

STATES OF JERSEY



JERSEY POST INCORPORATION: COST/BENEFIT ANALYSIS, INVESTIGATION AND RESPONSIBILITIES OF JCRA (P.61/2006) – COMMENTS

**Presented to the States on 5th June 2006
by the Minister for Economic Development**

STATES GREFFE

COMMENTS

The Report and Proposition (P.61/2006) from the Economic Affairs Scrutiny Panel raises issues pertinent to both the Minister for Economic Development and the Treasury and Resources Minister. Whilst the Minister for Economic Development currently has responsibility for the day-to-day activities of Jersey Post, it is the Minister for Treasury and Resources on behalf of the Shareholder who has brought forward the Draft Postal Services (Transfer) (Jersey) Regulations 200- (P.9/2006), which deal with the move to incorporation, for approval by the States. These comments should, therefore, be read in conjunction with a report of even date from the Minister for Treasury and Resources.

For ease of reference, the following comments reflect the paragraphs of P.61/2006 –

- (a) *to agree that an updated cost/benefit analysis, in a form to be approved by the Comptroller and Auditor General, be prepared prior to consideration of the Draft Postal Services (Transfer) (Jersey) Regulations 200- (P.9/2006), in order to provide information relating to –*
 - (i) *the overall financial viability of Jersey Post International Limited post-incorporation; and*
 - (ii) *the capability of each element of Jersey Post International Limited to support itself independently;*
- and to request the Minister for Economic Development to take the necessary action;*

The Minister for Economic Development does not believe that the Economic Affairs Scrutiny Panel made a sufficiently persuasive case for a further cost/benefit analysis. Furthermore, it would serve to further delay incorporation and would have a detrimental effect on the ongoing activities of Jersey Post and the morale of its staff. States Members have already endorsed incorporation 3 times:

On 22nd October 1996, when the States approved P.146/96 – Jersey Post Office Limited: Incorporation and Addendum to P.146/96 (Appendix B Regulatory Functions) on a Standing Vote.

On 4th July 2000, when it approved by Standing Vote, P.90/2000 – Incorporation of Jersey Post and Jersey Telecoms: Revised Approach;

and most recently, on 30th March 2004, when the States approved by 39 votes to 2, P.24/2004 Draft Postal Services (Jersey) Law 200- and P.24/2004: Amendments.

Best Practice in modern public sector trading shows that the multiple functions of the States as shareholder, operator and regulator need to be separated out. This is a core part of the PSL. The States will remain the shareholder, but the operator will gain commercial freedom through incorporation, while the interests of the consumer will be strongly protected through regulation by the JCRA. This follows the successful model used in the incorporation of Jersey Telecom and should be introduced without further delay.

- (b) *to request the Minister for Economic Development to request the Jersey Competition Regulatory Authority, in accordance with the provisions of the Competition Regulatory Authority (Jersey) Law 2001 and the Competition (Jersey) Law 2005, to carry out an investigation, prior to the incorporation of Jersey Post, into the cross subsidy by Jersey Post of Offshore Solutions Limited (OSL);*

The Minister for Economic Development fully supports the sentiments of the Panel in wishing to ensure that Jersey Post is an efficient and effective company and that it does not engage in any anticompetitive actions. The method for doing this, however, is to allow for incorporation and the coming into force of the PSL 2004. The JCRA will then have specific powers under that law to undertake investigations and, if warranted, compel Jersey Post to take any required remedial action. Both the JCRA Law and the Competition Law, however, are presently restrained by the provisions of the 1969 Postal Law and could only recommend, but not compel change.

- (c) *to request the Minister for Treasury and Resources to review the decision(s) to grant any loan(s) from the States to Jersey Post International Limited in respect of liabilities under the Jersey Post Office Pension*

Fund, and the terms of those loans, and report thereon to the States;

This is primarily a decision for the Minister for Treasury and Resources, however, the Minister for Economic Development supports the maximisation of return to the public so long as it is competitive. For this reason it is agreed that it will be open to the JCRA to determine at any time if they consider the terms of the loan to be uncommercial, and both the Minister for Economic Development and the Minister for Treasury and Resources would abide by that decision.

- (d) (i) *to agree, in principle, that Article 8(1) of the Postal Services (Jersey) Law 2004 be amended to provide that the Jersey Competition Regulatory Authority should no longer have a primary duty to perform its functions under the Law in such manner as to ensure that the company has sufficient financial resources to discharge its liabilities under securities issued by the Company to the States; and*
- (ii) *to request the Minister for Economic Development to take the necessary action arising from paragraph (d)(i);*

Article 8 of the Postal Services (Jersey) Law 2004, and in particular Article 8(1)(b), gives the Minister for Treasury and Resources, and indeed the States, the confidence that the Company will have the ability to repay its borrowing from the States within an adequate timescale. The Minister for Economic Development believes that the Article is a prudent measure to protect the public interest, but will undertake to review this after two years with a view to repeal.

- (e) (i) *to agree, in principle, to amend Article 9(1) of the Postal Services (Jersey) Law 2004 to provide that the States, and not the Minister for Economic Development, have the responsibility, in the public interest, to 'direct or guide' the Jersey Competition Regulatory Authority in relation to the implementation of any social or environmental policies in respect of postal services; and*
- (ii) *to request the Minister for Economic Development to take the necessary action arising from paragraph (e)(i).*

The Minister for Economic Development believes wholeheartedly in the need for proper accountability in the defence of the public interest. For this reason, it seems most appropriate to ensure that responsibility is seen to rest in one individual, the Minister, who can then be directly held to account.