STATES OF JERSEY

WATERFRONT ENTERPRISE BOARD LTD: REMOVAL OF STATES DIRECTORS AND CHAIRMAN FROM OFFICE

Lodged au Greffe on 13th June 2008
by Deputy G.P. Southern of St. Helier

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion −

to refer to their Act dated 28th March 2006 in which they appointed Senator Paul Francis Routier, Senator James Leslie Perchard and Deputy Jacqueline Jeannette Huet of St. Helier as States Directors of the Waterfront Enterprise Board Limited until 31st March 2009, and to their Act dated 19th July 2006 in which they appointed Mr. Francis Gerald Voisin as a non-States Director and Chairman of the company until 20th August 2009 and appointed Jurat John Claude Tibbo and Mr. Peter Joseph Crespel as non-States Directors until the same date, and –

(a) in accordance with the provisions of Article 30(b) of the Articles of Association of the company and having noted the resignation of Senator James Leslie Perchard as a Director on 11th June 2008, to remove all the remaining States Directors from office;

(b) to remove Mr. Francis Gerald Voisin as a non-States Director and Chairman of the company; and

(c) to request the Greffier of the States to notify the company of the decision.

DEPUTY G.P. SOUTHERN OF ST. HELIER

REPORT

(a) States Directors

I believe that States members have been seriously misled in the debate on P.60/2008, the Esplanade development. Material that I consider to be essential to the debate and fundamental to a proper understanding of the serious issues involved was withheld from members, and almost certainly this information would have influenced the way members voted.

Members will recognise that the debate took part in 2 separate parts, the first of which largely concerned the design of the waterfront project, led by the Minister for Planning and Environment, and the second concentrated on the financial and economic issues underpinning the development, led by the Chief Minister. My concerns relate to this second part of the debate.

The material that was missing from the debate consists of 2 reports, as follows –

1. The PricewaterhouseCoopers Report (PwC) "Harcourt Developments Limited Financial Capacity Assessment: Draft report for discussion, presented to WEB September 2007. This document was released to members after the debate had concluded.

2. Report of the Economic Adviser to the Council of Ministers on the Economic impact of the proposals for the development of the Waterfront, February 2006.

This proposition deals with the responsibilities and role of the States members nominated as Directors of the Waterfront Enterprise Board, namely Senators Perchard and Routier and Deputy Huet, and therefore is only concerned with the first of these reports, presented to WEB in September 2007 and the actions of the responsible members around it.

The first question that needs to be answered concerns the extent of Directors' knowledge and understanding of the contents of this report. Accordingly I asked the following urgent questions of the Chief Minister and all 3 representatives on 10th June–

Were the CM and WEB representatives aware of the results contained in section 2.2 of the PwC report and, if so when did they become aware and if not why not?

Why did they choose not to reveal this important information to members in advance of the debate?

Having failed to release this data earlier, why, when pressure was applied over information relating to the financial deal, was it not revealed during the debate so that members could properly consider it?

The answers to these questions, along with supplementaries, were given to the Assembly by the Deputy Chief Minister and will be contained in an addendum to this proposition, to be published as soon as they are available.

What is crystal clear from these answers is that the PwC report was commissioned by WEB and its contents would have been made available to the States Directors in October 2007.

The case to answer centres on 3 issues –

1. Whether the PwC report contains information which is important to the proper consideration of the decision to proceed;
2. the extent of States nominated Directors' knowledge and understanding of the contents of the PwC report;
3. their consequent actions and statements before and during the debate on P.60/2008.

What does the PwC report state?

Members have received a copy of the PwC report which was given to members on the final day of debate but not until the debate was over. The most significant section of the report is Section 2.2 on pages 7 and 8, reproduced below –

2.2 Comparison of Turnover and Potential Scheme Construction Costs

Table 2.1 below compares Harcourt's most recent reported annual turnover to the potential peak annual construction costs envisaged under the West of Albert development (taken from data generated by Cushman & Wakefield in respect of the "Hopkins 1" scenario). In assessing whether a particular development is likely to overstretch a partner, it may be appropriate to utilise a factor of 5 when comparing projected peak annual construction values to Company turnover levels (i.e. the development in value terms would not be expected to exceed 20% of the Company's overall turnover).

Table 2.1: Turnover and Construction Cost Comparison

Development	Development construction value	Reported Turnover (2005) (A)	Peak Annual Construction Cost (B)	Factor (A/B)	Result
West of Albert (Hopkins 1 scenario)	€765.8m[1]	€97.9m[2]	€69.6m[3]	1.41	Fail

1 *Based on data generated by Cushman & Wakefield in connection with the assessment of revised (Hopkins 1) development scenario. Estimate of €765.8m (£517million) includes estimated development costs for Les Jardins de la Mer, Castle/ Marina Quays and Esplanade Square sites (£462m) and cost of sinking Route de la Liberation (£55million). Costs have been translated using an exchange rate of £1:€1.4813.*

2 *Based on data extracted from Harcourt 2005 financial statements (2005 turnover of €97.9million)*

3 *Based on the assumption that the development will be delivered evenly over a period of 11 years (as per Updated Socio-Economic Analysis of West of Albert Development, January 2007*

As outlined in Table 2.1 above, Harcourt fails to achieve a ratio of 5 for the proposed West of Albert scheme. Interpreting the methodology outlined above rigidly would appear to suggest that Harcourt has insufficient financial capacity to deliver the project. However, Harcourt's apparent low turnover levels do not fully reflect its activities in the development market.

Financial Capacity Assessment

Analysis of recent financial statements indicates that turnover relates to both value realised from the sale of property and rents receivable and other revenues from tenants. The Company's business is balanced between the sale and retention of developed property for investment purposes, with hotel assets with a book value of €38million recorded within fixed assets at 31 December 2005, investment properties in excess of €212million and stocks of land and development work in progress of €181million. As a result we would recommend a wider consideration of Harcourt's financial capacity.

Total projected expenditure for the Esplanade Square, Castle/ Marina Quays and Les Jardins de la Mer sites (including sinking Route de la Liberation) have been estimated at €765million over a period of 11 years (based on information provided by Cushman & Wakefield). At 31 December 2006 the Company's reported gross and net asset values stood at €650million and €154 million respectively. The proposed scheme therefore appears to represent a substantial commitment in comparison to the Company's 2006 year end book values.

Information provided by Harcourt suggests that the reported gross and net asset values do not fully reflect the value of the Group's property portfolio (and its capacity to deliver schemes). Apart from its investment properties a significant proportion of its development assets and hotel assets are held in the Group balance sheet at cost and take no account of uplifts in market values. Harcourt management suggest that the true market value of their total property portfolio is in the region of €1.1billion, although we have not been provided with any data to substantiate this. At the same time recent turbulence in global financial markets may impact on trading conditions in property markets and associated values.

A peak annual construction cost of €69million may appear less material in the context of values quoted by Harcourt management. However, caution should be exercised as the bulk of the Group's asset base is not liquid. In this context their business model relies to some degree on the ability to raise funds from backs on the back of property values. This ability is influenced by a number of factors including banks' capacity and willingness to lend and their pricing of risk. As part of its assessment of the ongoing suitability of Harcourt as a development partner we would recommend that WEB should consider requesting detailed information from Harcourt concerning the valuations of the Company's full property portfolio in order to provide comfort on the level of the Company's reported net asset base.

As members can see in the extract above, an assessment is made of the ratio of company turnover (A) to peak annual construction cost (B) as a means to test whether a particular development is likely to overstretch a partner and a ratio (A/B) of 5:1 is suggested as suitable. The table below this statement shows a figure of only 1.41:1, and the final test comment is Fail.

This is the test used in this sector to decide whether a particular development is likely to overstretch a partner. Not only does Harcourt fail this test, it fails by a substantial margin. Instead of peak construction costs being 20% of turnover, it is 70%.

The document then goes on to discuss, in the 4 paragraphs on page 8, what appear to be the circumstances c mitigating factors for such a wide margin of failure on this test.

I highlight some of these comments here. They do not particularly add any comfort.

Para. 1– As a result we would recommend a wider consideration of Harcourt’s financial capacity.

Para. 2– The proposed scheme therefore appears to represent a substantial commitment in comparison to the Company’s 2006 year end values.

Para. 3– Harcourt management suggest that the true market value of their total property portfolio is in the region of €1.1 billion, although we have not been provided with any data to substantiate this. At the same time recent turbulence in global financial markets may impact on trading conditions in property markets and associated values.

Para. 4– is entirely cautionary. It should be read carefully.

I believe that anyone examining this report, either in its entirety or section 2 alone, would surely insist that this data was put before members as a matter of course to ensure a complete and informed debate. Anything less, in and of itself, would constitute a dereliction of duty.

Furthermore we have also to examine how this report was presented in its absence by the WEB Directors during the debate.

In addition to the Chief Minister’s contribution –

> “The ruler has been run over Harcourt thoroughly and they have come up A1 every time.”

We heard Senator Perchard assess the report in the following terms –

> “It is a responsibility of the Directors to ensure those that we do business with are creditable. As we were talking to Harcourt we decided to do a second due diligence of the company and we engaged PwC to do that. As the Chief Minister has said – and this was last year – the report from PwC on Harcourt was a glowing one – a very lowly geared and dynamic company – and they recommended them as there were no concerns.”

This is simply not the case. Section 2.2 above is full of concerns as I have highlighted. Given the conservative nature accountancy advice, these reservations are not to be treated lightly.

Furthermore, to state, as the Deputy Chief Minister did in response to questions from me on 10th June, that the inclusion of Appendix D, the Evaluation Proforma, was sufficient information to enable members to make up their minds is patently incorrect. The statement on low gearing is shown to be untrue in the Review of the Financial Position. Whilst it is accepted that gearing levels are in line with the range generally observed for property development companies, the gearing levels are described as “substantial” and “significant”.

In the Review of Solvency, PwC point out the predominantly short-term nature of the Group’s debt, with only €59 million (14.6%) out of €405 million being repayable in more than one year. In the Review of financial performance, PwC note also the increasing debt position of the company and the way in which gross profits are swallowed up by debt repayments.

Nowhere in Appendix D does the report state that PwC “recommend them as there are no concerns” as stated by Senator Perchard. Such a statement is a gross distortion of the report’s contents, and as such represents a dereliction of the member’s duty to look after the public interest.

Whilst contributing less to the debate, neither of the other 2 States Directors contradicted this misleading picture painted for members by Senator Perchard. Senator Routier had the following to say –

> “The financial standing of the company…. they are a top company… they are very low gearing. We would be foolish to miss this opportunity for working with this company.”

Deputy Huet was even briefer, but had nothing to add in her role as guardian of the public interest –

"As a Director of WEB, I am in complete agreement with Senator Routier. The word is ditto."

In terms of the 3 issues outlined at the beginning of this report over the content of the PwC assessment, the States Directors' knowledge of its contents and their actions in presenting it to members, I believe that the Directors have been shown to have failed in their duties to the States.

The PwC report does contain serious reservations about the financial position of Harcourt. The States Directors knew of these reservations, but failed to bring this information to the States or to raise the issues in the debate. Furthermore, all 3 Directors presented the issues in a falsely positive light. They failed to do their duty to the States and should be removed.

(b) Position of Chairman

This is a far more straightforward issue. The non-executive Director and Chairman of WEB, appointed by the States, Mr. Gerald Voisin, is also the Chairman of a subsidiary, Allied Irish Bank C.I. Ltd., of the major Ban behind Harcourt.

The potential conflict of interest is clear.
The fact of the dual chairmanship is admitted.

The statement that a conflict of interest does not exist because the relationship with Harcourt is with the Dublin Head Office and that Mr. Voisin is not involved in any decisions relating to Harcourt developments, is spurious The States was not aware of this potential conflict when the appointment was made and has not been made aware of it since. Now that it is aware there is no choice but to remove the Chairman of WEB.

There are no financial or manpower costs arising from the proposition.