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CONTROL OF SPECIAL PURPOSE VEHICLES

John Chadwick

1 This article[1] seeks to address some of the issues which arise in connection with the governance, management and control of what were described in the *Mahonia* case[2] as "orphan SPV's".

2 An SPV, or special purpose vehicle, is an entity, usually corporate, which has been established or acquired to meet a particular need: often, but not invariably, to be a participant in a single transaction with a pre-arranged counterparty. The characteristic of an "orphan SPV" is that it should not be owned or controlled by the person for whose special purpose it has been established; while, at the same time, that person (sometimes called "the arranger", but to whom I will refer as "the sponsor") should be able to predict, and rely upon, the manner in which, in practice, the SPV will carry out the transaction or transactions into which it is expected to enter. There is usually some compelling regulatory or fiscal reason why the SPV should be independently owned and independently controlled: that is to say owned and controlled by someone who is not the sponsor or itself owned or controlled by the sponsor. And there will be compelling commercial reasons why the SPV should carry out its role in a way which fulfils the special purpose of the sponsor: that is to say, in a way which the sponsor can predict with certainty in advance of the transaction. Those who act as directors or trustees of such entities are sometimes said to be providing "a commercial service of inevitability".[3]

3 It should be emphasised, at the outset, that there is no place in the administration of these entities for pretence. It is, of course, important to ensure that what is done in the course of acting as director or trustee is fully and properly documented; but it is no less important to ensure that what is documented has actually taken place. The possibility that the administration of an orphan SPV may be subjected to the most rigorous, critical and, indeed, hostile scrutiny by regulatory or fiscal authorities – including, perhaps, scrutiny in the courts and under oath – should never be overlooked. It is because the administration of these entities in Jersey has withstood such scrutiny in cases like *Mahonia* – and in other cases mentioned in this article – that Jersey has an enviable reputation for probity and competence. That is a reputation which must be guarded jealously.

4 It is necessary to identify the principles on which the courts in England and in the Channel Islands can be expected to act in determining where the control of an SPV really lies before going on to discuss some of the practical problems which may arise in the course of administering such an entity. A convenient point at which to start is a decision of the House of Lords on a tax appeal[4] in 1960. For the purposes of United Kingdom

[1] This article is based on a lecture delivered by Lord Justice Chadwick to members of Jersey Finance on 23 March 2007.
[2] *Mahonia Limited v West LB AG* [2004] EWHC 1938 (Comm)
[3] *Dextra Accessories Limited and others v Macdonald (HMIT)* [2002] UKSC SPC 00331; [2002] STC (SCD) 413.
[4] *Unit Construction Co Ltd v Bullock* [1960] AC 351

corporate tax legislation – or, at least for most purposes – “company” is defined to mean “a company resident in the United Kingdom”. It was decided[5] just over one hundred years ago that residence, in that context, is not determined by the place of incorporation. Rather, a company is resident “where its central management and control actually abide”. So, in a case where the United Kingdom Revenue are seeking to levy tax on the profits of a company incorporated outside the United Kingdom, it is will often be necessary to decide from where control of that company is exercised. The principles have developed in that context.

5 The circumstances in which that question fell for decision in 1960 were these. The appellant company, Unit Construction Co Ltd, was the wholly owned subsidiary of an English company, Alfred Booth & Co Ltd. That company had three other subsidiaries, each incorporated in Kenya and having its registered office in Nairobi. Unit Construction had made payments to the three African subsidiaries which it claimed to be entitled to deduct for the purposes of its own assessment to United Kingdom income tax. Whether it was entitled to do so turned on whether the African subsidiaries were, themselves, resident in the United Kingdom.

6 The three African subsidiaries each had a local board of directors. The articles of association, in each case, provided that managerial power was vested in the directors and that meetings of the directors could not validly be held in the United Kingdom. But, in practice, from 1952 every decision of any importance which concerned the running of the business of those subsidiaries in Kenya was taken by the directors of the parent company in London. That had come about because the subsidiaries had been operating so unsuccessfully that the parent company had decided that (to use the words of the finding made by the Special Commissioners) “it was unwise to allow them to be managed in Africa any longer, and . . . their management must be taken over by Alfred Booth & Co Ltd in London”. As Lord Radcliffe observed[6], on those facts the seat of the central management and control of the African subsidiaries changed and passed from Africa to London: it was a straightforward case of *de facto* control being actively exercised in the United Kingdom while the local directors “stood aside” from their duties as such and never purported to function as a board of management. So, in relation to years of assessment after 1952, the African subsidiaries were to be treated as resident in the United Kingdom.

7 The *Unit Construction* case was not one in which the subsidiaries were SPVs; nor were they orphans. But there are two features of the decision which are of importance in the context of orphan SPVs. First, it was not determinative of the question where the seat of management and control of the African companies actually abided that the articles of association of those companies required them to be managed by their own local boards of directors meeting outside the United Kingdom. The House of Lords accepted[7] that management by the parent board in London was unauthorised, irregular and indeed, as a

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[5] In *De Beers Consolidated Mines Ltd v Howe* [1906] AC 455
[6] [1960] AC 351, 364
[7] *Ibid*, Viscount Simonds at 363, Lord Radcliffe at 364, Lord Cohen at 372-3, Lord Keith of Avonholm at 375

matter of corporate law, unlawful. But the relevant inquiry was as to what had actually happened: not as to what ought to have happened under the constitutional documents. Secondly, the local boards were held to have "stood aside". That was not a case in which the local boards had acted in accordance with the parent company's directions: it was a case in which the local boards had allowed the parent board to usurp their functions. As Lord Cohen pointed out[8], that feature made the facts most unusual: it was "surely exceptional for a parent company to usurp the control; it usually operates through the boards of the subsidiary companies".

8 The *Unit Construction* case is a convenient starting point because it directs attention to the need to focus on what is actually happening; rather than what ought to be happening under the company's constitution. It shows, also, the danger where the constitutional organ through which control ought to be exercised – in that case, the local board of directors – permits its functions to be usurped or overridden by an outsider – in that case, the parent company.

9 A case[9] on the other side of the line – and on the other side of the world – came before the High Court of Australia in 1972. The question in that case, so far as relevant in the present context, was whether a company, Esquire Nominees Limited, was resident in Norfolk Island, an Australian offshore territory. The company was incorporated in Norfolk Island; it had its office there; all the directors and shareholders were resident there; and all meetings of the company and of the directors were held there. The business of the company was to be trustee of certain trusts set up by clients of, and on the advice of, a firm of accountants based in Melbourne. The Commissioner of Taxation contended that the directors of the trustee company merely carried out directions given to them by the firm of accountants, so that the actual management and control of the company was in Australia. It was said that the activities of the company were confined to acting as trustee of trusts set up on the advice of the accountants; that the administration of the various trusts followed a general pattern which had been laid down by that firm in advance; and that detailed agenda for meetings of the directors of the company, and of the company itself, were prepared by the accountants in advance.

10 The trial judge rejected the contention that the activities of the company were controlled from Australia. He did so in terms which are reflected in subsequent decisions in Jersey and in London. It is instructive to note what he said -

> ". . . it is obvious that what the appellant did in relation to the Manolas Trust was done in the course of carrying out a scheme formulated in Australia and that [the accountants] not only communicated to the appellant particulars of the scheme but advised the appellant in detail of the manner in which it should be carried out. But if it be accepted that the appellant did what [the accountants] told it to do in the administration of the various trusts, it does not follow that the control and management

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8 *Ibid* 374

9 *Esquire Nominees Limited v The Commissioner of Taxation of the Commonwealth of Australia* 129 CLR 177

of the appellant lay with [the accountants]. That firm had no power to control the directors of the appellant in the exercise of their power or the ‘A’ shareholders in the exercise of their voting rights. Although it is doubtless true that steps could have been taken to remove the appellant from its position as trustee of one or more of the trust estates, [the accountants] could not control the appellant in the conduct of its business of a trustee company. The firm had power to exert influence, and perhaps strong influence, on the appellant, but that is all. The directors in fact complied with the wishes of [the accountants] because they accepted that it was in the interests of the beneficiaries, having regard to the tax position, that they should give effect to the scheme. If, on the other hand, [the accountants] had instructed the directors to do something which they considered improper or inadvisable, I do not believe that they would have acted on the instruction. It was apparent that it was intended that the appellant should carry on its business of trustee company on Norfolk Island. It was in my opinion managed and controlled there, none the less because control was exercised in a manner which accorded with the wishes of the interests in Australia. . . .”[10]

11 That conclusion was not challenged when the case went on appeal to the full Court on other points. Two of the four members of the full Court[11] said, in terms, that they agreed with it.

12 The importance of the decision in *Esquire Nominees Limited* is that it was accepted that the fact that directors of an SPV company were accustomed to act in accordance with the wishes of the sponsor – in that case, the wishes of accountants as adviser to their client – did not lead to the conclusion that the company was in fact controlled by the sponsor. The critical feature lies in the judge’s finding that: “If [the accountants] had instructed the directors to do something which they considered improper or inadvisable, I do not believe that they would have acted on the instruction”.

13 That approach was followed in the United Kingdom in 1995, in a decision[12] of the special commissioners on the residence of a Jersey incorporated SPV company, Untelrab Limited. There were three directors of the company: two based in Bermuda and the third based in Jersey. Board meetings were held in Bermuda, two or three times a year. The meetings were not attended by the Jersey based director; but he was sent copies of the minutes. The company had been set up for the specific purpose of receiving a payment which was to become due to its parent, Unigate plc, from Allied Breweries Ltd under a compensation agreement made in connection with the acquisition by Unigate of three Allied Breweries subsidiaries. The business of Untelrab was the receipt of monies from Allied Breweries; the investment of those monies; and the making of loans to other companies in the Unigate group. Requests for such loans usually originated from Unigate.

[10] *Ibid*, 190-1
[11] *Ibid*, Barwick CJ at 209, Menzies J at 220
[12] *Untelrab Ltd v McGregor, Unigate Guernsey Ltd v McGregor, Unigate Overseas Ltd v McGregor* [1996] STC (SCD) 1

14 The Special Commissioners reviewed the decisions in the two cases I have already mentioned – *Unit Construction* and *Esquire Nominees*. They derived a number of principles from the authorities, of which the following are relevant in the present context -

> ". . .that a determination [as to where the central management and control of a company actually abides] is a pure question of fact to be determined by a scrutiny of the course of business and trading; . . .; that although a board might do what it is told to do it did not follow that the control and management of the company lay with another, so long as the board exercised their discretion when coming to their decisions and would have refused to carry out an improper or unwise transaction; and that when deciding the issue . . . one should stand back from the detail and make up one's mind from the picture which the whole of the evidence presents." [13]

15 The special commissioners accepted[14] that the manner in which the board of Untelrab Limited carried out its role was close to the fine dividing line between doing what it was told and being controlled by the parent, Unigate plc; but were satisfied "from the picture which the whole of the evidence presents" that the board met in Bermuda and transacted the company's business there; that, at board meetings, proposals were discussed and decisions made by the two directors present "in the best interests of the company"; and that the directors would have refused to carry out any proposal which was improper or unreasonable. Unigate could have removed the directors; but could not control them in the exercise of their powers. The special commissioners observed that, although Untelrab was compliant to do the wishes of Unigate, "it did actually function in giving effect to its parent's wishes." By that they meant, I think, that the directors did actually address their minds to the question whether, in relation to each request for a loan, it was in the interests of Untelrab to comply with the request. A crucial question in cases of this type is whether the directors of the SPV company retain the power to say "No" to a proposed transaction; and can be expected to do so if their duty to the company so requires.

16 It is unnecessary to overload this article by reference to decided cases. But, before coming to discuss the *Mahonia* case,[15] I should mention two others: the decision of the United Kingdom Special Commissioners in a case[16] where an orphan SPV company, Regent Capital Trust Company (Jersey) Limited was used as a trustee of an employee benefit trust; and a decision of the Deputy Bailiff[17] in Jersey in relation to the administration of a family settlement.

17 In the first of those cases, Regent was owned by the partners of a Jersey law firm. The trust was established by the employer company on the advice of its auditors, Ernst & Young; and the administrative work in relation to trusts of which Regent was trustee was

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[13] *Ibid*, para 74
[14] *Ibid*, para 78
[15] [2004] EWHC 1938 (Comm)
[16] *Dextra Accessories Limited and others v MacDonald* [2002] UKSC SPC 00331; [2002] STC (SCD) 413
[17] *In re the Esteem Settlement* 2003 JLR 188.

carried out Ernst & Young's Jersey trust company. The underlying tax questions were whether allocations of funds within the trust to sub-funds for individual directors and their families, and loans from the sub-funds to the individual directors, were taxable as emoluments or earnings received by the directors as employees of the employer company. The relevant question, in the present context, was whether the sub-funds were under the control of the individual directors rather than under the control of Regent. It was said, on behalf of the United Kingdom revenue, that it was for practical purposes inevitable that Regent would comply with the wishes of the individual directors; monies allocated by the Regent to the respective sub-funds were to be regarded as at the absolute disposal of the individual directors because, in practice, Regent would always do as they required.

18 The Special Commissioners rejected that contention. They said this -

> ". . . The highest the case can be put is that the trustee is likely to comply with any reasonable request that is for the benefit of the beneficiaries, which is hardly surprising in the context of a trust established for the benefit of employees. This falls far short of saying that the trustee is a cipher who will do what it is told by the six [individuals]."

19 They described the director of Regent – a partner of the law firm and a trust law specialist - as "someone who well understood his duties as director of a trustee company". They described the Revenue's submissions as "[starting] from the premise that the employee benefit trust is nothing but a tax avoidance scheme and [seeking] to justify the conclusion from inferences from surrounding circumstances which do not add up to such justification". I should, perhaps, add that the case was eventually lost in the House of Lords[18] on another point. But the conclusion of the Special Commissioners on the issue of control was not challenged.

20 In the second of those cases[19] the Deputy Bailiff had to consider whether funds in settlement had, nonetheless, remained under the control of the settlor. The argument that the settlement was, in effect, a sham rested on the now familiar premise that the trustee was not exercising an independent judgment because it was accustomed to comply with the requests that were made to it. The Deputy Bailiff explained why that argument was misconceived in a passage[20] which, if I may say so, is perceptive and illuminating -

> "165 . . . .The approach that a trustee should adopt to a request will depend upon the nature of the request, the interests of other beneficiaries and all the surrounding circumstances. Certainly, if he is exercising his fiduciary powers in good faith, the trustee must be willing to reject a request if he thinks that this is the right course. But when a trustee concludes that the request is reasonable having regard to all the circumstances of the case and is in the interests of the beneficiary concerned, he should certainly not refuse the request simply in order to assert or prove his

[18] *MacDonald v Dextra Accessories Limited* [2005] UKHL 47; [2005] STC 1111
[19] *In re the Esteem Settlement* 2003 JLR 188.
[20] *Ibid*, 271-2, paras 165, 166

> independence. His duty remains at all time to act in good faith in the interests of his beneficiaries, not to act against those interests for improper reasons.
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> 166 . . . where the requests made of trustees are reasonable in the context of all the circumstances, it would be the exception rather than the rule for trustees to refuse such requests. Indeed, . . . one would expect to find that in the majority of trusts, there had not been a refusal by the trustees of a request by a settlor. This would no doubt be because, in the majority of cases, a settlor would be acting reasonably in the interests of himself and his family. This would particularly be so where there was a small close-knit family and where the settlor could be expected to be fully aware of what was in the interests of his family. Indeed, in almost all discretionary trusts, the settlor provides a letter of wishes which expresses informally his desires in relation to the settlement. Furthermore, he may change his wishes from time to time. [Trustees] are entitled . . . to take account of such wishes as the settlor may from time to time express provided, of course, that the trustees are not in any way bound by them. The trustees must reach their own independent conclusion having taken account of such wishes."

21 The Deputy Bailiff went on to observe that, although a lack of refusal may be indicative of the fact that the trustees have abdicated their fiduciary duties and are simply following the wishes of the settlor without further consideration, a lack of refusal may be equally consistent with a properly administered trust where the trustees have in good faith considered each request of the settlor, concluded that it is reasonable and concluded that it is proper to accede to such requests in the interests of one or more of the beneficiaries of the trust. One should not start from the premise that trustees must be acting improperly because they are accustomed to accede to the settlor's requests.

22 I turn, now, to the *Mahonia* case[21]. The facts are complex but, for present purposes, it is sufficient to summarise them briefly. Mahonia Limited was an SPV company incorporated in Jersey. It was incorporated at the request and for the purposes of JP Morgan Chase Bank. In the terms which I adopted earlier in this article, Mahonia was an orphan SPV and Chase was the sponsor. It was owned (although not directly) by a charitable trust of which the trustee was a trustee company associated with a firm of Jersey lawyers. The directors of Mahonia were partners in that firm.

23 Chase wished to use Mahonia as a vehicle for lending to Enron North America Corp ("ENAC"), a subsidiary of Enron Corporation. That was the "special purpose" for which Mahonia was established. In broad terms, Mahonia's transactions with ENAC were matched by parallel transactions between Chase and Mahonia. Following the collapse of Enron the end of 2001, Mahonia claimed in the Commercial Court, London, under a letter of credit issued by West LB (a German Bank) at the request and for the account of Enron on behalf of ENAC on 5 October 2001. West LB raised a number of defences; of which the

[21] *Mahonia Limited v West LB AG* [2004] EWHC 1938 (Comm)

only one that needs mention is that Mahonia and Chase were parties to a conspiracy to obtain the letter of credit by disguising the true nature of the transaction.

24 It was in the context of that defence that it was necessary to determine whether Mahonia was independent of Chase, or was controlled by Chase. The judge held[22] that Mahonia was not controlled by Chase. He found[23] that Mahonia entered into transactions only at Chase's invitation. Chase would structure a transaction in which it wished Mahonia to participate. It would then enquire of Mahonia's directors whether they were willing for Mahonia to do so. The crucial finding was that Mahonia (through its directors) was free to decide whether or not to participate. There was a need, which the directors recognised, to understand the overall purpose of the transaction in order to assess whether it was in the interests of Mahonia to participate, to assess the degree of risk, to be satisfied that no illegality was involved and to be satisfied that there would be a profit for Mahonia. In practice the transactions were structured so as to avoid (or reduce to a minimum) any risk to Mahonia and to ensure that Mahonia profited from the nominal fee which was payable to it for its participation. The judge said this -

> "52 . . . Whilst the directors . . . would always wish to conclude transactions at the behest of the arranger, and as lawyers they would wish to earn . . . legal fees from proposed transactions, they would also, as lawyers be conscious of their duties as directors of Mahonia to act in the best interest of the SPV and therefore to ensure that the SPV's risks were minimised, its expense covered and a small profit was made. If there were elements of the transaction with which the directors were unhappy, I find that they would have sought amendment, as they did from time to time, or refused to agree to Mahonia's participation."

25 That approach is wholly consistent with the approach of the High Court of Australia in *Esquire Nominees*[24] and in the other cases to which I have referred earlier. As I have said, a crucial question in cases of this type is whether the directors of the SPV company retain the power to say "No" to a proposed transaction; and can be expected to do so if their duty to the SPV company so requires.

26 I should add, for completeness, that that approach is consistent, also, with the approach of the English Court of Appeal[25] when it had to consider, recently, the residence of an orphan SPV company, Eulalia Holding BV, incorporated in the Netherlands. Eulalia had been acquired, on the advice of Price Waterhouse acting for United Kingdom clients, for the purposes of a capital gains tax avoidance scheme. The sole director was the trust company of a Dutch bank. Eulalia was used for a single transaction: the acquisition and disposal of shares in a BVI company through which the underlying assets were held. The trust company (as director of Eulalia) caused Eulalia to participate in the transaction in

[22] *Ibid*, para 58
[23] *Ibid*, paras 49 to 57
[24] 129 CLR 177
[25] In *Wood v Holden* [2006] EWCA Civ 26; [2006] STC 443.

accordance with the scheme devised by Price Waterhouse and on the basis of documents which Price Waterhouse had prepared. Although, as the Special Commissioners and the judge[26] accepted, Price Waterhouse intended and expected that Eulalia would make the decisions which it did make, there was no basis for an inference that Price Waterhouse (or anyone else) dictated what decision it should take; and it was inherently improbable that a major bank (or its trust company) would allow its actions to be dictated by a client's professional advisers (however eminent). On a true analysis the position was that there was no reason why Eulalia should not decide to do as it was requested; and ample reason why it should enter into the transaction, as it was expected that it would.

27 I have sought, through examination of judicial decisions, to identify the principles upon which courts in Jersey and in England can be expected to approach the question whether an SPV company is truly an orphan; or is, in truth, under the control of the sponsor. I do not think that those principles are in doubt. The orphan SPV can properly act in accordance with the wishes of the sponsor: provided, first, that it is free not to do so; and, secondly, that the directors understand, and are prepared to give effect to, their overriding duty to act in the company's interest. That duty may require that, on occasion, the directors do not allow the orphan SPV to act in accordance with the wishes of the sponsor.

28 What guidance can be given in relation to practical problems which may arise in the course of administering an orphan SPV. The problems can, I think, be addressed under two main heads. The first may be described as constitutional: the second as comprehensional.

29 The constitution of the SPV company must ensure that the sponsor does not have legal control. That precludes the sponsor from having a legal or beneficial interest in a controlling shareholding. It is probably safer that the sponsor has no interest as shareholder. The structure in *Mahonia* – where the shares in the SPV company were owned by a charitable trust – provides an obvious way in which this requirement can be met. The structure in *Esquire Nominees*, or in *Regent*, will suffice: provided it can be demonstrated that the shareholders are wholly independent of the sponsor.

30 The constitution of the SPV company should vest management control in the board of directors. It should provide for the appointment of directors by the shareholders. There are obvious dangers in giving the sponsor power to nominate directors; and dangers in giving the sponsor power to remove directors. Those dangers are better avoided. The constitution should specify the minimum number of directors. It should contain provisions as to the notice to be given in relation to board meetings; and should specify the quorum for a valid board meeting. A quorum of at least two directors is desirable: there are dangers in having a sole director, or in providing for a quorum of one.

[26] [2005] EWHC 547 (Ch); [2005] STC 789

31 In cases where the residence of the SPV is of importance – as it usually will be if the SPV is to be used for a fiscal purpose – it will be sensible to provide for the territory in which the board is to meet. That will not, of course, be determinative of residence if the board does, in fact, choose to meet elsewhere: as the *Unit Construction* case[27] demonstrates. But it may have the advantage of focussing attention on the need to exercise central management and control in the specified territory. An ancillary provision might provide that if a board meeting were held by video or telephone conference, the place of the meeting should be deemed to be the place at which (say) the chairman or a nominated director was present and taking part.

32 I have described the second of the problems as comprehensional. By that I mean that the directors of the SPV must have a proper understanding of their role; and that that understanding must be shared by the sponsor and its advisers.

33 The directors must understand that their first and overriding duty is to have regard to the interests of the SPV company; the desire to give effect to the wishes of the sponsor must be subordinate to that duty. In that context it is, I think, no coincidence that, in the Australian case, one of the two directors (Mr McIntyre) was a solicitor;[28] that a solicitor (Mr Morgan) was the Jersey based director of Untelrab Limited;[29] and that both Regent and Mahonia were owned and directed by Jersey law firms. The advantages of having an independent lawyer or other professional in the role of director of the SPV are twofold. Not only can he be expected to appreciate the scope of the fiduciary duties imposed on directors: his own professional standing is likely to provide a powerful incentive to observe those duties. Taking those factors together, the assertion by a professional that he would not accede to a request which he thought contrary to the company's interests is likely to carry weight: as it did in the cases that I have mentioned.

34 That is not, of course, to suggest that directors from other disciplines or with other experience or expertise will not inspire equal confidence; as in the case of the bank trustee company in the *Eulalia* case. But it is to suggest that the directors of an orphan SPV should be chosen with care; and with the requirement that they may need to demonstrate a proper understanding of their role in mind. The ability to meet those criteria from amongst the professional and banking community is an important feature of the financial services which the Channel Islands are able to offer.

35 Finally, I should emphasise that it is necessary that the sponsor and its advisers should have a proper understanding of the function of the SPV directors. The sponsor's wishes should not be couched in terms of instructions or demands; but in terms of proposals and requests. Its advisers should not lose sight of the fact that the SPV directors are not the sponsor's agents or employees: to do as they are told without question. If the course proposed is a sensible course and in the interests of the SPV

[27] [1960] AC 351
[28] 129 CLR 177, 181
[29] [1996] STC (SCD) 1, para 10

company, the directors are no less likely to follow it if they are merely requested to do so than they would be if they were instructed to do so: or if they are, then they are the wrong choice for the role. And, if the transaction comes under scrutiny, it will be easier to satisfy the regulator, the revenue or the court that both sponsor and orphan understood the nature of the relationship if the communications between them reflect that understanding. The key to a successful relationship, of course, lies in the need for the sponsor and its advisers to be attuned to what the directors of the orphan SPV can, and cannot, properly be asked to do.

Sir John Chadwick was a judge of the Courts of Appeal of Jersey and Guernsey between 1986 and 1993. He was appointed a judge of the High Court of England and Wales in 1991 and has been a Lord Justice of Appeal since 1997.