

ST. HELIER WATERFRONT LEISURE COMPLEX LEASE: STRUCTURE OF SUB-LEASES

**Lodged au Greffe on 3rd April 2001
by Finance and Economics Committee**



STATES OF JERSEY

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PROPOSITION

THE STATES are asked decide whether they are of opinion -

to refer to their Acts dated 27th July 1999, 4th July 2000 and 3rd August 2000 and -

to authorise the Attorney General and the Greffier of the States, following the passing of the contract for the lease of eight vergées of land west of Albert Pier, St. Helier (as shown on drawing 1704/2) to CTP (Jersey) Limited as the site of the Waterfront leisure complex, to join on behalf of the Public into any contract of sub-lease by CTP (Jersey) Limited of any part of the property or any other disposition out of the lease or any sub-lease (which has been approved by the Finance and Economics Committee of the States of Jersey or such other Committee which may have responsibility for the Public's interest in the leisure complex from time to time) to ratify and confirm such sub-lease or disposition on such terms as may be determined by the Finance and Economics Committee (or other such Committee as aforesaid).

FINANCE AND ECONOMICS COMMITTEE

REPORT

1. Introduction

1.1 On 4th July last year the States approved terms for the lease of eight vergées of land west of Albert Pier to CTP (Jersey) Limited ('CTP') for the construction of a leisure complex to include -

- leisure pool
- cinema
- nightclub
- cafe
- fast food outlets
- health club
- public house.

The legal documentation envisaged that CTP would sub-let all of the units once complete.

1.2 On 3rd August 2000 the States rejected proposed amendments to the legal documentation.

1.3 CTP have now agreed conditional terms with sub-tenants for all of these units with the exception of the public house.

1.4 Members are reminded that CTP's profit is capped under the Development Agreement concluded between CTP and the States. The surplus from the commercial rents returns to the States in the form of the agreed subsidy (£93,000) and the overage (to be determined). The subsidy is to be guaranteed by the funders (Royal Bank of Scotland International - 'RBSI') if the commercial leases are taken up. The security of these sub-leases is as important, therefore, to the States as it is to CTP.

2. Jersey property law

2.1 The legal document envisaged that three of the sub-leases (the cinema, the nightclub and the health club) required the consent of the Public (which would not be unreasonably withheld or delayed) on a first letting. Otherwise, there was no necessity for consent to any sub-letting.

2.2 In the course of this legal work it became apparent that there is an omission in Jersey property law which is of particular importance in commercial leases of this nature. Under Jersey law the sub-lessees would have no automatic security of tenure in the event of the head lessee having its head lease cancelled by the Public by reason of default under the terms of the head lease. These rights of cancellation are reserved to the Public under the head lease.

2.3 Under United Kingdom property law, sub-leases would be recognised by the courts and the sub-lessees would have security of tenure.

2.4 Given that all the sub-tenants are investing between them over £10 million in fitting-out costs this lack of security under Jersey law is a fundamental problem, and a solution has to be found to assure the sub-lessees of their tenure.

3. Recommended solution

3.1 The simple solution recommended by WEB's lawyers, Bailhache Labesse, and by the Solicitor General, is that the Public is made party to the sub-leases. It is usual practice in Jersey for an owner to be requested to ratify and confirm the sub-leases of its head lessee to give to the sub-lessees security of tenure. Under this arrangement, in the unlikely event that the head lessee defaults, and in the even more unlikely event that the funding bank chooses not to step into the head lessee's shoes in order to protect its financial interests, which rights are accorded to it both by the head lease and the law which the States passed making it possible to charge leases, then the Public would replace the head lessee, recognise the sub-lessees and receive all the benefits and liabilities which would have been enjoyed and owned by the head lessee.

3.2 The benefits are the total of the rents and other sums due under the sub-leases. The liabilities are the management, repair and insurance costs of the Leisure Complex, but since all of these costs are recharged to the sub-tenants, there is, in practice, little exposure to financial liabilities.

- 3.3 Because of the number of sub-leases and the potential over the term of the head lease for sub-sub-letting and other devolutions and indeed expiration and recreation of sub-lettings on several occasions, it is recommended that the Finance and Economics Committee or such other Committee of the States from time to time responsible for the Public's interest in the Leisure Complex, would decide in relation to each sub-lease whether its terms are acceptable to the Public and should be ratified and confirmed.
- 3.4 This proposition has no implication for the manpower resources of the States. The potential implications for the financial resources of the States are detailed above.