

STATES OF JERSEY

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JERSEY ENTERPRISE BOARD LIMITED: PROPOSED ESTABLISHMENT (P.194/2007) – THIRD AMENDMENT

Lodged au Greffe on 19th February 2008
by the Public Accounts Committee

STATES GREFFE

JERSEY ENTERPRISE BOARD LIMITED: PROPOSED ESTABLISHMENT (P.194/2007) – THIRD
AMENDMENT

(1) *At the end of paragraph (a) insert the words –*

“except that before the Memorandum and Articles of Association are signed by the subscribers they shall be amended to provide that the Company shall not appoint its own auditors and that, instead, the Comptroller and Auditor General shall be responsible for ensuring that an audit of the Company’s annual accounts is completed, to mirror his statutory powers under the Public Finances (Jersey) Law 2005 in relation to the States’ accounts, and that a report on the audit shall be presented to the States by the Comptroller and Auditor General each year.”

(2) *After paragraph (b) insert the following new paragraph –*

“(c) to agree that the Comptroller and Auditor General shall have the power to investigate and report on the economy, efficiency and effectiveness of the manner in which the Jersey Enterprise Board uses its resources to mirror his statutory rôle under the Public Finances (Jersey) Law 2005 in relation to States funded bodies;”

(3) *After new paragraph (c) above insert the following new paragraph –*

“(d) to agree that any proposed changes in the Memorandum and Articles of Association of the Company shall firstly be brought to the States for approval.”.

PUBLIC ACCOUNTS COMMITTEE

Note: The Public Accounts Committee has withdrawn its second amendment, lodged on 15th January 2008, and is lodging this amendment.

REPORT

This proposition will effectively transfer States' Assets, of a significant value, out of the direct control of the States and into the ownership of the new company.

Although the sole shareholder will be the States, as represented by the Minister for Treasury and Resources and the Chief Minister, the company will be controlled by a Board on which the States Members will not be in the majority.

Whilst the Chief Minister may issue directions to the Directors, the Directors will have all the powers of a normal Board of Directors, including the powers outlined in paragraph 45 of the Memorandum and Articles of Association. This paragraph allows the Company to mortgage or charge its undertaking, property and uncalled capital or any part thereof, and to issue debentures and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party. These are normal powers for a company. However this company will be receiving assets of an extremely high value which are the property of the Public of the Island.

It is understood that there will be occasions when commercial sensibilities will prevent complete transparency regarding the details of the activities of the company. It is also probable that if there are financial problems then commercial partners will look to the States rather than to the company.

The argument might be made that this organisation should be treated as an "independently audited States body". The main organisations to which this applies are the JEC and Jersey Water. These however are constrained by the strict rules of the London Stock Exchange as they are publicly quoted companies. The proposed company will not be listed.

Moreover, this particular activity is not one in which the States has professional experience. It follows that the States is reliant on the Board of Directors. Whilst the Public Accounts Committee has no doubts about the levels of probity which will be required in such an organisation, it is always advantageous to be able to call on an independent opinion.

The Public Accounts Committee considers that it would be prudent and entirely commonsense that the company and its subsidiaries should come within the remit of the Comptroller and Auditor General. This would give assurance to the Public that there will be an independent oversight of Jersey Enterprise Board and its activities and would provide additional assurance to the Council of Ministers.

Amendment (1) will bring changes to the Articles of Association to require the Comptroller and Auditor General to oversee the audit and report on the audit to the States.

Amendment (2) will ensure that the Comptroller and Auditor General has the ability to report on the economy efficiency and effectiveness of the way in which the new Company uses its resources. The power would mirror the current duty of the Comptroller and Auditor General under Article 46(3)(b) of the Public Finances (Jersey) Law 2005 (see Appendix).

Amendment (3) ensures that there can be no change to the constitution of the company without prior referral to the States Assembly. Whilst the Public Accounts Committee has no doubts of the competence of a Chief Minister or a Minister for Treasury and Resources, this represents a commonsense check and balance in the operation of the company.

*Duties of Comptroller and Auditor General***46 Comptroller and Auditor General to ensure compliance with Law**

- (1) It is the duty of the Comptroller and Auditor General to provide the States with independent assurance that the public finances of Jersey are being regulated, controlled and supervised and accounted for in accordance with this Law and that the provisions of this Law are otherwise being duly complied with.
- (2) That duty shall be taken to include, in particular, assuring the States –
 - (a) that money withdrawn from the consolidated fund, the strategic reserve fund or the currency fund was used for the purpose for which it was authorized to be withdrawn; and
 - (b) that all income due to the States has been collected or otherwise duly accounted for.
- (3) It shall also be taken to require the Comptroller and Auditor General to consider and report to the States on –
 - (a) the effectiveness of the internal financial controls of States funded bodies and the internal auditing of those controls; and
 - (b) the economy, efficiency and effectiveness in the way they use their resources of States funded bodies, independently audited States bodies (other than those that are companies owned or controlled by the States), and States aided independent bodies; and
 - (c) the general corporate governance arrangements of the States and of States funded bodies, independently audited States bodies and States aided independent bodies,and, in each case, to make recommendations to bring about improvement where improvement is needed.