it, "Enron's size (it

was at one point the 'seventh largest corporation in the US') was a numerical illusion, built on an accounting convention that allowed it to book full amount of energy trade as sales, not just its own margin. Just as fictional were its earnings, a combination of financial manipulation ('innovative transaction structures' as the prospectus for one of its off-balance sheet partnerships boasted ...." (The Observer Business, 3 February 2002, p. 8). Some 900 offshore companies registered in a variety of tax havens played a prominent role in Enron's 'innovative transaction structures', allowing the company's management to create a monster that escaped taxes and deceived its employees, pensions scheme members, shareholders, suppliers and creditors. Yet no regulator scrutinised the globalisation promoted by Enron and its offshore satellites.

In 2000, the OECD wanted to introduce a withholding tax so that an amount could be deducted from all money transfers to tax havens. Those with legitimate dealings could offset the tax credit against their total tax bill. But major companies were not happy with that. They had invested heavily in political parties and now it was payback time. Upon becoming the US President, one of the first acts of George W. Bush was to pull the rug from the under the OECD proposals. With support from the World Trade Organisation (WTO) the US government argued that the tax havens should be free to pursue any policies that they wanted and that tax competition was OK. This was hardly surprising as many US corporations, such as General Motors, Boeing, Microsoft and others, have set up skeleton companies in offshore havens to enable them to slash their tax bills. In the global competition stakes, offshore operations enable transnational companies to cut their tax bills and compete with considerable advantage. The costs are dumped on to ordinary people. They do this with patronage from politicians and governments.

People expect governments and politicians to shackle tax havens and provide decent levels of public services. But governments and political parties have been bought out by big business. Rather than cleaning up tax havens, politicians have been using them to gain narrow personal advantages. For example, Labour's Lord Levy of Mill Hill, who donated some £7 million to the Party, used the offshore haven of Guernsey to slash his tax bills (The Times, 26 June 2000; 10 July 2000). Geoffrey Robinson, one time Labour Paymaster-General also used Guernsey to minimise his taxes. Jeffrey Archer, the former Chairman of the Conservative Party, is facing an Inland Revenue inquiry into allegations that he evaded UK taxes by using Jersey (The Guardian, 20 July 2001). The Conservative Party had some 44 secret bank accounts in offshore havens (The

Times, 3 September 2000)[31]. One time Conservative Party treasurer Lord Michael Ashcroft played a major role in creating the offshore sector in Belize to advance his financial interests (The Times, 1 August 2000). Germany's Christian Democratic party was alleged to have used bank accounts in Switzerland and Lichtenstein to avoid German taxes and hide sources of possibly illegal donations (The Times, 16 February 2000). The events of September 11th 2001 and the realisation that tax havens cannot continue to deprive the people of decent public services will force a rethink.

Issues like harmful tax competition, money laundering, banking secrecy, terrorist funding, tax avoidance/evasion will not go away. Ordinary people are not content to pay higher and higher taxes whilst major corporations accept public subsidies and avoid taxes. No one is going to accept that drug traffickers and money launderers can continue to hide their loot. People want a better health service, education, pensions, transport and social infrastructure. Political parties have to make choices. They either side with the people or continue to advance the narrow interests of major companies and a rich elite. Ordinary people can take action by shunning the goods and services of banks and companies that hide behind secretive offshore operations. They can boycott trade with the tax havens and support pressure groups that demand better public services. Better services can be had by forcing the rich and major corporations to pay their fair share of taxes.

Tax havens will not voluntarily agree to major reforms. A multilateral approach to tax avoidance/evasion, corruption and money laundering is needed. No bank should be allowed to have brass plate operations anywhere in world. Where companies are avoiding taxes through artificial transaction and shell companies located in offshore havens, the host countries should levy taxes based upon estimated local revenues, market shares and profits. Those refusing to pay taxes should not be allowed to trade in the host jurisdictions. Transfer pricing rules that seek to artificially avoid taxes in host countries should be declared unlawful. Accountants and lawyers drawing up tax evasion schemes through artificial companies and creative financial transactions should be made personally liable for the lost taxes. Major corporations should be required to publish a list of all the companies, including those located in offshore tax havens, that they trade through and explain their purpose, profit and income. No one should be allowed to hide behind nominee directors. If the overall burden of corporation tax is less than the local rate, the directors of companies should be required to explain the reasons. The companies violating the above should forego any export, tax (e.g. capital allowances) and credit subsidies.

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[31] These were discovered by the 1998 Neill inquiry into political funding.

The local population of many tax havens rarely benefits from the monies stashed there. Many argue that without their financial activities many tax havens would not be able to survive. These economies should be helped by the United Nations to diversify. Major western nations should restructure the terms of the global trade so that many smaller economies can get a good price for their goods, produce and services. A special committee of the United Nations should be created to oversee the trade of all tax havens. It should also create information sharing standards, anti crime, tax evasion and money laundering regulations that all members states should be obliged to follow. Tax havens should be democratised so that the local population can object to their predatory activities.

None of this would be popular with corporations or the wealthy elite using the tax havens. But the social cost of indulging them is already too great. We should all ensure that the fiddle factories of tax havens are brought to the attention of friends and neighbours to ensure that the trade of tax havens is given visibility in the press and political circles.

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