

**Toby Brookfield**

**From:** Paul Kelly  
**Sent:** 26 April 2006 09:40  
**To:** Toby Brookfield  
**Subject:** FW: LBA

13:50  
14:30 -  
17:30 -

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**From:** Billy Grace [mailto:billy.grace@careyolsen.com]  
**Sent:** Tue 25/04/2006 16:07  
**To:** Paul Kelly  
**Cc:** Robert Clifford; Clair Sanders; Clair Sanders  
**Subject:** RE: LBA

Paul

My final substantive paragraph below frames the issue. What matters to the JFSC is the extent of the overlap between the two businesses and their personnel both historically and going forwards. As this structure came to Investec in November 2001, please can you provide detail of overlap from that point. For obvious reasons I have made the principal person issue a key element of my request but the point goes further. Specifically, if any of the other people mentioned at the outset of your report from Investec Guernsey have or have had in the past a role in Investec Jersey then please let me know.

We need to be able to put together a short paragraph for the JFSC letter which is both 100% accurate and representative of the overlap and does the best job possible to isolate the incident in to being considered as a Guernsey problem - not a Jersey one.

Regards

Billy Grace

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GSJ  
IB 18.4.2002  
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-----Original Message-----

**From:** Paul Kelly [mailto:Paul.Kelly@investectrust.com]  
**Sent:** 25 April 2006 14:21  
**To:** Billy Grace  
**Cc:** Robert Clifford; Clair Sanders  
**Subject:** RE: LBA

Billy, re your request for further information and a list of principal persons in both islands are you only concerned with the position as at today ?

Regards  
Paul

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**From:** Billy Grace [mailto:billy.grace@careyolsen.com]  
**Sent:** Fri 21/04/2006 18:16  
**To:** Paul Kelly  
**Cc:** Robert Clifford; Clair Sanders

**Subject:** LBA

Paul

Thank you for providing me with various documents which I have considered carefully. My draft letter to JFSC will be with you by 9.30 on Monday morning subject only to the new requests made below. I will also provide to you written advice by that time in relation to the filing of an SAR and other issues so that you have in place Jersey advice proportionate to the issues from a Jersey perspective. I will try and keep that advice as brief as possible but it is looking a little longer than 2 pages.

I have considered the SAR issue and that written advice will say that there is a sensible basis for filing an SAR in Jersey. It is exceedingly unlikely that Jersey's AG with his generally bullish attitude and particular attachment to corruption and SCB will not want to investigate allegedly corrupt payments passing through a Jersey bank account with a view to a Jersey prosecution. An institution outside of Jersey is as capable of being caught up in that investigation and at risk of charge (as are directors and staff) as someone in Jersey. Accordingly Investec Guernsey should file an SAR in Jersey. Because of Ian Burn's position within Investec Jersey it is also advisable for Investec Jersey to file an SAR. While one may hope or expect that any criminal investigation against Investec is constrained to Guernsey, that cannot be guaranteed and, as my advice will show, there is a clear potential for offences being charged in Jersey. The risk is relatively much higher for Investec Guernsey than Investec Jersey. The SAR is needed because of the practical risk of prosecution and not merely because it will please the authorities or that it is an over cautious reaction to a serious situation. It is the product of clear and rational analysis and accordingly justified on any reasonable basis.

The following points are made with due respect to the fact that my role is not to comment on the Guernsey advice or compete with it. You want your advisers to work together for your common good. However there are matters arising from the Guernsey advice which impact on what I need to advise you on. Accordingly I am not criticising the Guernsey advice.

The Guernsey advice does not seem to consider whether there has been a predicate offence of corruption under Guernsey law or whether Investec's involvement is part of the alleged predicate corruption offence - aiding and abetting the corrupt payment or whether it is part of an alleged money laundering offence ie laundering the proceeds of the corrupt act. This is an important point for the Jersey position. The Guernsey advice also assumes that corruption is unarguably a predicate offence for the purposes of Guernsey's proceeds of crime legislation and no account seems to have been taken of the House of Lords case Montila [2004] UKHL 50. The situation in Jersey is that there is a real argument to be had as to whether that is the case. The positive aspect of that is that if Jersey's AG cannot prove that the predicate conduct is an offence under Jersey law or capable of being criminal conduct for the purposes of Jersey's proceeds of crime legislation then there may well be a defence to either a substantive corruption charge or to a money laundering offence based on it. I have a wealth of background know how on corruption issues in Jersey as Paul Sugden and I have worked on and spoken on corruption issues for a number of years.

The position in Guernsey on the equivalent of Jersey's Money Laundering Order may also be more vulnerable than the Guernsey advice suggests. The Jersey case of Caversham and Bell is so significant that it may well have a material impact on any prosecution decision taken in Guernsey. That case taken together with the recent JFSC guidance note on corruption and arms trading hints at a potentially more aggressive approach in Jersey. We will not be able to assume that Jersey's regulatory and investigatory authorities will let Guernsey both take the lead and be solely responsible for the outcome of this matter.

In order for me to complete my task I need a limited amount of further information from you. Please can you provide me with a list of any principal persons who are principal persons in both islands in addition to Ian Burns. We must be sensitive to the links between Investec Jersey and Guernsey and the extent to which they extend beyond Ian Burns being a principal person in both islands. Beyond the principal person issue it would be helpful if you could put together a short paragraph on the extent to which there is structural or operational overlap between the two islands. This is a material fact for the JFSC to take into account even at this early stage.

Please advise if you have been served yet with any form of production order in either island.

Regards

Billy Grace