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# STATES OF JERSEY



## **JERSEY INNOVATION FUND: REVIEW OF MINISTERIAL RESPONSIBILITY FOLLOWING THE C&AG REPORT OF JANUARY 2017**

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**Presented to the States on 2nd May 2017  
by the Chief Minister**

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**STATES GREFFE**



**REVIEW OF MINISTERIAL RESPONSIBILITY IN  
RELATION TO THE  
JERSEY INNOVATION FUND FOLLOWING THE C&AG  
REPORT OF JANUARY 2017**

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**1 May 2017**

## Contents

<b>The terms of reference and nature of the review</b> .....	3
<b>Executive summary</b> .....	6
<b>Recommendations</b> .....	10
<b>The background to and statutory basis for the Fund</b> .....	12
The functioning of the JIF and the OTRs .....	24
<b>Duties and obligations of Jersey Ministers</b> .....	32
<b>THE TERMS OF REFERENCE</b> .....	37
<b>ITEM 1: THE POSITION AND RESPONSIBILITIES OF MINISTERS FOR THE JIF</b> .....	37
<b>The facts</b> .....	37
<b>The position from 12 November 2014-1 January 2016</b> .....	42
<i>The failure to report the delegation decision to the States under Article 30 of the 2005 Law and record a written Ministerial Decision</i> .....	42
<i>The delegation decision was made and everyone understood it to have been made</i> .....	43
<i>Lack of clarity as to the extent of Senator Ozouf’s responsibility and to whom he answered</i> .....	45
<i>Conclusion</i> .....	52
<b>Period from 1 January 2016 onwards</b> .....	53
<b>The need for a list of ministerial functions under Article 30A 2005 Law</b> .....	53
<b>ITEM 2: THE EXTENT THAT MINISTERIAL INVOLVEMENT CONTRIBUTED TO THE FAILINGS AND DEFICIENCIES IDENTIFIED IN 15.2-15.3 OF THE C&amp;AG REPORT.</b> .....	54
<b>15.2: THE ARRANGEMENTS FOR THE FUND AS DETAILED IN THE OTRs AND FD WERE INADEQUATE FROM THE OUTSET.</b> .....	54
<i>Ministerial responsibility/involvement in the above in so far as they relate to the content of the OTRs</i> .....	55
<i>Conclusions on the above</i> .....	57
<i>The Financial Direction and the amendments to the OTRs</i> .....	60
<b>15.3: THE OPERATION OF THE FUND WAS DEFICIENT IN MANY RESPECTS.</b> .....	61
<b>ITEM 3: OTHER ISSUES</b> .....	67
<i>Failure to bring forward proposals in relation to Phase 2</i> .....	67
<i>Appointments Commission</i> .....	68
<b>ANNEX 1</b> .....	70
<b>RELEVANT LAWS/POWERS/DIRECTIONS/GUIDANCE</b> .....	70

## The terms of reference and nature of the review

1. By decision of 17 January 2017 the Chief Minister informed the States Assembly that he intended to initiate a review into the conduct of ministers in relation to the Jersey Innovation Fund (“the JIF”). I have been asked to carry out that review. My terms of references are as follows:
  - *Identify the time periods in which different ministers had responsibility for the Jersey Innovation Fund and consider whether the involvement and interaction of different Ministers during such time periods contributed to the deficiencies and failings identified in the Report.*
  - *Consider the extent to which ministerial involvement in matters referred to in the Report of the Comptroller and Auditor General (“C&AG”), in particular matters identified at 15.2 & 15.3 of the conclusions and the conclusions generally, contributed to the deficiencies and failings identified in the Report.*
  - *Consider any other matters that the reviewer considers necessary and appropriate to paragraphs 1 and 2 above that arise during the course of the review.*
2. It is important to emphasise that my review does not cover the conduct of officers of the States of Jersey (“officers”). This review is confined solely to the acts or omissions of the relevant ministers themselves in the context of the operation of the JIF, as set out above. I mention this because as a matter of law, as made clear in paragraph 2 of the Code of Conduct and Practice for Ministers and Assistant Ministers (“the Code”):<sup>1</sup> *“Ministers have a duty to the States Assembly to account for matters for which they are responsible, including for the policies, decisions and actions of the departments and agencies which discharge their responsibilities”* (emphasis added). There is therefore “ministerial accountability” for the actions of those discharging their responsibilities, albeit that as a matter of reality ministers cannot, should not and do not discharge the functions of their officers for which they are ultimately accountable *qua* ‘minister’. Whilst a minister is answerable for any failings by their officers therefore, that is a different question to the one that I have been asked to consider, namely, whether the ministers themselves failed in some respect. That requires me to separate what can properly be expected of a minister in the discharge of his day to day work,

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<sup>1</sup> Code presented 10 February 2015. However, the same rule was present in the 2006 version of the Code: *“Ministers have a duty to the States to account, and be held to account, for the policies, decisions and actions of their department and any agencies for which their department has responsibility.”*

from what can be expected of a properly functioning department, that is, of officers operating within a department under the direction of the Chief Executive of the Department. The latter, and in particular, the conduct of officers in relation to the JIF is I understand, to be dealt with in a separate review. In addition, I understand that there will also be a further separate review to determine compliance with relevant rules and accounting standards in respect of each grant made by the JIF.

3. This review seeks to avoid trespassing on either of those separate investigations and for that reason I have spoken to the individuals charged with carrying out those reviews. Accordingly, following those reviews there may be ultimate ministerial responsibility for failures within the relevant department to which I have not referred.
4. The approach I have adopted to this review has been to consider whether ministers discharged their legal responsibilities in the wider public law sense, which includes whether they acted 'reasonably' in the discharge of their duties. In so far as possible I have sought to avoid asking whether in my view their conduct could in some way have been 'better'. I do not consider that it would be appropriate for me to address that question, which would involve me taking a wholly subjective approach and doing so moreover, with the benefit of hindsight.
5. That brings me to the nature of the criticisms in the C&AG Report, in respect of which I have been asked to consider ministerial responsibility. It is important to recall what the C&AG actually said in her Report, since it is in relation to those criticisms that I have been asked to consider the actions of ministers. I emphasise therefore the following four features of her report:
  - a. **First**, her criticisms related only to procedure. She did not call into question the concept or policy behind the JIF, something that was and is a matter for the States. Her criticisms were confined solely to elements of how the JIF was set up and how it was run.
  - b. **Secondly**, the C&AG did not attribute individual responsibility for any of the procedural failings she identified. For that reason, her report equally did not exonerate anyone. It was concerned not with individual responsibility but with identifying errors and failures more broadly.
  - c. **Thirdly**, the C&AG did not find that the JIF had failed; indeed, the question of what 'failure' of the Fund meant was itself an issue she discussed (as had the States). As

she noted in her report at paragraph 1.10, as at 31 December 2016 the provision for doubtful debts stood at £1,383,000 but *“the debts to which the provisions relate remain due and may subsequently be recovered in whole or in part”*.

- d. **Finally**, the C&AG did not find that the procedural errors she identified had been causative of any specific loan failures – or put another way, that had proper procedures been adopted, the loans would not have been made, or would have been made differently. Indeed, her Report did not consider the question of whether any specific loan should or should not have been made, or whether the terms of any loan specifically should have been different.
6. Accordingly, this review cannot and does not proceed on the basis that the JIF did not or cannot succeed over a longer term. Nor is it concerned with whether or not any specific loan decision should or should not have been made. It is concerned only with the question of whether ministers were responsible for the procedural failures in setting up and running the JIF, as identified by the C&AG.
  7. In assessing those questions, I have reviewed all the relevant laws and procedural rules, as set out in Annex 1. I have also considered the Minutes of the JIF Board as well as the individual loan recommendations made to the ministers and reviewed E-mails relating to the decision-making around the JIF. Finally, I interviewed Senators Maclean, Farnham and Ozouf, sending them detailed questions in advance and providing them with the possibility of giving me written responses, which Senator Farnham and Senator Ozouf both took up. I also met with the Chief Executive of the Chief Minister’s Department, John Richardson, the Chief Minister, Ian Gorst, and the C&AG, Karen McConnell and her Deputy, who provided me with background information for my review. I was given full assistance at all times, being provided with materials that I requested and answers to any relevant questions that I had in relation specifically to Jersey Administrative Law, from the Solicitor General, Mark Temple. I am grateful to all for their co-operation and assistance, which has enabled me to complete my review relatively swiftly. I am also grateful for the assistance of Eleanor Mitchell, a barrister at Matrix chambers, who worked with me to produce this report in the short time available.

## **Executive summary**

8. **The roles and responsibilities of different Ministers.** At the time the JIF was set up until 12 November 2014, Senator Maclean was Minister for Economic Development and Senator Ozouf was Minister for Treasury and Resources. Accordingly, Senator Maclean was responsible for loan decisions under the JIF.
9. On 12 November 2014 Senator Farnham became Minister for Economic Development and therefore took over responsibility for the JIF. Senator Maclean became Minister for Treasury and Resources. Both have continued in those positions to date. Senator Ozouf was appointed as Assistant Chief Minister.
10. Senator Farnham therefore had legal responsibility for the JIF from 12 November 2014. In accordance with the intention of the Chief Minister, he appointed Senator Ozouf as his Assistant Minister for Economic Development for an interim period pending transfer of the JIF (along with Digital, Innovation and Competition) to the Chief Minister's Department. Senator Farnham believed that in so doing, he had delegated his powers and responsibilities in relation to the JIF to Senator Ozouf. However, whilst I have found that he did delegate his powers, he did not make a written Ministerial Decision to that effect, nor was the delegation reported to the States in accordance with the requirements of Article 30 of the States of Jersey Law 2005 ("the 2005 Law").
11. I have concluded that these errors did not render the subsequent loan decisions made by Senator Ozouf (when Assistant Minister for Economic Development) under the JIF *ultra vires*. I take this view because Article 28 of the 2005 Law does not require delegation decisions to be taken in writing. At the relevant time, the 2006 Code of Conduct for Ministers ("the 2006 Code") was in effect and this too did not prescribe any particular form for Ministerial decisions. That changed on 10 February 2015 when the Code of Conduct and Practice for Ministers and Assistant Ministers ("the 2015 Code") came into force. The latter provides at paragraphs 3 and 4 of Appendix 3 that a Ministerial Decision should be in writing in a prescribed form. However, even assuming a breach of those provisions from 10 February 2015, this does not in my view affect the legality of the original delegation decision or ongoing position. A breach of a provision of the Code does not render action done under a statute, namely delegation under Article 28 of the 2005 Law, unlawful; it is simply a breach of the Code. Accordingly, a decision to grant a loan (taken on the basis of that delegated power) and made pursuant to the JIF Operational Terms of Reference ("OTRs"), which were adopted



under the Public Finances (Jersey) Law 2005 (“the Public Finances Law 2005”) was lawful irrespective of whether the original delegation was in compliance with the 2015 Code.

12. There can be no doubt that Senator Farnham took a decision to delegate his statutory powers in relation to the JIF and that Senator Farnham believed he had taken that decision in mid-December 2014 (when the 2006 Code did not mandate that decisions should be taken in writing). Nor can there be any doubt and that it was widely understood that Senator Ozouf had delegated powers in relation to the JIF. The confusion arose as to how this worked in practice, that is whether Senator Farnham retained responsibility for the JIF or whether it became the sole responsibility of Senator Ozouf.
13. As regards the fact that the decision to delegate was never reported to the States as required by Article 30 of the 2005 Law, again, my view is that this does not affect the legality of the loan decisions. Had the States intended the reporting requirement in Article 30 to have such a consequence, it would have said so. Accordingly, whilst the errors were obviously unfortunate they were clearly not intentional (their likely cause is explained further below). Moreover, the delegation took place before written Ministerial Decisions were required by the 2015 Code.
14. The Chief Minister’s intention had been that Senator Ozouf exercise responsibility for the JIF as Assistant Economic Development Minister only for a short interim period, pending transfer of the JIF to the Chief Minister’s department (in accordance with the Chief Minister’s intention as set out in R160/2014 and in draft regulations), at which point it was intended that Senator Ozouf would have responsibility for it in his capacity as Assistant Chief Minister (and indeed until mid-2015 it was intended that he would have full ministerial responsibility as head of a new Ministry).<sup>2</sup> That transfer was delayed.
15. From 12 November 2014 until 1 January 2016 there was accordingly a significant degree of confusion and according to Senator Ozouf, disagreement as to which minister held ultimate responsibility for the JIF. This confusion derived from the fact that the Chief Minister’s intention expressed in November 2014 to re-arrange Governmental responsibilities, which had to be agreed by the States pursuant to Article 29 of the 2005 Law, was not agreed until on 16 December 2015 when the States Assembly finally adopted the States of Jersey (Transfer of Functions No. 8) (Miscellaneous Transfers) Regulations 2015 (“the Transfer Regulations”),

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<sup>2</sup> The initial stated intention of the CM was that a new Ministry should be established, which would contain the JIF and of which Senator Ozouf would have been the Minister. This proposal was altered in mid-2014.

with effect from 1 January 2016. I was not asked to and have not examined the precise reasons for the delay. However, it is clear that the interim solution that was adopted, namely to make Senator Ozouf Assistant Minister for Economic Development with responsibility for Digital, Competition and Innovation lasted far longer than had originally been envisaged and caused problems connected with reporting lines, including the reporting lines of officers. It is not possible to say the extent to which this contributed to failings identified by the C&AG but in an important year for the JIF, it would undoubtedly have been easier for all concerned had the 'interim' solution not persisted for so long.

16. One of the problems was that during the interim period Senator Ozouf understood that he had sole responsibility for the JIF and was answerable to the Chief Minister in relation to it. This he understood from three factors. The first was his letter of appointment as Assistant Chief Minister dated 4 November 2014, in which he was informed that he would have responsibilities in the areas of 'Digital, Innovation and Competition'. The second was the nomination letter for Senator Farnham of the same dates, which excluded those areas from Senator Farnham's (proposed) responsibilities. The third was advice he received to that effect. This was incorrect because the relevant areas of responsibility were only transferred to the Chief Minister on 1 January 2016 by the Transfer Regulations; neither his appointment letter nor nomination letter affected the fact that ministerial responsibility for the JIF ultimately rested with Senator Farnham until that date. Senator Farnham, correctly understood that as a matter of law he retained ultimate legal responsibility for the JIF.
17. From 1 January 2016 functions in relation to the JIF were transferred to the Chief Minister following the States' adoption of the Transfer Regulations. Again, at this point, everyone understood that Senator Ozouf in his capacity as Assistant Chief Minister had delegated responsibility for the JIF. However, no actual written delegation decision was made by the Chief Minister until April 2016, with the same legal consequences as set out above in relation to the prior period. Since no loans were made between January and April 2016, however, no relevant legal issues arise as to whether Senator Ozouf had the necessary powers to sign loans.
18. **Inadequacies in the OTRs.** The initial work on preparation of the OTRs was carried out by the Department of Economic Development at the time when Senator Maclean was the Minister. This work was done to some extent in co-operation with the Ministry for Treasury and Resources, of which the Minister was Senator Ozouf, the proposition to the States being made by him because of his role under the Public Finances Law 2005. The Economic Affairs Scrutiny Panel then carried out an impressive and effective review, which resulted in the States

adopting the amended OTRs. Having been adopted by the States, those OTRs and any inadequacies in them, as identified by the C&AG, became the responsibility of the States (as well as of the relevant ministers). I cannot therefore attribute the difficulties that the C&AG pointed out in relation to the content of the OTRs to the ministers. Further, any changes to them needed to be made by the States and indeed, the Scrutiny Panel stated its intention to review them regularly, which does not appear to have happened. It is evident from material relating to the Board that there was a reluctance to return to the States with the OTRs on the basis that they were inadequate for fear of causing delays. I have not seen any evidence that any minister was made aware of that concern, albeit that officers evidently were aware.

19. **The failure to bring forward Phase II.** The proposition was adopted on the clear understanding that a second phase, enabling the States to take equity in respect of loan recipients, would be brought forward swiftly. This second phase was said to be an important part of the original Proposition, as explained below. From the evidence available to me, it is not clear why this did not happen nor why Scrutiny did not follow up in relation to it.
  
20. **Non-implementation of the OTRs.** From the documents I have seen and the interviews I have conducted it cannot be said that ministers failed to carry out their functions or breached their duties under the Code of Conduct or otherwise. From the evidence I have seen, it is clear that the ministers took advice from their officers and were acting in good faith. As the C&AG herself pointed out, ministers were not informed of the difficulties posed by the OTRs and I have seen no evidence to suggest otherwise. Indeed it is clear that Senator Ozouf understood on the basis of what he was told that the JIF was functioning effectively and took action as soon as he discovered otherwise.

## **Recommendations**

21. In light of the legal complexities of ministerial and assistant ministerial appointments, functions and delegations, and the limited power of the Chief Minister to rearrange government responsibilities, it would be useful for all ministers to receive training on these points. Ministers need to understand (1) the scope, meaning and effect of a letter of appointment; (2) the source of their powers, namely delegations and the enactment under which the relevant power(s) arise; and (3) their obligations to complete written Ministerial Decisions in accordance with Appendix 3, paragraphs 3 and 4 of the 2015 Code and to report delegation decisions to the States under Article 30 of the 2005 Law. It would also be useful if they were given training on their legal responsibilities, the roles and responsibilities of their officers and decision-making and recording.
22. Ministerial oversight necessarily depends on ministers being kept fully informed of what is going on at an operational level. To ensure that oversight is as effective as possible, I would expect every department to have a work schedule, setting out who is responsible for what and the relevant deadlines. I would also expect an organogram to exist for Government, for each department and for each separate project, such as the JIF. It may be that such documents already exist. With the assistance of his Chief Officer, I would recommend that each Minister use such documents to ensure effective oversight.
23. Where a project of the nature of the JIF is set up, a system is required to allow for its operating terms to be adjusted swiftly to deal with difficulties encountered. It seems to me that that necessarily means that full legislative agreement even to the most minor change to operating terms cannot be required. It may be worth considering therefore whether a committee, rather than the States Assembly as a whole, could be empowered to agree to such changes. Alternatively, whether a power to adopt secondary legislation could be delegated to the Minister or to the Council of Ministers. This could prevent a situation arising where those responsible for implementing the project avoid advising ministers that the operating terms need to be amended by the States but rather, informally alter them or indeed, operate outside of their terms. The possibility of more efficient alteration to ensure effectiveness, could also encourage a more thoughtful response to administrative challenges or difficulties that are encountered when implementing detailed policy decisions, such as those of the OTR for the JIF.

24. Finally, aware as I am that this potentially falls outside of my terms of reference, in light of the source of many of the difficulties that arose here between November 2014 and January 2016, consideration should be given to whether a method of streamlining decisions as to the relevant responsibilities of ministers and departments could be found.

## **The background to and statutory basis for the Fund**

25. The JIF was established as a 'special fund' pursuant to s. 3(3)(a) of the Public Finances Law 2005. The initial proposal, P. 124/2012, was made to give effect to the Jersey Economic Growth and Diversification Strategy ("the Strategy"),<sup>3</sup> which had been developed in conjunction with the Chief Minister's Department, the Treasury and other States Departments, following a detailed analysis of the economy undertaken by the Economic Advisor's Unit. One of the three key objectives in the Strategy was to "*increase innovation in Jersey's economy, improve competitiveness and stimulate a return to growth.*" To achieve that strategic aim, an Innovation Fund was proposed, which aimed to support innovation through making funds available "*to support a wide range of activity from direct business support to strategic infrastructure investments in the private, public and third sectors*". The Strategy *inter alia* proposed the establishment of an Innovation Fund to be operated in accordance with the OTRs set out in the Appendix. By Act of 17 July 2012 the States approved the Strategy.

26. Specifically, the Strategy document provided that

*"[t]he Fund will have the following structure:*

- *Investments will only be made in projects that clearly demonstrate a significant leverage in terms of improving Island competitiveness, infrastructure improvements, developing innovation and diversification towards high value activity that creates good jobs for local people. Projects will also have to demonstrate how the investment will deliver wider economic benefits to the Island.*
- *The Fund will be used to support projects across all sectors, from enabling investment in ICT infrastructure, to additional support to attract innovative businesses to the Island*
- *The Innovation Fund will increase the availability of risk capital for high value growth companies, and is central to the Island's strategy for economic growth and diversification. The Fund will support private, public and third sector projects that can clearly demonstrate the following:*

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<sup>3</sup> P.55/2012 Lodged au Greffe on 1 June 2012 by the Council of Ministers.

1. *Creation of employment for Jersey residents*
  2. *Return on investment in terms of economic benefit for every £1 spent from the Fund*
  3. *A quantifiable impact on competitiveness and innovation in sectors which Jersey can demonstrate a comparative advantage (measured by increased market share)*
  4. *Encouraging high value added, high quality, high productivity economic activity*
  5. *A strong case for States support through alignment with States Strategic Plan priorities, in particular in areas where market failure is presenting a barrier to innovation.*
- *The Fund will be used to support projects across all sectors through:*
    1. *Additional support to attract new innovative businesses to the Island.*
    2. *Direct support to innovative businesses that may be unable to find finance.*
    3. *Finance for research and development opportunities.*
    4. *Enabling investment in ICT infrastructure.*
    5. *Seed funding for new products/services/processes.*
    6. *Funding for businesses to establish better links with university research*
  - *Eligibility will not be sector-specific but all applications for support must demonstrate, as a minimum:*
    1. *The impact directly/indirectly in terms of expected profits/revenues/employment in future years*
    2. *What efforts have been made to access private sector funding*
    3. *Why private sector funding is not available*
    4. *How the project will bring wider benefits to the Jersey economy*

*5. What funding is necessary and how the Island will benefit*

- *Applications will be assessed on a consistent and objective basis and only projects that meet the required criteria and score highly will be progressed. In particular:*

*1. Dedicated Officer support will check and make sure compliance in terms of information/key criteria (those that do not will not go forward to the Officer Board).*

*2. The Officer Board will consider applications and decide whether they merit more detailed consideration.*

*3. Projects that merit further consideration would be assessed on their net economic impact by the Economics Unit and in terms of financial code, etc. by Treasury and Resources (and other officers where appropriate)."*

27. As regards the role of Departments and Ministers in the Fund, the Strategy document provided that:

*a. Projects that merit further consideration would be assessed on their net economic impact by the Economics Unit and in terms of financial code etc by Treasury and Resources (and other officers where appropriate)*

*b. The performance of the Innovation Fund will be monitored by the Treasury and investments in the Fund will be subject to annual audit, the results of which will be presented to the States.*

28. Accordingly, the Minister for Treasury and Resources brought forward a proposal for the creation of the JIF, which was put to the States in Proposition 124/2012 lodged au Greffe on 20 November 2012. That proposal had been developed largely by the Minister for Economic Development but was brought forward by the Minister for Treasury and Resources because its statutory basis was the Public Finances Law 2005. On 6 November 2012 the States approved the Medium Term Financial Plan, which ear-marked £5million for the JIF.

29. On 10 October 2012 the States of Jersey Economic Affairs Scrutiny Panel ("the Scrutiny Panel") wrote to the Minister for Economic Development asking him to delay the date of the Fund Proposition, noting that it intended to review the JIF. That was agreed to on 24 October 2012



on the basis that the debate would take place in January 2013. That debate was again deferred on the basis that a number of issues were “*far from resolved*”. The Chairman of the Scrutiny Panel pointed out some of the issues, which were extensive, that remained of concern.

30. The Scrutiny Panel’s Terms of Reference were as follows:

*“1. To undertake an examination of key elements of the proposals to create a Jersey*

*Innovation Fund, including:*

*i. eligibility criteria and how ‘innovation’ is defined for the purpose of the Fund*

*ii. the constitution and role of the ‘Jersey Innovation Fund Board’, and the associated role of the Minister for Economic Development*

*iii. the appropriateness of increased risk in the investment of public funds, and how such risk will be managed*

*iv. the processes to manage the Fund’s income and its operational costs*

*2. To establish what work has been undertaken on plans to enable equity investment, and what work remains to be completed.*

*3. To examine how the Jersey Innovation Fund compares to similar initiatives in relevant jurisdictions.”*

31. As part of this review, in December 2012 the Scrutiny Panel commissioned CIPFA – Finance Advisory (the commercial arm of the Chartered Institute of Public Finance and the Accountancy) to assist it.

32. In carrying out its review, with the assistance of CIPFA, the Panel took detailed evidence, including oral evidence over a period of 6 days, from Ministers and relevant officers, the Jersey Chamber of Commerce, Jersey Business and Digital Jersey.<sup>4</sup>

33. On **10 January 2013** it took evidence from Senator Ozouf (Minister for Treasury and Resources); Mr Mike King (Chief Executive Officer, Economic Development); Mr Doug Peedle

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<sup>4</sup> Scrutiny Report, Appendix 1 p. 94

(Economic Advisor); and Mr Jim Shilliday (Project Advisor, Treasury and Resources). Senator Ozouf made clear that the:

*“proposition is in the name of the Treasury and Resources Minister because only the Treasury can propose a fund, and that is why while Jim Shilliday is here, who has been advising from a Treasury perspective, I am flanked by the Chief Officer of Economic Development and the Economic Advisor. I hope that you would get similar answers when the Minister for Economic Development stands before you, because I am doing his bidding for effectively the fund, and normally it would be his proposition, the way that the public finances law is there. But that is fine, because that means there is additional ministerial support and there is a bit of oversight and challenge from the Treasury in terms of the governance structure and all the way that the fund is set up.”*

34. When asked specifically about the idea for the Innovation Fund and what was classed as ‘innovation’, Senator Ozouf answered:

*“Mike [King] and Dougie [Peedle], please jump in where you feel proper, because I am very clear about the high-level principles of this, Chairman. I know the economic challenge. I know the diversification challenge. I know the job challenge. The granular detail of what this Innovation Fund is going to be delivering is rightly in the heads - and in the aspirations, in the plans, because they are going to deliver it - of economic growth.”*

35. Similarly when asked whether it was *“the sort of fund that will be looking to back more high-risk type enterprises or could you give us an explanation of what you feel will be the core benefit for this fund or core business?”*, Senator Ozouf answered: *“Again, Mike can come in, but I will do the introductions in a second.”* After brief general introductory remarks, Senator Ozouf handed over to Mike King and Doug Peedle, who provided specific detailed answers to the Panel’s questions, with Senator Ozouf occasionally providing an additional general comment. When asked about risk management by the Connétable of St. Brelade, Senator Ozouf answered as follows:

*“Well, it is we are setting up the fund and then it is over to the Minister for Economic Development and the Economic Development Chief Officer, who is legally responsible to ensure value for money, and Mike King’s neck is on the block in front of the P.A.C. (Public Accounts Committee) if he does not take all necessary prudent*

*measure of steps to implement ministerial policy, which is saying: "We do not mind you taking some risks, Chief Officer, but obviously you are going to need to do this properly and have a good governance structure." So our job and Jim Shilliday's job is to make sure that we have forged a good governance structure and we have questioned E.D. (Economic Development) and questioned and had a constructive tension between Economic Development and Treasury to ensure that we have got a governance structure that works, so that is why in the report we have got an independent chairman, we have got non-execs, we have got a reporting line about who signs off and all the rest of it, so there is a whole gubbins of rules, but also what we have got to be careful of is that we do not smother. Your panel has done some very good challenge on the T.D.F. (Tourism Development Fund) and you wrote a very good report."*

36. As regards who was ultimately responsible if the Fund did not work, Senator Ozouf said: *"The Minister for Economic Development and the Chief Officer."*

37. As regards the Fund being self-replenishing, Mike King expressed the view that this was his intention and wish. However, Senator Ozouf explicitly took a *"slightly contrary"* view, stating that *"we have got to be realistic"*. Further, when asked about grants being given from the Fund, rather than loans, he responded: *"The implementation of this, I am not going to be prescriptive. I am not going to tell E.D... I am not going to have a dog and bark. The fact is E.D. are responsible and they will do and make the right decisions. They are closer to the detail of this than me and they set up ..."*

38. As regards responsibility for the success of the Fund, Senator Ozouf noted that:

*"This man [the Chief Executive of E.D. Mike King] is legally responsible for value for money and he can be hauled before the P.A.C. in public and the Comptroller and Auditor General can call in all the papers of all the decisions that have been made. People have to understand that in public life in Jersey if you make bad decisions you are going to be held to account in public for those things. People are not unaware. One of the problems I think in the States is that we have got to encourage people to take some more risks because what we do is we say to them is: "Do this. Take some risks and, by the way" - and we politicians and the political environment sometimes are absolutely dreadful in saying - "then we are going to murder you and we are going to wreck your reputation and we are going to*

*humiliate you in public.” We want our public sector people to believe that politicians are going to back them in taking some proper risks. So I do not want to frighten. I can assure that there is an appropriate governance structure, rules, in place to ensure value for money. Jim and my role and the Treasurer with our own fault systems in place plus our own internal audit, we have got all that. We are doing this all the time. We are challenging people and bringing people in and saying: “What are you doing? Why are you doing this? Has that worked? Can we learn lessons from that?” That happens all the time. But in reality, if I go back to where I started, I think the scale of problems that we have and challenges and wanting to be optimistic is needing to allow people to take some appropriate risks and not telling them: “If you go through a proper process, if we can audit your decision-making, if you have made something fair and proper and all the rest of it and it still goes wrong we are not going to take your head off.”*

39. On **14 January 2013** the Panel took evidence from Senator Maclean (Minister for Economic Development); Mr Mike King (Chief Executive Officer, ED), Mr Sean Pritchard (Director of Business Creation and Growth); and [REDACTED] (Strategy Manager). Detailed evidence regarding procedures etc was provided by officers. However, Senator Maclean also gave evidence on broad principles, including how he considered that success or failure might be defined. In that regard, he stated in response to the question of whether or not he had set any goals or targets in respect of investments:

*“...In private business, if you were looking at a private business project you would look at exactly that, and in broad terms, yes, it has happened with this, but of course it is very different and there is a great deal more flexibility, because as we said earlier on, there is an element which in a private business investment you would not be considering the value of the jobs you are creating, but of course to Government that is extremely valuable because of course each job you create means you are not paying Social Security and other costs of benefits and so on. So there is a balance to be had. I mean, clearly I can answer the question by giving just a high level view that we want the fund to be self-replenishing, we want the fund to create jobs, and I think at the end of the first year we will look back and get a first cut of what that looks like in reality. In my view, it is going to take 3 years before you can look back and start to get a flavour as to the level of success you have. What I would like not to see happening is that it becomes a depreciating sinking fund. I think the Chairman used that. It is*

*not intended to be a sinking fund. I would not want to see it turning into a sinking fund.”*

40. Mike King and Sean Pritchard gave detailed answers on the modalities of the Fund. As to the relationship between Economic Development and Treasury and Resources. Sean Pritchard stated:

*“Treasury have been involved, Jim and others in the Treasury Department regarding development in the fund and the proposal. Treasury already manage all other funds of a similar nature, housing loans, associated kind of start-up loans for purchases of property and the old agricultural loans and there is one other which I could not capture the details this morning. They manage those on an ongoing basis and I think once the loan is approved there will be an ongoing requirement of Treasury to manage that in accordance with the kind of criteria that has been set by the board. So there is absolutely a requirement for Treasury to be managing that risk and be involved in the management ongoing.”*

41. Further evidence was taken on 6 February 2013 from Jersey Chamber of Commerce, Jersey Business and Digital Jersey.

42. On **22 February 2013** the Panel took further evidence from Senator Maclean (Minister for Economic Development); Mr Mike King (Chief Executive Officer, Economic Development Department); Mr A Sugden, (Director, Enterprise and Business Development); and [REDACTED] (Performance and Operations Manager). Mr King provided detailed evidence on how the JIF would work.

43. On **28 February 2013** CIPFA, using evidence it had collected, document reviews as well as transcripts from the hearings referred to above, produced a detailed report setting out the difficulties it saw in managing the fund, including:

- a. the problems posed by Due Diligence in relation to businesses not subject to regulatory business licensing;
- b. the monitoring and managing of the Fund’s performance;
- c. the sustainability of the Fund;
- d. the low probability of high yields;

- e. the need to account for the costs of running the JIF, including the need to have a best estimate of annual operating costs;
- f. the lack of comparability of funds in other jurisdictions; and
- g. significant matters relating to the setting up and management of the JIF, including the validity of the detail contained in the policy document and that the post of JIF Executive was not to be recruited but would be *“purely administrative”* and *“only as a co-ordinating and support role for the JIF Board”*.

44. The Report advised that since there was to be delegation to the JIF Board as to the detail of the management of the scheme and given the lack of clarity in the OTRs, further clarity should be achieved before Members were asked to vote on the Proposition. In that regard, at paragraph 1.26 CIPFA set out specific matters on which further clarity should be required.

45. Around 15 March 2013 a draft report was circulated to all witnesses, including Senator Maclean, with the final draft being sent on 21 March. On 27 March 2013 the Scrutiny Panel published its report, which supported the proposal for an innovation fund but considered that there was *“an unacceptable level of inconsistency within the proposals.”* Moreover, it considered that they *“lacked clarity and key details that might reasonably be in place.”* Accordingly, the Panel stated that it found itself in the position where it could not support the establishment of the JIF. In that context it *“recommended...the Minister for Economic Development must consider and address the issues, as outlined in this Report, before the JIF proposition is debated by the States.”*

46. The Report highlighted the following as matters that it required to be addressed:

- a. That whilst the Fund would launch with £5million, the second tranche of a further £5million was essential to the success of the Fund and accordingly, its source had to be identified.<sup>5</sup>
- b. That serious consideration be given to adopting a Partnership Fund model, that is, matching public funding with private venture capital so as to harness the benefits of leverage, shared risk and private sector expertise.<sup>6</sup>

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<sup>5</sup> §4.2

<sup>6</sup> §4.3

- c. The negative implications of basing the Fund on the principle of ‘lender of last resort’, which stakeholders considered an unsuitable approach.<sup>7</sup>
- d. The acceptable rate of failure, which should not be as high as 70%, which had been suggested by the Minister.<sup>8</sup>
- e. The need for the Ministers of Economic Development and Treasury and Resources to have a common position regarding the prioritisation of the success criteria, which had been identified as: creation of locally qualified jobs, financial return to the JIF and general taxation contributions.<sup>9</sup>
- f. The need to define with greater clarity the meaning of ‘success’ and ‘failure’ as applied to (i) the Fund overall and (ii) individual funded projects, including by way of the adoption of a framework to monitor the financial performance of both and a formal mechanism to establish the circumstances under which the possible temporary or permanent closure of the JIF might be considered.<sup>10</sup>
- g. The need to define roles and responsibilities of external organisations and departments. In particular:
  - i. The need for formal discussions with Digital Jersey and Jersey Business as to their roles.
  - ii. The need for consideration to be given to Jersey Business taking the role of executive of the JIF.
  - iii. The need to more clearly define the role of the Law Officers and Treasury and Resources.
  - iv. The need for work to be completed by the Law Officers prior to the debate, not least the development of the Royalty Agreement Template.<sup>11</sup>

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<sup>7</sup> §4.3

<sup>8</sup> §4.4

<sup>9</sup> §4.5

<sup>10</sup> §4.6

<sup>11</sup> §4.7

- h. The need to resolve the inconsistency as to whether the Fund should be available to all sectors of the economy or target high-value, high-growth opportunities. Consideration to reducing the restrictive eligibility criteria.<sup>12</sup>
- i. Imperative that the Fund should retain the objective of being self-replenishing, therefore essential to:
  - i. establish clear financial objectives;
  - ii. identify Key Performance Indicators,
  - iii. ensure that grants are only awarded in extremis; and
  - iv. ensure that the equity element is developed within 6 months.<sup>13</sup>
- j. The need to identify the internal costs of the JIF.<sup>14</sup>
- k. The need to identify all the costs, internal and external, of operating the Fund, so as to provide a true measure of its utility.<sup>15</sup>

47. The Report set out fifteen specific Recommendations.<sup>16</sup>

48. The Minister for Economic Development responded to the Panel's Report, setting out in tabular form a response to each 'finding' and each 'recommendation'.<sup>17</sup> Every recommendation was accepted. In so far as those changes affected 'Phase 1' of the JIF, they were reflected in the amended proposition P. 124/2012 (Amd) that was lodged au Greffe on 17 April 2013. In so far as they related to 'Phase 2', that is the intended shift to a part-private equity model (which required legislative change), the Minister expressed the intention to comply with such recommendations.

49. On 1 May 2013 the amended Proposition lodged on 17 April 2013 was debated by the States. Whilst developed essentially by the Minister for Economic Development, as explained above because the legal basis for the Fund was the Public Finances Law 2005 it was the Minister for

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<sup>12</sup> §4.8

<sup>13</sup> §4.9

<sup>14</sup> §4.10

<sup>15</sup> §4.11

<sup>16</sup> Pp. 14-15.

<sup>17</sup> S.R.4 Res 2013 presented to States on 30 April 2013.



Treasury and Resources who brought forward the proposal. Nevertheless, the Minister for Economic Development also spoke in the debate.

50. There were some complaints by members of the States that they had not been given sufficient time to consider the relevant documents. However, because the amended Proposition had been lodged two weeks earlier, it was not permissible for a proposition to be brought at that late stage to challenge it being debated that day. Accordingly, the debate and vote went ahead. Deputy S.G. Luce, who was Chairman of the Scrutiny Panel, noted that the original proposition had not been acceptable. He stated:

*“I also hope that the Members will realise that there has been a not inconsiderable amount of work – joint work, from both sides – that has gone on unnoticed in the background since this was first proposed. On behalf of the panel, I would like to take this opportunity to thank the Minister, in fact both Ministers, for devoting the time and energy necessary to working with Scrutiny in order to modify this proposal into something which is now workable and truly accessible to all. In very simple terms, the panel discovered, after opening their imaginary tin and examining the contents, that there were a number of requirements in the detail behind the original proposition that were completely incompatible. Some of those unrealistic requirements that the panel discovered included the creation of jobs that would need to provide a gross valued-added figure of over £65,000 per employee, the setting of maximum and minimum amounts of funding that the scheme would provide and the exclusion of sole traders and partnerships as well as limited liability partnerships. There was also little clarity as to the definition of success and failure of, not only the individual products, but of the Innovation Fund itself and it seemed to the Scrutiny Panel that despite stating quite clearly that it would be, this fund would be impossible to access if you were in either the public sector or, much more importantly, the third sector. Finally, we found that there were – how should I say it – some minor inconsistencies between Economic Development and Treasury and Resources as to where we were going with this fund and indeed how we were going to get there. Notwithstanding those facts, I can assure the Assembly today that all those issues and many others have now been addressed and that the Scrutiny Panel, Economic Development and Treasury and Resources are now moving forward together with a firm recommendation that Members support this proposition. Our Scrutiny review ran to*

over 160 pages. The Minister's response was carefully considered and lengthy. He consulted, he acted and he accepted the vast majority of the recommendations. He has made a large number of changes. The outcome that we have today is, I hope, an excellent example of both sides co-operating together to create something that is better, more workable, more relevant and more supportable. Before I sit down, I would like to stress, if I may, 3 things. First, today's modified proposal is not a cosy collaboration between Scrutiny and Government. This amended proposition is a genuine response to a lengthy, factual and well-researched Scrutiny Report. Secondly, there are still issues such as the role of the fund's executive and the thorny subject of due diligence that the panel will continue to monitor on an ongoing basis through quarterly hearings. Thirdly, there is now a second phase to this Innovation Fund; a phase that did not really exist in the original proposition, a phase that was identified and highlighted in our Scrutiny review as being a significant and distinctive separate step forward. The second phase involves the States taking equity in private businesses and I can assure the Assembly, as I have assured the Minister, that my panel will conduct another separate review when the details of this step change in the way Government promotes new initiatives are brought to this Assembly in a few months' time." (emphasis added)

51. The Chair concluded as follows:

*"With this type of new initiative, there is always a balancing act to be followed between moving fast and an attempt to stimulate local business and create work for Islanders and the requirement to scrutinise this type of new scheme to make sure that it is fit for purpose. I can assure Members that the proposals before them today are now considerably more fit for purpose than they were and that it is now time to move ahead with this fund; a fund that will help to create new and maintain existing jobs while hopefully, at the same time, making a financial return to the Government coffers. I think we all accept that it is still not perfect but now is not the time to delay and modify further. Now is the time to encourage uptake of this scheme and to move ahead with this first phase of the Innovation Fund."*

52. The proposition was passed 41 to 1.

### The functioning of the JIF and the OTRs

53. The OTRs adopted by the States provided for the following roles and responsibilities:

- a. **The JIF Board**,<sup>18</sup> acting within both the Public Finance Laws and any current or future Financial Directions and within an approved corporate framework to review every application and, “*as appropriate*”, draw on other expert opinions to provide comprehensive due diligence when assessing applications, including but not limited to technical expertise, market intelligence, financial due diligence and company or patent searches, but in every case as part of the assessment to consider an economic impact assessment produced by the **States of Jersey Economic Adviser’s Unit**.<sup>19</sup>
- b. In particular, to assess the applicant’s business plan, including but not limited to: its commercial viability, the market opportunity and size, the competition if any, the capability and experience of the project team, and any identified or unidentified risks, as well as to review and consider all forms of security disclosed or available.<sup>20</sup> Details of the information required for the assessment and the assessment to be carried out by the JIF Board are set out in 8.2-8.4 of the OTRs. In particular:

*“[t]he JIF Board will have a robust approach to considering the impact a project might have on employment, competitiveness and innovation, plus an objective measure of whether a project can be considered to encourage high-value-added, high quality or high productivity activity. The Board will also consider the likely short and long term viability of the project.”*

- c. “*After being fully satisfied with the due diligence checks, reviewing the expert and economic opinions and a detailed analysis of the proposal*” to make recommendations to the Minister for Economic Development, “*using the Business Case Template...which is based on H.M. Treasury Green Book best practice.*” Only to make recommendations to the Minister for Economic Development to approve an application if satisfied that the:
- Applicant has a viable business proposition.
  - Applicant will be able to meet its repayment obligations for the Loan.
  - Applicant is unlikely to secure funding from other sources.

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<sup>18</sup> Consisting of a minimum of four private sector members (including an independent Chair) appointed in a process overseen by the Appointments Commission, plus in an ex officio capacity, one representative each from (1) Treasury and Resources, (2) the Economic Advisory Unit (within the Chief Minister’s department) and the (3) the Economic Development Department, namely the Chief Officer, who is also the Department’s Accounting Officer.

<sup>19</sup> §10

<sup>20</sup> §8.1

- Provision of debt financing to the Applicant is an appropriate means of financing. For the avoidance of doubt, where the provision of debt financing is only one of a number of elements of an overall financing package, the JIF Board must be of the opinion that the provision of a Loan is an appropriate element of such financing package.
  - Individual or organisation receiving the Loan is able to meet its debts as they fall due and will not, as a consequence of entering into the proposed loan facility, cease to be able to meet its debts as they fall due.
  - Economic assessment undertaken is positive and confirms the project has the potential to positively contribute to the Jersey economy.<sup>21</sup>
- d. To set out the recommendation to the Minister for Economic Development in writing accompanied by a business case signed by the JIF Board Chairman and to include:
- the amount of the Loan;
  - based on the information provided by the Treasury Department, shall recommend the interest rate for the Loan;
  - details of how any available security should be secured;
  - any holiday period for both the Loan and interest repayments;
  - proposals for multiple draw-downs subject to the final draw-down being no later than 12 months from the Facility Letter;
  - confirmation that the Applicant has a viable business proposition with the potential to positively contribute to the Jersey economy;
  - details of the success criteria for the project (jobs and revenues) any wider economic benefits;
  - all information, clauses, terms and conditions that should be included in the Royalty Agreement.
- e. To determine what steps, if any, are to be taken in relation to any breach of the terms of any loan, which may include recommending to the Minister for Economic Development that the loan agreement be terminated.

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<sup>21</sup> §9.1

- f. To provide to the Minister for Economic Development and the Treasurer of the States a written report no later than 31 January and 30 July each year that the JIF is in operation, setting out financial reporting for the year.<sup>22</sup>
- g. To provide copies of the signed Minutes of the JIF Board to the Minister for Economic Development, to be published in accordance with Jersey reporting practices.<sup>23</sup>
- h. **The JIF Executive**<sup>24</sup> to support the JIF Board, and to provide administrative and secretariat functions, including:
  - i. managing the due diligence process (as set out in §7 OTRs) and undertaking initial and appropriate levels of due diligence;
  - ii. preparing the business case on behalf of the JIF Board for the Minister's consideration;
  - iii. preparing the funding agreement in association with the Law Officers' Department;
  - iv. managing aftercare, ongoing monitoring and aftercare of approved projects, which may include commissioning third party organisations such as Jersey Business Ltd, Digital Jersey or requesting the States Rural Economy Team, to provide ongoing aftercare;
  - v. establishing a risk register for all projects and managing the risk register, to be updated every six months notifying the JIF Board, Minister for Treasury and Resources, Treasurer of the States and Minister for Economic Development of any changes;
  - vi. drafting the Annual Report for the JIF Board to approve,<sup>25</sup>

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<sup>22</sup> §14

<sup>23</sup> §14

<sup>24</sup> Provided by the Economic Development Department.

<sup>25</sup> §10

- vii. collecting quarterly progress reports and an annual Loan/Grant Assurance statement to be provided by recipients of loans/grants to the JIF Executive Officer.<sup>26</sup>
- i. **The States of Jersey Economic Adviser’s Unit** to provide a full economic assessment to be presented to the JIF Board in the form of a written report.<sup>27</sup>
- j. **The Chief Officer to the Minister for Economic Development** to sit as an *ex officio* representative on the JIF Board without voting rights and to provide independent advice to the Minister for Economic Development.<sup>28</sup>
- k. **The Minister for Economic Development** to decide on the basis of the recommendation by the JIF Board whether or not to grant the loan and may ask the JIF Board to commission further experts to provide specialist technology, financial or legal advice.<sup>29</sup>

54. According to the Minutes of the JIF Board of 11 March 2014, a draft Financial Direction specific to the JIF had been drafted and was awaiting Ministerial sign-off. On 25 March 2014 there was a meeting between Chief Minister Gorst, Senator Routier, John Richardson (Chief Executive of the Chief Minister’s Department), Laura Rowley (Treasurer of the States), Tim Herbert (Chairman of the JIF Board); Aaron Chatterley (JIF), and Dave Allen (JIF). This was recorded in a document entitled Memorandum of Understanding (“the Draft MOU”) signed by Tim Herbert and dated 31 March 2014, which was sent to John Richardson and Laura Rowley by E-mail on the same day, seeking the agreement of the relevant Ministers to its contents prior to the JIF Board meeting on 2 April 2014. The Minutes of that meeting of 2 April 2014 record the following in respect of the Draft MOU:

*“IT WAS NOTED that TH, DA and AC recently met with Ian Gorst, Paul Routier, Laura Rowley and John Richardson. Unfortunately, Alan Maclean, Mike King and Philip Ozouf were not present. TH...highlighted the constraints JIF face under the original proposition. In addition, he advised them that although 18 applications have been received, and only three are looking likely to proceed/are being explored further at this*

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<sup>26</sup> §14

<sup>27</sup> §8.1 and §10

<sup>28</sup> §10

<sup>29</sup> §8.1, 4<sup>th</sup> bullet, §10

*time. TH advised that JIF's risk profile and the failure rates of applicants were discussed and the Chief Minister and Treasurer were supportive in this regard.*

*TH accepted that the Board have adopted a conservative approach so far but expressed the hope that JIF will now be able to take a more liberal approach about rates of failure. He stressed however that despite the rate of potential failures, corporate governance and the rigour around processes cannot be avoided.*

*TH reported that the meeting was not minuted although he encapsulated the discussions of the meeting in a file note and sent them to John Richardson and sought agreement of them. However, Mr Richardson has responded asking that this is deferred until Ian Gorst has had an opportunity to discuss the matter with Alan Maclean and, to date, this has not happened."*

55. The Draft MoU recorded that the Fund should have greater risk appetite and that reasonable expectation of failure rates was 50% and that there should be *"New Financial Directions specific to [Fund] by the Treasury to reflect this"*. This item was to be actioned by L Rowley, Treasurer. Neither the Minister for Economic Development, Senator Maclean, nor the Minister for Treasury and Resources, Senator Ozouf was present at that meeting. After it took place the Chairman wrote to Senator Maclean stating that *"As you know there was a meeting last week with various ministers and officials and JIF board members from which emerged a draft MOU for JIF to move it on from 124/2012. It was a profitable discussion I think... Ian Gorst wants to speak with you about the MOU before it is announced as obviously you are the responsible minister for JIF."* From other E-mail correspondence it appears that Senator Maclean was not aware that the meeting had taken place.

56. At the subsequent JIF Board meeting of 13 May 2014 the minutes record that:

*"(b) Financial Direction – TH advised that he had not yet received ministerial sign off regarding risk or the Financial Direction because the Minister has not had an opportunity to discuss the matter with the Chief Minister. IT WAS RESOLVED that JS would follow this up with Laura Rowley and John Richardson."*

57. At the subsequent meeting of 1 July 2014, a draft Financial Direction ("FD") was provided. This included a provision relating to risk. The Minutes record the following:

*“MK referred the Board to clause 2.3.1 of the FD and advised that the fact that the FD accepts that there is risk in providing funding is the fundamental difference to all other financial directions. He explained that this has arisen following the States’ involvement in the film although it was very difficult to obtain agreement to include it because the States do not like to accept risk. He added that it is a big move for the States of Jersey because they are usually very focused on risk elimination and the Board noted that no other FD includes this clause. TH advised that he was pleased the clause had been included and noted that it was first raised at a meeting with the Board, the Chief Minister and the Treasurer in March. He accepted that the FD made it clear what government were responsible for but stressed that this now needs to be complemented with what the Board are responsible for.”*

58. The FD was discussed in detail at that meeting, with the Chairman in particular criticising its contents and workability.

59. According to the Treasury Report of 30 September 2014, the FD – “Financial Direction No. 1.2 Jersey Innovation Fund” – was adopted on 30 July 2014. At the subsequent meeting of the JIF Board on 19 August 2014, the FD is discussed however, on the basis that it is still a draft. The following is recorded:

*“TH reported that a draft FD was prepared by Andy Hacquoil in Treasury on which TH provided comments. However, when a further draft was circulated there was little change. TH therefore discussed the draft with him and a revised draft was prepared. IT WAS RESOLVED that JS would circulate a copy of this to the Board.*

*TH advised that the revised FD does not go nearly as far as he would wish in accommodating the recommendations the Board made (although it does include the de minimus provisions and the 50/50 success/failure rate). He said that he had been told that this was because of the restrictions in the operational terms of reference and the only way to change these would be by amending the original JIF proposition by States’ debate. The Board agreed that a States debate on this subject was unlikely in the next three to six months and therefore the Board are required to work with the FD as it currently stands. However, he suggested that when the new EDD and Treasury Ministers are in place following the elections it may be possible to discuss it with them. In the meantime, TH urged the directors to review the revised FD as it continues to prevent the directors from approaching issues liberally.”*



60. It appears that no further changes were made to the FD and it is unclear why the Board considered that the FD was a draft rather than a final document.

## Duties and obligations of Jersey Ministers

61. The 2005 Law provided for the establishment of a ministerial system of government in Jersey. The functions of the Council of Ministers are set out in Article 18(2). Ministers and the Council of Ministers adhere to the principle of collective responsibility and agree a Code of Conduct and Practice presented to the States within 3 months of their appointment pursuant to Article 19(7): Article 18(3A).
62. The States Assembly selects the Chief Minister and then, in accordance with prescribed procedures, makes its choice of ministers from those nominated for ministerial office: Article 19(1) and (5). The Chief Ministers and ministers may appoint and dismiss their assistant ministers: Articles 24-25. Each minister is a corporation sole: Article 26.
63. The States of Jersey (Transfer of Functions from Committees to Ministers) (Jersey) Regulations 2005, which were adopted pursuant to Article 49 of the 2005 Law, transferred the liabilities and responsibilities of the Committees of the States to Ministers. The Minister for Economic Development took over, *inter alia*, the responsibilities of the Economic Development Committee, the Harbours and Airport Committee and the Committee for Postal Administration. The Treasury and Resources Minister took over those of the Finance and Economics Committee. The Chief Minister took over the responsibilities and liabilities of the Policy and Resources Committee and the Legislation Committee.
64. At the time of the new Council of Ministers elected in 2011, the 2006 Code of Conduct and Practice<sup>30</sup> applied. This was replaced on 10 February 2015 with a new Code of Conduct.<sup>31</sup> Both required ministers and assistant ministers to comply with the seven Nolan principles of conduct in public life: **selflessness** (decision should be taken solely in terms of the public interest and not in order to gain financial or other material benefits for themselves, their family and friends, their business colleagues or any voluntary or charitable organization they are involved with); **integrity** (holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them

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<sup>30</sup> <http://www.statesassembly.gov.je/AssemblyReports/2006/37251-16065-1022006.pdf>

It appears that in 2011 the States endorsed the Code of Conduct for Ministers as originally approved in 2006 by the Council as previously constituted R.14/2006 refers. The endorsement was given on the understanding that a review of the Code of Conduct had been commissioned and that a revised draft Code of Conduct would be tabled for consideration by the Council prior to the end of 2011. The Council agreed that a revised draft Code of Conduct for Ministers should be tabled for consideration by the Council in early course. The Interim Chief Executive was authorised to take the necessary action. It appears that following consultation a new Code was not adopted until 2015.

<sup>31</sup> R.11/2015

in the performance of their official duties); **objectivity** (in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit); **accountability** (for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office); **openness** (about all the decisions and actions that they take, giving reasons for their decisions and restricting information only when the wider public interest, rules on freedom of information, data protection or confidentiality require it); **honesty** (a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest); **leadership** (promote and support these principles by leadership and example to maintain and strengthen the public's trust and confidence in the integrity of the States and its members in conducting public business).

65. Similarly, ministers were and are required under both the 2006 and the 2015 Code to account to the States Assembly for a matter for which they are responsible, as set out and explained in paragraph 2 above. As I have explained that means that ministers are ultimately responsible *qua* ministers for failings within their department. However, that does not mean that they are required to take over the role of Chief Executive of the Department, that is take over the role of manager of their department and the staff within it.

66. Indeed, ministers, whilst ultimately responsible for the actions of the Department's officers, are in fact obliged to listen to the advice of their officers. The 2015 Code specifically provides that:

*"Ministers and Assistant Ministers have a duty to give fair consideration and weight to the advice of officers."*<sup>32</sup>

67. Further, the 2015 Code provides that decisions are to be recorded in accordance with Appendix 3, so as to ensure that *"they are of an appropriate quality"*. This specifically includes decisions that involve the allocation of financial and manpower resources. It provides that decisions must be recorded on a decision template, each one to be signed by a minister or assistant minister with delegated responsibility.

68. Detailed provisions are also set out in Appendix 3 to the Code in relation to governance arrangements, namely the separation of advice to ministers from the process of decision-

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<sup>32</sup> §19

making. It is worth setting those arrangements out in full here, since they are of significant relevance to the matters with which this review is concerned. The Code provides at section 4 of Appendix 3:

*“...the following governance arrangements must be followed –*

*It is inappropriate for Ministers to take decisions without receiving advice from their officers. Where matters are particularly significant or controversial, that advice should, whenever possible, be reviewed by the Chief Officer.*

*2. A Minister must make it clear at the beginning of a meeting where no officer is present that no decisions can be taken at the meeting. In all but the most urgent of cases, the Minister should not be expected to make a decision on the spot. The Minister should be afforded the opportunity to reflect upon the matter and consider appropriate advice and evidence.*

*3. A Minister might indicate his or her intent verbally or by other means, but a decision will only be made when the Ministerial Decision is signed or, in extremis, agreed remotely and in writing, e.g. by e-mail.*

*4. The decision form must as far as possible be fully completed and supported by appropriate information and a trail to relevant documents, such that the Ministerial Decision and supporting documentation can stand substantially on its own as record and rationale for the decision.*

*5. The officer providing advice and/or completing the decision form is accountable for the advice given. It should be complete and balanced and reflect the officer’s best professional advice. Ministers, as the decision-takers, are free to take a different view and a contrary decision to the advice received. The Minister’s reasoning should be recorded.*

*6. Officers will be expected to implement Ministerial Decisions regardless of the advice given. If, however, a decision were to result in an illegal act, contravene financial directions or create a significant risk to the States or the Island, the officer should refer the matter to the Chief Officer of the Department or, if the officer is a Chief Officer, to the Chief Executive to the Council of Ministers. Those senior officers will be expected*

*to discuss the matter with the Minister or the Council of Ministers in order to resolve it appropriately.*

*7. In the case of a decision which contravenes financial directions or would otherwise contravene the role of Accounting Officer, the Minister will have to issue a directive in the form a letter of instruction. In doing so, the Accounting Officer will follow the rules laid out for such matters in the Financial Direction titled "Accounting Officers".*

*8. Chief Officers are personally responsible for ensuring that Ministers are appropriately supported, and that all appropriate officers are fully aware of and trained to fulfil their responsibilities. This includes where the Minister takes a view that a Ministerial Decision is not required with reference to this guidance.*

*9. Ministers are personally responsible for ensuring that they follow the rules and guidelines to ensure that their actions are subject to sufficient governance, and that there is appropriate separation of advice and recording of decisions.*

*10. In order to ensure appropriate segregation of responsibilities, Ministers should whenever possible refrain from implementing their own decisions."*

69. Further, Appendix 3 to the Code provides for the responsibility of the Department in relation to ministers' decision-making powers. In particular, it provides that:

*"the preparation of papers and Ministerial Decisions and the management of the interaction with the Minister is the responsibility of senior officers within the Department."*

And further that:

*Departments are responsible for bringing to the attention of their Ministers matters that require a Ministerial Decision under this guidance.*

*Departments are responsible for ensuring that the process for decisions taken by their Minister is appropriate and the outcome is properly recorded, which includes complying with this guidance. This includes –*

- ensuring interaction with the Minister is appropriate*
- ensuring documentation provided to the Minister is complete*

- *preparing the Ministerial Decision template to the desired standard*
- *ensuring the right level of 'internal' Quality Assurance takes place*
- *ensuring the Ministerial Decision is processed correctly and signed at the correct time*
- *and, when making Decisions in relation to Standing Orders and other legislation, and exemptions from the requirement to publish under the Freedom of Information (Jersey) Law 2011, seeking legal advice as needed, and noting any advice provided by the States Greffe in the course of their Quality Assurance.*

70. As regards the responsibilities of ministers, Appendix 3 of the Code provides:

*“The duty of Ministers is to ensure that they are aware of what they are signing and are happy with the supporting documents. Ministers have a duty to the States to account, and be held to account, for the policies, decisions and actions of their Department and agencies for which their Department has responsibility. It is the duty of Ministers to remember that, ultimately, any decision they sign rests with them and it is their responsibility to answer for it and defend it. In noting these respective responsibilities, it should nevertheless be recognised that the conduct of the business of government is often complex, and where roles and responsibilities are not discharged in accordance with this guidance, that the earliest correction is needed and an appropriate investigation should be undertaken.”*

## **THE TERMS OF REFERENCE**

### **ITEM 1: THE POSITION AND RESPONSIBILITIES OF MINISTERS FOR THE JIF**

#### **The facts**

71. At the time of commencement of the JIF, Senator Maclean was Minister for Economic Development. The Chief Executive and Accounting Officer for the Department was Mike King. Senator Ozouf was Minister for Treasury and Resources and Laura Rowley was Treasurer (Chief Officer of the Ministry for Treasury and Resources). Senator Gorst was Chief Minister.
72. On 11 April 2014 the Chief Minister made a decision delegating operational responsibility for Financial Services to Senator Ozouf.<sup>33</sup>
73. On 4 November 2014 the Chief Minister designate, Senator Gorst, in accordance with Standing Order 117(2) and (2B) gave notice of 10 nominations to ministerial offices. This included the appointment of Senator Farnham as Minister for Economic Development and Senator Maclean as Minister for Treasury and Resources.
74. The Explanatory Note to that notice provided that the Chief Minister intended to lodge draft regulations by which certain functions would be transferred between ministerial portfolios, prior to the creation of a new Ministry:

*“Initially, responsibility for financial services, the digital sector, competition and innovation will be combined under the remit of the Chief Minister. Senator Ozouf will be appointed as an Assistant Chief Minister with delegated responsibility for this portfolio.”*

75. By decision of 12 November 2014 the Chief Minister appointed Senator Ozouf as Assistant Chief Minister.<sup>34</sup> On 14 May 2015 the Chief Minister made a decision under Article 28 of the 2005 Law delegating his functions to Assistant Chief Minister Ozouf in respect of specific enactments,<sup>35</sup> that decision being presented to the States on 18 May 2015.<sup>36</sup>

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<sup>33</sup> MD-C-2014-0072 presented to States on 16 April in R.48/2014.

<sup>34</sup> MD-C-2014-0183, referred to in R160/2014, letter of appointment dated 4 November 2014

<sup>35</sup> MD-C-2015-0052

<sup>36</sup> R57/2015.

76. As set out in R160/14, presented to the States on 17 November 2014, the Chief Minister consented to the appointment of assistant ministers pursuant to Article 25(1) of the 2005 Law.<sup>37</sup> This included his consent to the appointment of Senator Ozouf as Assistant Minister for Economic Development for an interim period. Having received that consent, by Decision of 24 November 2014 (MD-E-2014-0121), Senator Farnham, Minister for Economic Development, appointed Senator Ozouf as an Assistant Minister for an interim period (pending the transfer of Digital, Competition, Innovation to the Chief Minister pursuant to the proposed regulations referred to above).
77. On 16 December 2014 the Minister for Economic Development, Senator Farnham, made a Decision pursuant to Article 28 of the 2005 law delegating certain of his functions to his Assistant Ministers (MD E-2014/0132). That Decision was presented to the States on 19 December 2014 in the States of Jersey Law: Delegation of Functions – Economic Development – Revised Delegations December 2014 (R181/2014). The delegation report (R181/2014) mistakenly stated that Senator Farnham had by his earlier decision of 24 November 2014 (MD-E-2014-0121) “*delegated political responsibility for Digital, Competition and Innovation [to] Senator Ozouf*”. It is unclear whether the reference to that decision is simply a typographical error and it should in fact refer to his decision of 16 December (MD E-2014-0132), which was his delegation decision, or alternatively whether there was a mistaken belief that the earlier decision that concerned the appointment of Senator Ozouf as Assistant Minister pursuant to Article 25 of the 2005 Law (pending the transfer of Digital, Competition, Innovation to the Chief Minister), was in effect also a delegation decision. In any event, it was only the Minister’s decision of 16 December 2014 that specifically provided for delegations as required by Articles 28 and 30 of the 2005 Law.<sup>38</sup>
78. These specific delegations were set out in the Appendix to the Decision, which provided for functions under fourteen statutes be delegated to Senator Ozouf. These did not include the Public Finances Law 2005, pursuant to which the Proposition creating the JIF had been adopted and pursuant to which, indirectly, the Economic Development Minister therefore exercised his powers in relation to the Fund. Nor was there any reference to the functions relating to the JIF itself. Accordingly, it appears that there was no express written delegation decision by Senator Farnham that delegated his functions in relation to the JIF to Assistant

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<sup>37</sup> In that regard, the Explanatory Note to R160/2014 sets out the same paragraph as contained in the notice pursuant to Order 117(2) and (2B), which is quoted in the preceding paragraph, regarding the Chief Ministers intention to propose draft regulations.

<sup>38</sup> MD-E-2014-0132



Minister Ozouf, albeit that the Minister appears to have believed that he had made such a delegation. This mistake may have arisen because Senator Ozouf was only appointed Assistant Minister for Economic Development pending transfer of the functions relating to Digital, Competition and Innovation to the Chief Minister, to whom he was also Assistant Minister and confusion arose as to what further delegation was needed.

79. That transfer of functions was initiated by the Chief Minister lodging the draft States of Jersey (Transfer of Functions No. 8) (Miscellaneous Transfers) (Jersey) Regulations (“the draft Transfer Regulations”) au Greffe on 6 May 2015. In so far as relevant to this review, the draft Transfer Regulations provided for the transfer of functions in respect of the digital sector of the economy, competition and innovation from the Minister for Economic Development, Tourism, Sport and Culture to the Chief Minister. Regulation 4(e)(e) specifically provided for the transfer of functions from the Minister for Economic Development to the Chief Minister in relation to the JIF.
80. There was a long period of delay between the Chief Minister expressing his intention to lodge the draft Transfer Regulations, which he did in November 2014, and the regulations actually being lodged, which only took place on 6 May 2015. It is not entirely clear why that delay occurred. I was informed by the Chief Minister that the draft regulations were produced very quickly and an advance copy was provided to the Scrutiny Panel, which requested that their lodging be postponed pending resolution of objections they had to the proposed arrangements. This is supported by an E-mail dated 5 December 2014 from officer AM to the Council of Ministers and CMB & Admin, which attached the draft States of Jersey (Establishment of Minister, Re-Naming of Ministers and Transfer of Functions) (Jersey) Regulations 201- and stated that the Chief Minister would “*sign the relevant Ministerial Decision on Monday and lodge the draft Regulations on Tuesday for consideration by the States Assembly on 20th January 2015.*” It is also supported by the record of the public meeting of the Corporate Scrutiny Panel of 9 March 2015, at which the Chief Minister was asked when he intended to lodge the draft Regulations and responded that he had undertaken “*not to lodge them some weeks ago while*” the Panel was thinking about what it would do.<sup>39</sup> Further, the Chief Minister stated that he would provide details of what he was planning to lodge prior to lodging the draft Transfer Regulations. What in fact happened was that the draft regulations were lodged with the Greffe on 6 May 2015. By letter dated 11 May 2015

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<sup>39</sup> <http://www.scrutiny.gov.je/SiteCollectionDocuments/Transcript%20-%20Quarterly%20Hearing%20-%20Chief%20Minister%20-%2009%20March%202015.pdf> p. 17

they were then sent to the Corporate Services Scrutiny Panel, explaining that they “*have been lodged au Greffe with the intention, subject to Scrutiny, that they be debated by the States Assembly as soon as possible following the lodging period*”. That letter further explained that the Chief Minister was no longer proposing a separate ministerial office for Financial Services, Digital, Competition and Innovation due to the administrative infrastructure needs that that would entail. The letter also stated that a review of the relevant ministerial functions was being commissioned.

81. Over the following period there is evidence that the Corporate Services Scrutiny Panel of the States raised the need for existing ministerial responsibility to be observed pending the draft legislation being lodged, subjected to scrutiny, debated and approved by the States Assembly.<sup>40</sup>

82. At some point after the draft Transfer Regulations were lodged, the Corporate Services Scrutiny Panel called in the proposition for review. I have been unable to ascertain the date on which that took place. Although the Corporate Scrutiny Panel web-site states that the review commenced on 4 November 2015, a hearing with the consultant from Concerto Partners took place on 7 August 2015 concerning transfer of property holdings to infrastructure (with a report dated 4 December 2015) and submissions were sought by the Panel in early August 2015 relating to the transfer of fisheries and it evidently (and perhaps unsurprisingly) started much earlier. It would indeed be strange for the Chief Minister to have lodged draft regulations on 6 May 2015 and for a review by the Panel not to have been commenced until 4 November. Whatever the position, however, the Scrutiny Panel review evidently caused further delay and it is unclear from its web-site as to why this happened. Moreover, on 20 October 2015, the proposition, in so far as it related to the transfer of Digital, Innovation and Competition to the Chief Minister’s department, was referred back to the Economic Affairs Panel for scrutiny and that review apparently commenced on 9 November 2015. On 24 November 2015 the Chief Minister gave evidence in relation to the May 2015 proposals.<sup>41</sup>

83. Having taken evidence, the Panel noted in its comments on the proposal that:

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<sup>40</sup> Letter 23 January 2015 from Deputy Fondré to Senator Gorst, letter 24 April 2015,

<sup>41</sup> <http://www.statesassembly.gov.je/ScrutinyReviewTranscripts/2015/Transcript%20-%20Transfer%20of%20Functions%20-%20Chief%20Minister%20-%2024%20November%202015.pdf>

*“Since the Chief Minister indicated his intentions alongside his nominations for ministerial office, swiftly followed up in R.160/2014, it seems that departments concerned have worked under the assumption that the entire package of proposals for the Transfer of Functions would go ahead, despite the fact that this has yet to be put to the test in a States debate. Indeed, some Ministers and Assistant Ministers appear here to be proud of the fact that (for once) departments have simply got on with the job in hand, rather than delaying pending the production of costly reports and reviews to justify action.”<sup>42</sup>*

84. The draft Transfer Regulations were finally adopted on 16 December 2015, with effect from 1 January 2016 – that is, seven months after the proposition had been lodged and 13 months after the Chief Minister had first expressed his intention to make changes.

85. As required by s. 30A of the 2005 Law a report setting out relevant responsibilities of ministers and their assistant ministers, as presaged in R160/2014, was presented to the States on 5 February 2016.<sup>43</sup> This report states that the Chief Minister has responsibility for *“Financial services and digital sector, competition and innovation policies”*. Further it is stated that Senator Ozouf has *“responsibility for the following areas”*:

*“for the financial services industry, the digital sector and promoting competition and innovation, to increase the performance of the local economy to help deliver sustainable public finances and improve job opportunities.”*

86. However, it was not until 15 April 2016 that the Chief Minister made a written Ministerial Decision delegating his functions under Article 28 of the 2005 Law in relation to the JIF to Senator Ozouf. By his decision of that date, the Chief Minister delegated to Assistant Chief Minister Ozouf:

*“responsibility for the digital sector of the economy, promoting competition and innovation”, including for the “Jersey Innovation Fund loan authorisations (arising from the administration of the special fund established by the States under the Public Finances (Jersey) Law 2005 with the adoption of P.124/2012).”*

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<sup>42</sup> P.46/205 COM. (3)

<sup>43</sup> <http://www.statesassembly.gov.je/AssemblyReports/2016/R.14-2016.pdf>

87. The Delegation Report was presented to the States on 19 April 2016.<sup>44</sup>

88. I have identified two problems as to the designation of responsibility for the JIF, both of which date from early November 2014.

a. First, a failure to ensure that the person intended to have responsibility was given that responsibility by way of a written Ministerial Decision that was reported to the States in accordance with Article 30 of the 2005 Law.

b. Secondly, a confusion between relevant individuals as to who had responsibility and who was intended to have ultimate legal responsibility for JIF loan decisions, which appears to have impacted also on the officers charged with administering the JIF.

89. To a large extent of course, these two problems are connected; had the legal position been understood and complied with, it is likely that the confusion that arose would have been avoided. That would not necessarily, however, have resolved the difficulty that arose from Senator Ozouf being in charge of the JIF whilst responsibility for it ultimately remained with Senator Farnham, as Minister for Economic Development. This appeared to give rise to problems connected with the relative experience and seniority of those two ministers, the fact that Senator Ozouf was also Assistant Chief Minister, as well as difficulties relating to which officers answered to which ministers.

### **The position from 12 November 2014-1 January 2016**

#### *The failure to report the delegation decision to the States under Article 30 of the 2005 Law and record a written Ministerial Decision*

90. From 12 November 2014 to 1 January 2016, there was a failure to comply with the obligation in Article 30 of the 2005 Law, that is, to produce a report to the States setting out that Senator Farnham had delegated his functions in relation to the JIF to Senator Ozouf. There was also no recorded Ministerial Decision delegating such functions, which from 10 February 2015 became a requirement under the 2015 Code. However, I am satisfied from the material I have seen that Senator Farnham believed that a delegation decision had been made and undoubtedly intended to delegate the relevant functions. It can indeed be said without

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<sup>44</sup> MD-C-2016-0047 [not available on [www.gov.je](http://www.gov.je)], presented to States on 19 April 2016 in R.36/2016

equivocation moreover, that there was at the very least an oral delegation, as recorded in numerous E-mails.

91. At the time the delegation was made, there was no requirement that the decision be recorded in writing, either in the 2006 Code or in Article 28 of the 2005 Law. From 10 February 2015 Ministerial Decisions were required to be in writing, as provided in paragraphs 3 and 4 of Appendix 3 to the 2015 Code. However, I am of the view that the failure to delegate by way of written Ministerial Decision does not render the loan decisions taken by Senator Ozouf *ultra vires*. Similarly, the fact that the delegation was not reported to the States, as required, would not in my view make the loan decisions *ultra vires*; had the States Assembly intended non-compliance with Article 30 to have that consequence it would have said so clearly.

*The delegation decision was made and everyone understood it to have been made*

92. Senator Farnham believed that he made the delegation by way of his decision of 16 December 2014 reported in R181/14 (19 December 2014): see paragraph 77 above.
93. Prior to that, on 18 November 2014 Senator Ozouf had sought clarity in relation to the delegation from the Minister, which he did again on 4 December 2014, noting that he had not seen the delegation of responsibilities to him in relation to the JIF. At that stage (on 4 December 2014), the Chief Officer for the Department of Economic Development, Mike King, wrote to Senator Farnham stating that: *“The only point of issue that appears to remain unresolved is your position with regard to the Innovation Fund. The Transfer of functions Regulation, to be lodged today or tomorrow, are clear in that responsibility for the JIF transfers to the new Ministry and we have prepared the draft scheme of delegation to reflect this. However EDD officers are aware that you have an unresolved issue with respect to the Fund which, when resolved between you, Philip and the Chief Minister, will allow us to complete the delegations.”* Senator Farnham replied that he was meeting with the Chief Minister, the Treasury Minister and Senator Ozouf to fully understand exactly what was to be transferred.
94. Subsequently, in response to an Email from Tim Herbert on 8 January 2015 regarding where the JIF “sat” administratively and in terms of ministerial oversight, Senator Farnham stated that: *“[u]ntil the States approve the transfer of functions to the new ministries, the Jersey Innovation Fund remains with EDD. I have, however, under the delegation of powers, passed the delegated function to Senator Philip Ozouf who is Assistant Minister for EDD during this interim period. Having said that, both Philip and I will provide support as necessary to enable you to continue with the important work you are currently doing.”* (emphasis added)

95. It is clear therefore and this accorded with the position as expressed to me in interview, that Senator Farnham believed that by his decision of 16 December 2014 he had delegated responsibility in relation to the JIF. No one appears to have realised that that decision did not in fact delegate the Minister's functions in relation to the JIF referring as it does to legislation that does not include the Public Finance Law 2005.
96. It was suggested to me that the error may have arisen on the basis of a belief that no written delegation was required because the JIF function was not a function "*vested in a Minister by or under...an enactment*", as provided in Article 28 of the 2005 Law. However, that does not appear to me to be correct. The JIF is a "special fund" deriving from the Public Finance Law 2005 and as such, the function is in my view vested in the Economic Development Minister, as set out in the OTRs, which were adopted pursuant to that Law. Put another way, the Economic Development Minister would not have the power to grant a loan under the JIF absent the creation of the JIF pursuant to the Public Finance Law 2005.
97. There is a suggestion in later correspondence that by around April 2015 it was understood, at least by officers, that a written/reported delegation decision had not been made, since officers at that point took the view that Senator Farnham had to sign the decision granting the loan.<sup>45</sup> Senator Ozouf however, expressed surprise when informed by the officer that the ministerial decision in relation to a loan requires the signature of Senator Farnham, stating: "*I thought this had been delegated to me*". The response was that "*the decision making lies with you, but the MD still has to be signed by Lyndon.*"<sup>46</sup> It appears however, that the subsequent communications involving ministers concerned only the question of the extent of Senator Ozouf's responsibility for the JIF rather than whether he had delegated power and this is considered further below.
98. There does not appear from the documents to have been any subsequent discussion involving ministers as to whether or not a delegation had in fact been made. The JIF Board Minutes of 3 June 2015, however, indicate that the Board was not satisfied on that point, recording that Mike King advised "*that the responsibility for approving JIF recommendations has been delegated to Senator Ozouf and IT WAS NOTED that he would provide the Board with a letter to confirm this together with the scheme of delegation which was agreed in the States*" (emphasis added). At the following meeting on 29 July 2015, it was noted that no such

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<sup>45</sup> See E-mail dated 20 April 2015 17.18 from [REDACTED] to Senator Ozouf and subsequent responses.

<sup>46</sup> E-mails Senator Ozouf to [REDACTED] 20 April 2011 and in response: 21 April 2015 9.36.

confirmation had been received and it was stated that “TH proposes writing to those concerned if this was not forthcoming shortly.” It appears that subsequently, as explained below, the Board accepted that not only Senator Ozouf had delegated responsibility but indeed that he had sole responsibility for the JIF.

*Lack of clarity as to the extent of Senator Ozouf’s responsibility and to whom he answered*

99. From 12 November 2014 when Senator Farnham became Minister for Economic Development, decisions to grant loans were made by both the Minister, Senator Farnham and the Assistant Minister, Senator Ozouf.<sup>47</sup> As a matter of principle, and assuming a delegation had been made to Senator Ozouf (which, as explained above, I consider did take place, albeit not by way of written Ministerial Decision) then there would have been nothing objectionable as a matter of law in both the Minister and his delegate taking those decisions. Article 28(3) of the 2005 Law is clear that a delegation of a power does not remove the legal power of the Minister in relation to the delegated power. Moreover, a minister who delegates a statutory power remains ultimately responsible for its discharge. As Senator Farnham recognised in his interview with me, as Minister for Economic Development, he remained responsible for the decisions taken by Senator Ozouf in the exercise of a delegated power.

100. Nevertheless, as a matter of practice there were evidently problems in large part connected with the position of officers, reporting lines and the sense of ownership and responsibility for the JIF, as well as the relative seniority and experience of the two ministers. This seems to have arisen because Senator Ozouf was holding the position of Assistant Minister for Economic Development on an interim basis only and there was an understanding by all concerned that JIF was to be transferred to the CM’s department, where he would have responsibility for it as Assistant Chief Minister (and indeed in the first half of 2015, as a Minister of a new department). Senator Ozouf evidently considered that he was intended therefore to have had sole responsibility for the JIF, as evidenced by an Email dated 30 January 2015 from the Chairman of the JIF Board, Tim Herbert: “PO stated that the Chief Minister had confirmed that, moving forward, PO is now the sole decision-maker in relation to JIF. DP [Doug Peedle] or PO will provide TH with the document which confirms PO position and his delegated authority/appointment. This is because Proposition 2012/124 establishing JIF envisages all

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<sup>47</sup> Senator Farnham signed loans to: [REDACTED] on 23 January 2015; [REDACTED] on 19 June 2015; Logiller on 12.12.15; Senator Ozouf signed a loan 1 May 2015 to [REDACTED] and on 18 November 2015 to [REDACTED] (follow up loan).

*decisions being made by the ED Minister alone and JIFAB do not want criticism for disregarding this.”* Doug Peedle subsequently provided an E-mail enclosing hyperlinks to what were no doubt considered the relevant documents confirming that position: R160/14, a Ministerial Decision<sup>48</sup> and R181/2014.

101. Senator Farnham stated in interview that he considered Senator Ozouf to have lead responsibility for the JIF. He said his *“understanding was and it was on the instructions of the Chief Minister that he wanted certain assistant ministers to undertake certain responsibilities. After this delegation, really, I had very little to do with those areas that were delegated. The other ministers were in charge of the management from that period.”* Further: *“I was absolutely clear and so was Philip that he was in charge of the Innovation Fund and I was pleased, I had absolute confidence in Senator Ozouf’s ability. He’s a two-time Treasury Minister and former Economic Development Minister, the most senior, experienced member and that’s why I was more than happy for him to get on with it. I was always mindful that whilst it sat in my department, I was going to be, ultimately, politically responsible for it but I was more than happy for Senator Ozouf to manage it and leave it to the officers.”*

102. Nevertheless, the JIF executive was run from within Economic Development, including by the Accounting Officer from that Department. There is E-mail correspondence in relation to JIF issues between officers and only Senator Farnham concerning the JIF suggesting that they still considered Senator Farnham to be the responsible minister, as indeed as a matter of law he was.<sup>49</sup> And Senator Farnham did moreover, take loan decisions on 12 December 2014 (████████); 23 January 2015 (████████); and 19 June 2015 (████████). Senator Farnham explained that he did so as ‘the decision maker’ (rather than merely as signatory of someone else’s decision). Thus, he said that was presented with a recommendation from the JIF Board, the business case and the Economic Impact Study, which he considered with the Executive Officer and said that he *“based his decision on the information contained within it.”* He said that *“[o]bviously, [he] had a number of questions and comments which were answered satisfactorily by the executive.”*

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<sup>48</sup> Impossible to ascertain which one from the relevant hyperlink but assume it is the decision of Senator Farnham of 16 December 2016 referred to in R160/14.

<sup>49</sup> See for example E-mail 12 February 2015 from ██████████ to Senator Farnham regarding ██████████ loan terms; see also mail of 16 March relating to ██████████, albeit that this may not be a JIF loan.



103. He also said however, that with all the decisions, Senator Ozouf reviewed the position, even if he did not specifically approve of the loan or take the decision in relation to it. This appears to be correct:

- a. In relation to **Logfiller**, Senator Farnham referred me to E-mail correspondence showing that Senator Ozouf supported the decision.
- b. In relation to the [REDACTED] decision, the JIF Executive Officer in a covering email dated 19 January 2015 to Senator Ozouf enclosing the Board's recommendation, stated: "*It is worth noting that this project, and the recommendation that supports it, is more complex than previous applications to the JIF have been. Should you (or Senator Farnham) wish to meet with Tim/myself/members of the Advisory Board to discuss its merits and risks in greater detail, I am sure that can be arranged.*" Whilst the decision was then signed by Senator Farnham on 23 January 2015, an E-mail of 23 January 2015 to Senator Ozouf noted that at the request of Doug Peedle, Senator Ozouf had been provided with the Board recommendation letter to Senator Farnham (who signed off on the recommendation) along with "*a copy of the entire recommendation bundle (which includes the Economic Impact Assessment inter alia)*", which was left on his desk for when he was "*next in the Island*". Senator Ozouf informed me in writing however, that in relation to this decision he had neither reviewed nor approved it.
- c. In relation to the [REDACTED] decision, as explained in paragraph 94 above and footnote 50 below, it is clear that Senator Ozouf in effect 'authorised' the signature by Senator Farnham.

104. Senator Ozouf appears to have thought that whilst he signed JIF loans in his capacity as Assistant Minister for Economic Development, his powers derived from his appointment as Assistant Chief Minister, rather than by way of a delegated power from Senator Farnham.<sup>50</sup> Thus, he considered that he reported to the Chief Minister in relation to the JIF and considered that he had sole responsibility in relation to the JIF, rather than a delegated power for which Senator Farnham was ultimately responsible. As already mentioned that understanding

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<sup>50</sup> The position is not altogether consistent. For example, by E-mail of 18 June 2015 in relation to the [REDACTED] loan decision referred to at paragraph 112 above, Senator Ozouf agreed that Senator Farnham should sign the loan decision in his absence but asked that "*the following should appear on the MD: 'following an email and telephone consultation with the Assistant Economic Development Minister Senator Ozouf who discharges this function Senator Farnham is signing this Ministerial decision in his absence.'*"

appears to have derived from his reading of his appointment letter from the Chief Minister of 4 November 2014, to which he referred me, in which he was appointed Assistant Chief Minister, with *“responsibility in the following primary areas:....promoting competition and innovation”* as well as from the fact that the letter by which Senator Farnham was nominated for the post of Minister of Economic Development did not refer to those areas. The fact that he considered that he answered to the Chief Minister rather than to Senator Farnham is evidenced in an the E-mail of 24 September 2015 that he had and would *“as a matter of courtesy ...continue to... keep the ED Minister informed. However, my reporting line is to the CM under the terms of my appointment.”* Senator Farnham appears to have taken the same view, albeit that he also understood that he had ministerial responsibility for the JIF. He stated in an E-mail to me that: *“[p]olitical responsibility for ‘innovation’ and the JIF was delegated to Senator Ozouf in his capacity as Assistant Chief Minister. Senator Ozouf is a politician with substantial experience having served previously as Economic Development Minister and for two terms as Treasury Minister. Indeed during his second term as Minister for Treasury & Resources he was involved in the establishment of the JIF with my predecessor at Economic Development, Senator Maclean”* (emphasis added).

105. Pending the adoption of the Transfer Regulations, Senator Ozouf’s responsibility for the JIF derived not from his appointment as Assistant Chief Minister but rather from his appointment as Assistant Minister for Economic Development (pending the transfer of Digital, Competition, Innovation to the Chief Minister pursuant to the proposed regulations) as set out in the Decision of Senator Farnham of 24 November 2014 (see paragraph 76 above). Absent a delegation from Senator Farnham, he would have had no power to take any loan decisions. In taking loan decisions pursuant to a delegated power, those decisions remained the responsibility of Senator Farnham. Until the States had passed the Transfer Regulations therefore, his line of reporting was as a matter of law to Senator Farnham. Senator Farnham was obviously aware of this in the sense that he accepted that he had ultimate responsibility for the JIF until January 2016 when it was transferred to the CM’s department.

106. This confusion evidently led to difficulties relating to which department was responsible and to whom the relevant officers answered. By September 2015 there were E-mail communications regarding disputes as to the transfer of funds and personnel to the Chief

Minister's department to cover the transfer of JIF functions, which Senator Ozouf described in one E-mail as follows: *"to some extent it looks like turf wars"*.<sup>51</sup>

107. In a written follow-up response to my questions, Senator Ozouf expressed the view that one of the reasons for the problem was that the transfer of responsibilities for Innovation from Economic Development to the Chief Minister's Department was repeatedly delayed throughout 2015 when the Chief Minister had intended that it take place early in January 2015. The result was that Senator Ozouf was working not with his own accounting officer (in the Chief Minister's department) but with the accounting officer in Economic Development. He said that: *"I would have never accepted responsibility and therefore accountability for any dossiers that would be managed on a one stage removed basis including for this review, Innovation [and that] I would not have approved the continuation of MK as AO for any of the areas I would be responsible for. That is not in any way to suggest any impropriety with MK. This individual had many strengths and we had previously worked happily together. The issue was one of skills alignment."* He noted that *"from appointment in 2014 throughout 2015 there was almost a constant thought that whatever was happening today would be short term and only when the Fund and everything else was under my (and my AO's) control would it be sorted out. It was an ongoing perpetual state of "we'll put up with this now, and deal with it properly when the transfer is complete."*

108. Senator Ozouf said to me in interview that real problems arose from the reluctance of the Economic Development Department, including Senator Farnham, to delegate to him full responsibility for the JIF. In his words: *"what effectively occurred throughout the period of November 2014 to December 2015 was an impossible situation. The incoming ED Minister did not accept that the Assistant Minister had full delegated responsibility for the JIF, despite the fact that he said so. His actions speak rather differently, and I, in my defence I clarified and attempted to clarify what the wishes of the Chief Minister were in case I'd misunderstood them, exchanged emails and demonstrated a repeated attempt to clarify what the intention of the Chief Minister was, what my delegation was and to try and un-muddy what were becoming muddy waters, and I would say that the Accounting Officer, despite concerns I had about him was put in a challenging position. It was difficult, even impossible to work for two political masters"* (emphasis added)

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<sup>51</sup> E-mail 21 September 2015 16.20 to Mike King

109. Senator Farnham did not agree with that characterisation. In his interview he said that he did not think that *“the situation was very confusing, it was quite straightforward although it was unusual because, I believe it’s a first time that a new chief minister has decided to restructure the government. So certain functions of departments were moved round. As a result of that, assistant ministers were appointed as assistant ministers in other departments, so they could manage their new responsibility.”* Accordingly, he considered that the change in responsibilities as set out in R160/14 had the effect of delegating his decision-making power in relation to the JIF. In this regard he noted that he had sent an E-mail to the Chairman of the JIF in early January 2015 to explain this. He stated that he *“was very keen to pass responsibility over to Senator Ozouf.”* However, as he correctly noted *“primary responsibility never moves away from a minister to an assistant minister. The delegations are to enable the workload to be spread effectively amongst a ministerial team....I was aware that until the official delegation was approved by the States, the ultimate responsibility was with me. I was absolutely clear that that was the chief minister’s wish and Senator Ozouf’s understanding that he would manage the Innovation Fund.”*

110. I am unable to resolve this conflict of evidence. What is clear, however, is that Senator Ozouf perceived his position as compromised in relation to the JIF; his understanding was that he was to have sole responsibility (which he described as ‘full delegated responsibility’) for the JIF. The Minister for Economic Development understood, however, that whilst he could delegate his powers, he could not divest himself of responsibility for the JIF, which could only take place on adoption of the Transfer Regulations. He continued therefore to take some role in the management of the JIF. In my view therefore, the difficulty arose not because of any lack of ‘delegation’ but because Senator Ozouf believed (and was advised) that he should have been given ‘full’ or ‘sole’ responsibility and that the officers should have been answerable only to him in relation to the JIF, since that was what the Chief Minister had intended, to whom he considered himself answerable as Assistant Chief Minister. Indeed, Senator Ozouf sought advice on this and by E-mail dated 29 April 2015 from Director of Corporate Policy in the CM’s department was informed that: *“I am clear that you do have responsibility for innovation, and to me that is exclusive responsibility, and that conclusion is supported by the nomination statements, letters, appointment of AMs, delegation of functions, and Code of Conduct”* (emphasis added). As I have already said, Senator Farnham however, understood that he could not divest himself of legal responsibility for the JIF by way of delegation.

111. Attempts to resolve the disagreement are seen in the minutes of the JIF Board meeting of 29 April 2015, which record Mike King noting that “*consideration is being given to giving Senator Ozouf taking full authority for the approval of JIF recommendations and he expects to receive Senator Farnham’s agreement of this shortly. The Board supported this change and IT WAS RESOLVED that MK would provide documented evidence of Senator Farnham’s agreement in this regard for the Board’s confirmation*” (sic). Discussion subsequently took place between the Accounting Officer, Mike King, and Senator Farnham as evidenced in the E-mail of April 30 2015 (11:43) from Doug Peedle, asking Mike King to let him know “*the outcome of your discussion with Lyndon on JIF and signing of MDs? [REDACTED] and I will work on the basis that he agrees that Philip signs the MDs and we will arrange to get one signed by Philip tomorrow afternoon. Fingers crossed it will all be sorted!*” On 1 May 2015 19:14 Mike King replied to Joe Moynihan, Dougie Peedle and Paul Bradbury saying “*I have obtained agreement from the EDM that Senator Ozouf will be the sole signatory on all future Innovation Fund loans or grants. Unless and until the States agree to the changes to portfolios announced by the CM some 6 months ago, I must assume that I remain the accounting officer for the fund. I assume you will inform Senator Ozouf*” (emphasis added). That mail is written confirmation of a decision transmitted orally some three hours earlier, as made clear in a mail from [REDACTED] to Tim Herbert (Chairman of the JIF Board) confirming “*that the Minister (Philip) has signed the [REDACTED] decision...I can also confirm that Senator Farnham has passed authority for the JIF in its entirety to Senator Ozouf. As such, all future decision making and signing of documents will be done by Senator Ozouf. I’m getting this in writing*” (emphasis added).

112. On 15 June 2015 the Board sent the recommendation regarding [REDACTED] directly to Senator Ozouf. And subsequently, by E-mail dated 19 June 2015, the officer wrote to Senator Ozouf to express surprise that the Ministerial Decision on that loan was signed by Senator Farnham noting that the original document that he had submitted to the Greffe listed Senator Ozouf as the decision maker. Further, he states that “*I shall clarify what has happened here, but I’m acting on the basis that (as agreed) you will sign all MDs relating to the JIF.*”<sup>52</sup> Further, by an E-mail of 11 August 2015 from [REDACTED] to both Senator Ozouf and Senator Farnham containing a loan recommendation, [REDACTED] states: “*whilst I understand that this would usually go solely to Senator Ozouf, as Assistant Minister for Economic Development with*

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<sup>52</sup> In fact there are E-mails relating to this that show that Senator Ozouf ‘authorised’ the signature of this loan by Senator Farnham, see paragraph 97.

*delegated responsibility for Innovation, in his absence I am sending it to both of you. I hope that is acceptable.”*<sup>53</sup> Similarly in an E-mail from ██████████ in ED to Tim Herbert (JIF Board Chairman) of December 2015 the officer notes that the “*attached ministerial Decision [signed] by Assistant Chief Minister Senator Ozouf, using his delegated authority as an Assistant Minister in Economic Development.*”

113. In my view, the confused position that continued from November 2014 to January 2016 was to a large part the result of the Chief Minister’s intention to re-organise governmental responsibilities as set out in R160/14 not taking effect for thirteen months. The regulations under Article 29 of the 2005 Law were not lodged until May 2015 and were not adopted by the States until December. Had the Chief Minister’s intentions been given effect more quickly, it is clear that the difficulties set out above, would have been avoided.

114. It is impossible to say the extent to which this confusion contributed to the failings identified by the C&AG in her Report. Nevertheless, a lack of a clear understanding by the relevant ministers, the officers and the JIF Board as to who was responsible for the JIF over this period was evidently unsatisfactory, as was the failure to transfer the functions relating to the JIF to the Chief Minister’s department for thirteen months. What had been intended as an interim solution pending transfer of functions to the Chief Minister became a long term situation.

### *Conclusion*

115. Senator Farnham delegated his powers in relation to the JIF to Senator Ozouf but that decision was not recorded in writing, although he believed that it had been. Nor was it reported to the States in accordance with Article 30A of the 2005 Law.

116. From 12 November 2014 until 1 January 2016 there was confusion as to the basis on which Senator Ozouf exercised his powers in relation to the JIF, and in particular whether he had 'sole' responsibility for it or whether Senator Farnham was ultimately responsible. This led to difficulties for officers and it seems also, the Board. The source of the misunderstanding was Senator Ozouf's letter of appointment of 4 November and the delay in implementing the intention of the Chief Minister as set out in R160/14 and in the adoption of the Transfer Regulations; it had never been intended that Senator Ozouf should on anything other than a short-term interim basis run the JIF solely on a delegated basis, answerable to another

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<sup>53</sup> There is a great deal of additional E-mail evidence to this effect.

minister and using that other minister's officers. Senator Farnham retained legal responsibility for the JIF until it was transferred to the CM's department and could not divest himself of that responsibility by way of delegation.

#### Period from 1 January 2016 onwards

117. From 1 January 2016 functions in relation to the JIF were transferred to the Chief Minister's department pursuant to the Transfer Regulations. However, the Chief Minister did not provide a written Ministerial Decision delegating his functions in relation to the JIF to Senator Ozouf until 15 April 2016. In practice this is of no practical importance since Senator Ozouf did not sign any loans during that period and therefore had no need of any delegated power. In his interview with me, Senator Ozouf expressed the view that the delay in making the delegation had been caused by overwork in the Chief Minister's department.

#### The need for a list of ministerial functions under Article 30A 2005 Law

118. Finally, it should be noted that under Article 30A of the 2005 Law the Chief Minister must maintain a published consolidated list of functions discharged by each Minister. This may be done by publishing the list on a web-site. Whilst I have a copy of such a publication dated 5 February 2016 (R.14/2016), it is not clear to me whether such a list was maintained before that and in particular for the relevant period considered above. The maintenance of such a list, which could include the functions of assistant ministers as well as ministers, might assist in avoiding the kind of difficulties that arose in this case.

**ITEM 2: THE EXTENT THAT MINISTERIAL INVOLVEMENT CONTRIBUTED TO THE FAILINGS AND DEFICIENCIES IDENTIFIED IN 15.2-15.3 OF THE C&AG REPORT.**

**15.2: THE ARRANGEMENTS FOR THE FUND AS DETAILED IN THE OTRs AND FD WERE INADEQUATE FROM THE OUTSET.**

119. The criticisms at 15.2 of the C&AG Report relate to how the JIF was set up that is, the inadequacies of its OTRs and the subsequent Financial Direction (“FD”). Essentially, the C&AG’s criticisms at paragraph 15.2, as set out in the bullet points found there, can be divided into two parts:

- a. **First**, those that relate to the **objective** pursued by the JIF, namely, the failure properly to define what would constitute ‘success’, including the fixing of the risk appetite of the Fund [4.4-4.5]; to determine the cost of achieving the Fund’s objectives [3.3-3.4]; and to provide adequate mechanisms, using for example key performance indicators such as jobs created, to measure to what extent the JIF was meeting those objectives [2.3].
- b. **Secondly**, those that relate to the **logistics** of the setting up and running of the JIF to give it the greatest possibility of it achieving its objectives, namely:
  - i. clearly defined relevant roles and accountability reflective of expertise, an accurate estimate of costs, and a consistent framework provided by the Financial Direction and the OTRs [2.3];
  - ii. the fixing of clear eligibility criteria [8.2] and an objective assessment framework for the provision of loans/grants [10.3];
  - iii. guidelines on due diligence [9.1];
  - iv. clear criteria and a clear process for the fixing of terms of loans/grants (interest rates, security etc) [6.1];
  - v. the provision of mechanisms to secure upside benefits (royalties etc) [4.3], [7.1];
  - vi. a clear framework for after-care in relation to loans, including corrective action and assistance to recipients to reduce risk and increase the chances of success [12.2, 12.6 and 14.2]; and
  - vii. risk management in relation to the fund as a whole [4.6].



**Ministerial responsibility/involvement in the above in so far as they relate to the content of the OTRs**

120. The proposal for the JIF was promulgated by the Minister for Economic Development, at the time, Senator Maclean. However, as explained above it was a proposal that came from the Government as a whole, which had been agreed to by the States at the debate of July 2012 concerning the Draft Economic Development and Diversification Strategy. Accordingly, the concept of the JIF, its wider objectives, parameters and broad structure, as summarised in paragraphs 25 to 27 above, were at least provisionally agreed by the States. Further, on 6 November 2012 the States Assembly debated and adopted the Medium Term Financial Plan 2013-2015 including the proposal to allocate £5m to the JIF.
121. It is clear that the Minister for Economic Development was responsible for and did develop the JIF project and it was his officers who drew up the first drafts of the OTRs. As Senator Maclean made clear to me: *“officials [within the Economic Development Department] were therefore given the task, having decided that that was the direction of travel, obviously, in part to support the economy, to go out and research and, from that research, draw up a suitable proposal that could be taken before our States Assembly...That’s what happened so officials went off and did that. Part of that was the operational terms of reference.”*
122. Senator Maclean also noted however, that whilst his department drew up the detail, it *“had to be agreed with the Treasury because clearly Treasury was taking the proposition”*.
123. At the very early stages of development of the JIF, comments were made by C Labey by E-mail of 15 September 2012 to Senator Maclean, copied to Senator Ozouf, highlighting important points regarding the proposal documents. In addition to pointing out the need for strict eligibility criteria, it was also noted that *“...the fund executive has got to have adequate professional qualifications to carry out the onerous tasks of KYC, advice, after care and monitoring. It should also be stated if JFSC and their regulations are going to have a role to play in the scheme.”*
124. After the proposal was lodged in November 2012, the Scrutiny Panel expressed some concerns about it and it was therefore agreed that it should not go forward for debate but be fully considered by Scrutiny. The period for this to take place was subsequently extended by agreement.

125. Whilst the Minister, Senator Maclean, appears to have been kept abreast of all significant developments in the revision of the OTRs during the scrutiny period and following the Scrutiny Panel's report, it is evident that he did not take an active role in their preparation. Whilst Senator Maclean was informed by the Scrutiny Panel of its concerns, it appears that he left it very much to the officials in the department to address those concerns by way of amendments to the OTRs. The evidence also shows that whilst the bulk of the work was done within Economic Development, officials from Economic Development, Treasury and Economic Advisory (in the Chief Minister's department) did meet to discuss the issues before the Minister for Economic Development's draft response to Scrutiny was finalised by officials and sent to the Minister.

126. The Scrutiny Panel was not wholly satisfied with the Minister's draft response to their report. Indeed, in its response to Senator Maclean of 12 April 2013 it set out what it considered to be *"a few important matters"* that remained *"unresolved"* and *"potentially [raise] significant concerns"*. Accordingly, it concluded that it *"reluctantly remains of the opinion that there is more work that needs to be undertaken on the draft JIF proposals before it is in a position to confirm its support for P. 124/2012"*.

127. The Scrutiny Panel noted four particular areas of concern. First, the increased importance of Phase 2 coming to fruition to avoid the JIF becoming a sinking fund and the fact that many issues set out in the Scrutiny Panel's report that required changes in the short term had in fact been provided for in relation to Phase 2, that is, in the longer term. Secondly, the fact that the second tranche of funding necessarily could not be confirmed and thirdly, the fact that the amendments still failed to address the need for costs transparency, albeit that a further £50,000 costs had been added. Fourthly, the lack of templates for, for example, royalty payments. Consequently, the Scrutiny Panel stated that it would not be willing to recommend to the States that the JIF proposal be adopted.

128. Consequently, the relevant officer drew up a further draft version of the amended OTRs, which was copied to the Chief Officer of the Department and sent to Senator Maclean asking for him to *"give this a good read and let me know whether you feel it hits the mark in terms of achieving all of the above."*

129. Senator Maclean subsequently wrote to Senator Ozouf to say that he was content with the changes that had been made. E-mail correspondence with the Treasurer regarding changes to the OTRs, however, reveals that the Treasurer was not aware that any changes

had been made to the OTRs since they had been lodged au Greffe in September 2012. In light of the nature of the changes, she decided that it was necessary to check whether the OTRs were compliant “with Jersey Finance Law or other important elements of our governance framework.” She pointed out that she needed comments from the Minister, Senator Ozouf, before she spoke to the Chief Officer in Economic Development, Mike King. In this regard, she specifically stated that: “There are risks in this to take and if you wish to take them I think it should be in full knowledge of the changes that EDD have made.” Accordingly, she withdrew the Ministerial Decision pending a further discussion between herself and Senator Ozouf. However, Senator Ozouf was concerned not to block the debate on the JIF proposal that was scheduled for the following week. Accordingly, he decided that the proposal should be lodged the following day and that any necessary changes could be made in the lead up to the debate. After the R&P was lodged, the relevant officer in the Economic Development Department suggested a meeting between the Minister and the Scrutiny Panel to discuss any outstanding issues. A meeting appears to have taken place, albeit not with the Minister, as a result of which the Scrutiny Panel were apparently happier with the proposal, albeit that there remained significant work to do that week.

130. It appears therefore, that by time of debate, the Scrutiny Panel had agreed that the amended OTRs were acceptable. This is clear from the remarks set out at paragraphs 50 and 51 above.

### *Conclusions on the above*

131. Leaving aside the later FD, the OTRs were the essential (quasi-legislative) basis that determined how the JIF was to function. As explained above, they were adopted by the States Assembly following very detailed scrutiny by the Economic Affairs Scrutiny Panel, a detailed Ministerial response, a further response from Scrutiny and further amendments by the Department. In light of the fact that (1) the Panel not only scrutinised the proposal, but appointed independent experts prior to reaching its view; (2) the Panel considered the Minister’s amended response to the Panel’s initial criticisms acceptable and approved the amendments to the OTRs made in consequence; and (3) the States Assembly went on to accept the OTRs through a democratic process, I am of the view that no single minister can be held responsible for their inadequacies.
132. That said, there was one omission that contributed to the failure identified in paragraph 119a above. In the Economic Development Minister’s response to the Scrutiny

Panel Report, he stated that *“the Department would continue to work with Stakeholders and Treasury to agree a mutually acceptable list of measures and performance indicators that accurately reflect the performance of the Fund keeping Scrutiny updated”* [S.S. 4/2013 Res/p.7/point 13]. It does not appear that that ever took place. Nor have I seen any evidence that that Scrutiny chased in relation to it. I asked Senator Maclean about this and in his view it was an *‘operational matter’*. He volunteered to come back to me in relation to that question but I received no further details. It seems to me that if that subsequent work had been carried out, the JIF would at least have had performance indicators, which the C&AG found were lacking. Senator Maclean may be correct that this further work was for the officers to carry out and was essentially an operational rather than a policy matter. Nevertheless, in light of the statement in his response to Scrutiny, one might have expected that the Department would have had a work schedule and that the Minister would have had oversight at least in relation to what he had said would be done, so that he was able to ascertain by reference to his officers whether in fact it had been done.

133. The same applied in relation to the JIF Executive. In the Minister’s response to the Scrutiny Panel, he reassured the Panel that the JIF Executive would be of a suitable calibre and possess sufficient relevant experience [S.S. 4/2013 Res./p.13/point 34]. When I asked the Minister about whether he played any role in ensuring this was the case, he expressed the view that this was very much something for officers to deal with. As it turned out, the JIF Executive was simply made up of officers who had senior roles in the department. The Minister did not take any part in working out the structure of the JIF Executive or ensuring appointments to it were suitably qualified. Whilst I accept that because of the *‘implementation’* nature of these tasks, the Minister did not consider them a matter for him, one might have expected him to take some role in the wider questions as to what kind of structure was suitable for the JIF and what qualifications were needed within it to discharge those functions effectively. Nevertheless, I accept that these matters could be characterised as closer to implementation than to policy and therefore a matter for officers rather than for the Minister.

134. Finally, I note that at a later stage of implementation, there was a point at which the Minister might have been engaged more actively, questioning the decisions that were being made by those in his department. On 13 August 2013 the Minister was copied into an exchange of E-mails between Mike King, the Chief Officer of his Department and Sean Pritchard (the JIF Executive Officer) regarding views that had been expressed by ■■■

██████████, a potential appointee as Chairman of the Board, as to what needed to be done for the Fund to be “*investment ready*”. Those views were rejected by the officers on the basis that they would take too long to implement and it was decided that ██████████ should be passed over as Chairman since his demands in relation to what was needed to make the JIF work were in effect too stringent. It appears that the Minister agreed without further questioning the issues that had been raised by ██████████. Whilst one might criticise that with hindsight, considering the timing it was perhaps unsurprising that neither the officers nor the Minister pursued the issues raised. A detailed review by Scrutiny had only just been completed and as such, the officers were entitled to proceed on the basis that the OTRs, as adopted by the States, were fit for purpose. Nevertheless, with hindsight it appears likely that it would have been sensible for his views to have been taken more seriously, rather than rejected on the basis that there was not time for them to be implemented.

135. The Scrutiny Panel Report foreshadowed many of the problems that were later identified by the C&AG. With hindsight, it could be said that following the Scrutiny Panel’s Report, the Ministerial response might sensibly have involved a complete re-think of the proposal. And it is fair to say that there was a certain level of impatience in getting the proposal through the States, no doubt caused by the time that had passed since the States adopted the Economic Diversification Strategy and the sense that the JIF was urgently required to stimulate the economy and produce employment.

136. Equally, it might be said that having prepared such a thorough and detailed report, and having noted that the first detailed response from the Minister did not address significant concerns, the Scrutiny Panel should have maintained its earlier position, namely to not support the proposal until its concerns had been fully met. Indeed, it is notable that in supporting the proposal at the debate in the States Assembly on 1 May 2013, Deputy Luce (Chairman of the Scrutiny Panel) said that “*we all accept that it is not perfect*” and noted that there were still issues “*such as the role of the fund’s executive and the thorny subject of due diligence*”. However, in relation to those issues, Chairman Luce stated that the “*panel will continue to monitor [them] on an ongoing basis through quarterly hearings.*” I asked Senator Maclean about whether such hearings ever took place and he had no recollection that they had or of any continued monitoring. Nor have I found any evidence of such hearings on the Scrutiny Panel web page or anywhere else.

### ***The Financial Direction and the amendments to the OTRs***

137. As regards responsibility for the FD, Article 34 of the Finance Law 2005 provides that financial directions may be adopted by the Treasurer with the agreement of the Minister for Treasury and Resources and could *“comprise such additional direction and information as appear to the Treasurer to be necessary or expedient for the proper administration of this Law and of the public finances of Jersey.”*

138. As early as 18 December 2013,<sup>54</sup> the Treasurer stated her view that *“an FD would have to be written for the JIF and that this together with our processes would have to go to PAC etc. before final sign off.”* The JIF Board Minutes of 4 February 2014 noted that the decision-making flow chart (apparently prepared by the Chair) referred to compliance with financial directions and that, while a financial direction existed for grants, *“it has been proposed to develop one specifically for JIF together with operational terms of reference which will be much more specific, easily understood and provide clarity regarding risk”*. The Chair assured the Board that development of a financial direction would not delay recommendations as it was anticipated that it would be prepared by March 2014. However, it was not until 30 July 2014 that the FD was adopted and for an unknown subsequent period the Board believed that it was still in draft, see paragraph 59. As the C&AG stated: *“Despite concerns about some gaps in the Operational Terms of Reference, Treasury and Resources did not issue a specific Financial Direction relating to the Fund until July 2014. Although the Financial Direction in part replicated the Operational Terms of Reference, in instances it went beyond them, for example in detailing due diligence to be undertaken.”* It is evident that there were chasing E-mails from the Chair of the JIF. However, these were sent to officers not ministers.

139. Accordingly, two loan decisions (██████████: 29 May 2014 and ██████████: 30 July 2014) were taken before the FD was adopted or believed to have been adopted and in any event, before it could have been properly applied, for example in relation to due diligence. When I asked Senator Maclean about this, he responded that he had not been aware that the FD was not in place.

140. The C&AG’s criticism in 15.2 of her Report was that when it was finally issued the FD contained elements that were inconsistent with the OTRs in relation to risk appetite [15.2 third bullet and 15.8, as detailed in 4.5]. In this regard, she noted that the Ministerial Answer to the Scrutiny Panel report, which predated the Proposition, quantified the risk as 20% of

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<sup>54</sup> In email from ██████████ to S Pritchard

loans not securing objectives and of 10% of loans not being repaid. Accordingly, she was concerned that the FD quantified the risk as a 50% chance that a loan would not be repaid and that this was provided without the financial implications being explicitly considered by the States Assembly that had endorsed the OTRs.

141. As explained in paragraphs 54 to 59 above, that risk appetite appears to have been decided at a meeting attended by the Chief Minister, the Chair of the JIF Board and the Treasurer but not by the Minister for Economic Development, Senator Maclean or the Minister for Treasury and Resources, Senator Ozouf, neither of whom appears to have been consulted. It is unclear what happened after that March meeting and whether the matter was fully discussed. Evidently, however, since the Minister for Treasury and Resources had to agree to the FD under Article 34 of the Finance Law and the increase in risk profile contradicted an answer given by the Minister for Economic Development to the Scrutiny Panel, both of these Ministers should have been involved in that decision. Senator Maclean in interview stated that in his view, it was very much a matter for the Accounting Officer. It is also notable that FDs do not bind the Minister but only the officers (and in this case the Board). When I asked Senator Farnham about this, he said that he thought this was because ministers could not accept *“being bound by financial directions because it is our chief officer who is the accounting officer who is in charge of all the operations and we don’t tend to get involved operationally and, you don’t have operational control, if you like.”* This only goes to emphasise the different role, perceived and actual, of ministers as compared with officers.

### **15.3: THE OPERATION OF THE FUND WAS DEFICIENT IN MANY RESPECTS.**

142. The failures identified by the C&AG at paragraph 15.3 of her Report relate to non-compliance with the OTRs. She highlights five particular failures:

- a. the failure to draw on potentially invaluable external expertise;
- b. insufficient documentation of decisions to support the recommendations made;
- c. inadequate monitoring of performance of loans granted;
- d. late, incomplete and inaccurate reporting of loan performance; and
- e. the setting of interest rates on loans;
- f. remuneration of Board members, and particularly the Chair.

143. Details relating to these findings are set out in the body of the report.

144. As explained above, implementation of policies is ultimately an operational matter for departmental officers, whether that is in relation to the responsibilities of Treasury and Resources or of the minister responsible for decisions under the JIF (initially the Minister for Economic Development and from 1 January 2016, the Chief Minister). Whilst failures in those departments may ultimately give rise to ministerial responsibility, the ministers themselves cannot be expected to manage the day to day detail or decision-making necessary to give effect to policy, including the JIF. They are obliged under the Code of Conduct to take advice from their officers. They are entitled to assume that they are being advised correctly and that their officers are discharging their functions properly. I have not come across any evidence that suggests that ministers should have been on notice that that was not the case. Indeed Senator Farnham stated that he *“generally [has] full confidence in his officers, they’re generally very good and very professional and provide good advice and we have to rely on that advice...We are lay people ourselves, we’re not experts in all sorts of fields....Knowing what I know now, I would be disappointed if it turns out that officers weren’t up to it and there were mistakes. At the time I was very satisfied. I thought they were very professional and they always, in my opinion, acted in a timely manner and provided all the information that was necessary.”* Further, in relation to individual loan decisions, he stated that *“I would’ve expected there to be strong interaction between the departments at officer level and, certainly, the business case, the recommendations that came from the board would indicate, in some cases, months and months of deliberation had been undertaken by the board and the departments.”*

145. Indeed, from my consideration of E-mail correspondence and Board Minutes, as well as interviews with the relevant Ministers, there is nothing to suggest that up until at least 2016 and possibly later, Ministers were aware of the problems that the JIF Executive and Board were experiencing nor that there were any problems with the OTRs; on the contrary the evidence was that the Ministers believed that the fund was being run properly by both their officers and the Board. Indeed, the C&AG herself was concerned that *“reporting at Ministerial level was inaccurate or delayed: (i) during 2015, the quarterly reports from the JIF Executive state that there were no breaches of conditions of loans, despite significant non-compliance with the requirements for reporting by borrowers and the known failure of one company to have complied with a specific requirement of a loan immediately after drawdown; and (ii) ...there was a six-month delay in officers formally briefing the Assistant Chief Minister on issues concerning one loan. This was despite a need for this briefing having been identified and minuted at three meetings of the Board”*: §13.4.



146. Further, the JIF Board Minutes of 1 July 2014 record that Chair was now meeting with Alan Maclean (Minister for Economic Development) on a monthly basis. However, in interview, Senator Maclean said that he was not aware of any failure to comply with the OTRs, nor had he been informed of any change in risk profile of the Fund. Senator Farnham also stated that he was not aware that there had not been compliance with the OTRs. Similarly, an E-mail from Senator Ozouf to [REDACTED] (JIF Executive Officer) dated 23 January 2015 suggests that any concerns the Board had about the operation of the JIF were not, at least at that stage, passed on to Ministers. Senator Ozouf wrote: *"I met with Tim last night and very, very pleased with what I heard. It was an excellent meeting which filled with me confidence. I'm very pleased with the Board, structure, processes in place and he clearly excellent support you are giving this massively important project."* It is clear from later E-mails that Senator Ozouf did not meet Tim Herbert again until at the earliest some time after 20 October 2015.<sup>55</sup> Indeed, Senator Ozouf in his follow-up written response to my questions noted that in reading through E-mails to respond to the review: *"I have also learnt about a very significant amount of information that I was never told - despite asking."*

147. I note that the Internal Audit Report produced by the Economic Development Department in January 2016 (Report No. 2015/26) was commissioned as part of maintaining effective Public Sector Internal Audit standards. It contained many useful and important findings in relation to governance. Its circulation list was, however, confined to officers. It expressly recommended that the JIF Board and public sector advisers perform a full review of the FD and OTRs and compare them to operational requirements based on work to date, with a view to recommendations for changes being formally presented. In the "Management Response" it was agreed that a formal *"Board appraisal in the form of a Board Effectiveness review [would be] initiated by the Chair and will be developed and adopted by the Board"*. It appears that this never occurred. The Board considered the report at its meeting on 8 February 2016. An officer from the Economic Development Department noted that *"if the Board believe the TORs are too constricting the opportunity should be taken to review them, take parts out, make them more flexible, or try and simplify them and he suggested that this was something the States Officers would look at as part of the process of reviewing the Chief Internal Auditor's comments"*. Despite this, Minutes of 20 April 2016 record the Accounting Officer as noting that *"no further action"* was required by the Board in relation to the Auditor's report at that stage. I have not seen any evidence that any minister was aware of this.

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<sup>55</sup> E-mail from Tim Herbert to Senator Ozouf dated 24 September 2015

148. Indeed, even in relation to the Grant Thornton (“GT”) report into the [REDACTED] loan, it appears that there was delay in informing Ministers. The officer’s E-mail of 27 October 2016 states: *“I have asked GT to complete their report as soon as possible so it can be shared with the JIF Board before November 17th. At some point the Minister will need to be informed of the GT report.”* Emails from Senator Ozouf from October 2016, moreover, suggest that he was unaware of the work GT had been undertaking: *“The other thing that I am extremely concerned about is that I have virtually zero knowledge of any work carried out by Grant Thornton. Quite apart from the completely unacceptable position that I found myself in on Wednesday I now also know from speaking to Tim H, and just looking at Sean P - in which there is an array of confidential material there for anybody to look at. A very significant amount of work appears to been done by Grant Thornton on not only Log-filler.”*

149. In relation to one issue, the setting of interest rates on loans, the C&AG noted that the OTRs and FD were not altogether clear and potentially contradictory as to the required process but that the FD certainly provided for the interest rates for loans to be set by way of consultation between the JIF Board, the Treasurer and the Minister for Economic Development: §2.6.6 FD. Neither Senator Maclean, nor Senator Ozouf, nor Senator Farnham was aware of that and none of them became involved in determining the interest rates for loans, considering that a matter for recommendation by the Board. Senator Ozouf stated in a written response following his interview *“that ministers should not be expected to make decisions about interest rates.”* That does not however, answer the difficulty that that is what the FD provided for.

150. As regards the remuneration of the Board, the specific criticism made by the C&AG was that the position of Chair was advertised on a remunerated basis prior to the adoption of a Proposition to pay the private members of the Board – this despite the fact that the OTRs expressly stated that *“Board members will not be remunerated.”* When the Proposition – which included the remuneration of the Chair – was subsequently laid, there was *“no suggestion that this was in any way authorised by the adoption of the previous Proposition.”*

151. The most detailed evidence to date in relation to the initial advertisement for the position of Chair is set out in the Internal Audit Report. This deals in detail with the remuneration issue at pp 13-14. In that context, the “Management Response” to the issue records that:

- c. *“the ED Minister [Alan Maclean]’s position was that the Chair role was different to that of a Non-Executive Director”, albeit that “this distinction was not properly stated” in the OTRs;*
- d. *“the Minister had knowledge that Chairs on other EDD Boards were remunerated”;*  
and
- e. the Minister therefore *“asked for the advert to include”* a reference to anticipated remuneration; and
- f. the Minister also *“offered the Chair an honorarium at the time of his appointment.”*

152. This account of the Minister’s involvement is supported by an E-mail from Sean Pritchard dated 22 May 2013, in which – referring to the advertisement for the Chair of the Board – he explained that *“[a]fter an internal discussion the ED Minister and Mike King suggested/agreed that the Chairman should be remunerated but Non-Executive Board members are unpaid positions.”* The response received from Jim Shilliday was that in his view *“this should be covered by a formal ED Ministerial decision”, as it was “very soon after the States Decision which was on the basis of no remuneration. If circumstances have justifiably changed these should be identified and the decision and financial implications properly recorded.”* These E-mails do not appear to have been passed on to the Minister himself, and it is unclear whether their contents were conveyed orally.

153. In any event, it is apparent that the suggestion made in the E-mails was not acted upon. In E-mails dating from July 2013, the appointment of the Chair was discussed and Mike King made specific proposals to the Minister in relation to the level of remuneration the presumptive appointee might be offered. Subsequent emails attaching copies of the Chair’s appointment letter – which had a signature panel for Senator Maclean and was dated 16 December 2013 – describe it as having been prepared by the Law Officers’ Department and approved by Human Resources. Finally, an E-mail to Senator Maclean from the Chair dated 23 September 2014 clearly records that at that time he was in receipt of an honorarium of £10,000 per year.

154. As the Proposition approving remuneration to the private members of the Board was only adopted in September 2014, there is therefore clear evidence that the relevant Minister had agreed to – and even proposed – the remuneration of the Chair despite the absence of a basis for this in the OTRs.

155. In interview, Senator Maclean did not recall drawing a distinction between the Chair and the Non-Executive Directors as suggested in the Internal Audit Report. He instead accepted that the Chair was *“fairly obviously a member of the Board”* for the purposes of the OTRs, and described his understanding at the time as being *“that the role was going to be remunerated from the outset”* in the form of an honorarium and the covering of costs. Mr Maclean frankly acknowledged that this *“did not adhere... and I hold up my hand to this – to the details of the proposition because that wasn’t clearly defined in there.”*

156. The result is that the remuneration of the Chairman involved a clear departure from the OTRs at a very early stage in the Fund’s operation, with the agreement and active involvement of the relevant Minister. It could reasonably be said both that the relevant officers ought to have expressly brought the risk of non-compliance with the OTRs to the Minister’s attention, and that the Minister himself ought to have been more familiar with (or at least sought more information from his officers regarding) the legal framework under which they were operating.

### **ITEM 3: OTHER ISSUES**

#### ***Failure to bring forward proposals in relation to Phase 2***

157. One of the key elements in the Proposition, and an essential part of the Minister's response to Scrutiny, was the adoption of Phase 2 of the JIF, which would require the amendment of the law to allow for the States to take equity in exchange for JIF funding. It was said that this proposal would be brought forward within a few months. As the Scrutiny Panel noted in its response of 12 April 2013, significant and possibly too much emphasis was placed on Phase 2, since such a second phase might never take place. However, in the debate before the States on 1 May, the existence of Phase 2 was referred to by the Minister for Treasury and Resources, Senator Ozouf as important and as work that would "*be undertaken immediately*"

158. In the JIF Board Minutes of 4 February 2014, there is reference to the Chair having met with J Richardson (Chief Executive, Chief Minister's Department) and it having been resolved that Chair would arrange meeting with Directors, Minister, Senator Ozouf and Senator Gorst to "*discuss where JIF sits in terms of phase 2*". I have not seen any evidence as to whether this meeting took place. The Board Minutes of 2 April 2014 record recognition that progress to Phase 2 had not occurred as envisaged, noting that "*JIF are still dealing with phase 1 and [the Chair] anticipated that this would continue to be the case for the remainder of the year.*" In an E-mail between officers on the JIF executive, in the context of discussing the loan to ■■■, it is noted that "*The T&R Minister needs to bring forward a further proposition to the States for approval of this element within 6 months of the Launch of the Fund. Looking at the website - the first round of applications for the board was on 13 December 2013 - which could be argued to be the Launch Date.*" As recorded in the JIF Board Minutes of 24 February 2015, the terms of the ■■■ loan included "*a clause giving the States of Jersey the ability to convert the loan to equity (albeit that this cannot be done until the Public Finances Law has been amended.)*" There is evidence that the JIF Executive Officer in early March 2015, having learnt that amendments to the Jersey Finance Law 2005 were being prepared, asked the relevant officer in the Law Officers' Department whether it would be possible to "*discuss including an amendment that would allow for the States of Jersey to make investments on an equity basis, rather than a debt basis*". The Minutes record that "*it was felt that the requisite changes to the [2005 Law] should be made at the earliest opportunity*". The Minutes of 30 September 2015 record that the JIF Executive Officer observed that the "*current legal position enabling convertibility*" "*remained a work in progress.*"

159. It appears that this possibility remained and indeed may still remain live. On 14 June 2016, for example, it was mentioned by the then Assistant Chief Minister, Senator Ozouf, in his statement to the States.

160. In light of its essential role in the Proposition, however, I would have expected the Minister for Economic Development in co-ordination with the Minister for Treasury and Resources to have brought forward proposals in 2014 or at the latest 2015, and for the Scrutiny Panel to have followed up in the absence of such proposals. None of the ministers explained why this had not happened but Senator Maclean thought that it was likely to be because the first loans were not made under the JIF until late 2014. However, the original reason for not setting up the JIF as a partnership model, in which the States held equity stakes in the enterprises that they invested in, was that this was not legally permissible, albeit that such a model was considered potentially more effective. One might therefore have expected to see proposals for legislative amendments being made during 2014 and in any event during 2015.

161. It is obviously important if assurances are made to the States that they are then complied with, or alternatively that the position is explained fully.

### ***Appointments Commission***

162. The OTRs provided that the appointments to the Board should be overseen by the Appointments Commission. This was understood by the Minister for Economic Development, Senator Maclean, on the advice of his officers to mean that the Appointments Commission had to agree the process but nothing more. However, that appears to me unlikely.

163. Article 24 of the Employment of States Jersey Employees (Jersey) Law 2005 provides:

24 Guidelines for recruitment of States' appointees

*(1) The Commission shall from time to time produce and review guidelines that are to apply in relation to the recruitment of States' appointees.*

*(2) Guidelines produced under paragraph (1) shall contain details as to –*

*(a) how recruitment of States' appointees is to be performed;*

*(b) the grounds on which States' appointees are to be selected; and*

*(c) the circumstances in which a member of the States may be involved in the recruitment of States' appointees.*

*(3) The Commission shall ensure that guidelines produced under paragraph (1) are available for viewing by any person.*

*(4) The Commission shall take all reasonable steps to ensure that guidelines produced under paragraph (1) are followed in relation to the recruitment of States' appointees.*

164. The 2016 Guidelines<sup>56</sup> require that the Appointment Commission is actively involved in the appointment of senior appointees to independent bodies and that it agrees to those appointments. The 2013 Guidelines are no longer on the web-site but their summary suggests a similar requirement.

165. I have not investigated the question of whether the appointment process was carried out properly but from what I have seen, it does seem to me that a potential issue arises as to whether that was so. The Appointments Commission itself has a mandate to carry out such inquiries.

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<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/P%20JAC%20recruiting%20guidelines%20%2020160517%20MN.pdf>

## ANNEX 1

### RELEVANT LAWS/POWERS/DIRECTIONS/GUIDANCE

1. States of Jersey Law 2005
2. Public Finances (Jersey) Law 2005: Article 3(1), 3(3)(a)
3. Code of Conduct for Ministers (“the 2006 Code”)
4. Code of Conduct and Practice for Ministers and Assistant Ministers (“the 2015 Code”)
5. Economic Growth and Diversification Strategy (“EGDS”) lodged au greffe: 1 June 2012
6. P124/2012 Jersey Innovation Fund: Establishment, Funding and Operation lodged au greffe: 20 November 2012, including Jersey Innovation Fund, Operational Terms or Reference, September 2012 (“OTRs”)
7. Report of the Economic Affairs Scrutiny Panel following review of JIF of 27 March 2013
8. P124/2012 (amd) Jersey Innovation Fund, Operational Terms or Reference amended from 17 April 2013 to give effect to recommendations of Economic Affairs Scrutiny Panel 27 March 2013, (lodged au greffe) 17 April 2013.
9. S.R.4/2013 Jersey Innovation Fund Response of the Minister for Economic Development, presented to the States: 30 April 2013. (*Plus Scrutiny’s response of 12 April 2013 to the draft Ministerial response received by the Panel on 9th April 2013*)
10. Financial Direction 3.3 January 2006
11. Financial Direction 5.5 April 2012
12. Financial direction 1.2 – JIF – July 2014
13. Financial Direction 5.1 – purchasing of goods and service – October 2014
14. P46/2014 Draft States of Jersey (Transfer of Functions No. 8) (Miscellaneous Transfers) Regulations 201... 6 May 2015
15. R48/2014 States of Jersey Law 2005: Delegation of functions – Chief Minister – Assistant Ministers presented to the State on 16 April 2014.
16. P.134/2014 Jersey Innovation Fund Board Remuneration lodged au greffe 24 July 2014
17. R.160/2014 appointment of Assistant Ministers by Chief Minister 17 November 2014 (and prior notice by CM understanding Order 117(2) and (2B) announcing nominations, dated 4 November 2014
18. R181/2014 States of Jersey Delegations – Economic Development revised delegations December 2014 presntec on 19 December 2014
19. R57/2015 States Of Jersey Law 2005: Delegation Of Functions – Chief Minister – Assistant Minister With Operational Responsibility For Financial Services Presented To States 18 May 2015
20. R&O 158/2015 States of Jersey (Transfer of Functions No. 8) (Miscellaneous Transfers) Regulations 2015, 16 December 2015 with effect from 1 January 2016.
21. R14/16 Ministerial Responsibilities: Ministers and Assistant Ministers, presented 5 February 2016.
22. R36/2016 States of Jersey Delegation of Functions, Chief Minister to Assistant Minister – Digital Competition and Innovation presented ;19 April 2016, with effect from 15 April.



23. R108/2016 Finance Law Delegation Report for the 18 month period ended 31 December 2015, presented 19 October 2016
24. R.21/2016 Delegation of functions Treasury and Resources – revised delegations Nov 2016
25. R9/2017 Delegation of Functions, Chief Minister to Assistant Ministers presented 30 January 2017
26. R22/2017 Finance Law Delegation Report for the 6 month period ended 30 June 2016 , presented 22 February 2017
27. R2/2016 JIF Annual Report 2014 presented to the States 6 January 2016
28. R93/2016 JIF Annual Report 2015 to presented to the States 21 September 2016

