

# STATES OF JERSEY



## STATES OWNED OR CONTROLLED COMPANIES: RIGHTS AND RESPONSIBILITIES (P.100/2014) – COMMENTS

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Presented to the States on 27th June 2014  
by the Minister for Treasury and Resources

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STATES GREFFE

## COMMENTS

The Minister for Treasury and Resources strongly opposes this proposition.

This proposition is similar to P.157/2013: 'Machinery of Government: committee system', which proposed the first stages towards a move away from Ministerial Government. This was defeated on 23rd January 2014. P.100/2014 would seem to represent a weakening of the principles of Ministerial responsibility and accountability.

The Deputy has raised numerous States Questions issues covering one aspect of one of the States-owned companies. He would appear to equate this with a fundamental failing of the current arrangements. Each of the States-owned or controlled companies has its own processes in place for dealing with customer complaints and service improvement matters. It is not appropriate for the shareholder to become actively involved in these processes.

The current structure and process, including the legislative separation of regulation and shareholder responsibility, works and ensures matters are dealt with properly, separately and with accountability.

These companies have been incorporated and set at arms-length from day-to-day States control for a reason – to allow them to grow and flourish in competitive business environments in a way that they would simply have been unable to do if every significant business decision was brought back into a Committee process. The decision-making of these companies needs to be agile and business-focussed. The Committee process, and the States Assembly itself, are not conducive to such agility.

The States have already agreed a process for each of the major States-owned companies –

- JEC
- Jersey Water
- JT
- Jersey Post and
- SoJDC

that involves the Minister for Treasury and Resources exercising shareholder responsibility and accountability on behalf of the States Assembly, and ultimately the Public.

The precise relationship in each case between the Minister and the company is defined, for the wholly-owned companies, in a Memorandum of Understanding (MoU). JEC and Jersey Water operate under public company listing requirements. For the JEC these are the strict London Stock Exchange requirements. For the 100% owned companies the MoUs aim to foster a sound working relationship between the Minister and the company with regards to the following areas –

- Set the expectations of the States with regards to Strategic Planning, Budgets and other information requirements. Establishing Key performance Indicators.
- Ensure there is a regular dialog on key issues which emerge and develop and most importantly to ensure a “no surprises” policy. They should ensure the

Minister, in exercising his responsibilities, is kept informed of key business decisions which have a potential impact on the States of Jersey's interests as owner of the companies.

- Operate half-yearly reporting and presentations to the Minister.
- Provide for management meetings between the Officers on behalf of the Minister to meet with senior management of the companies – currently this happens twice a year.
- Ensure ongoing communications and accountability between the Minister, the Chairman and the Board.
- Other factors which directly relate to the individual businesses – e.g. Postal Unions, Regulatory Co-operation, Insurance, being a good employer.

(Extract from briefing paper to Public Accounts Committee on Relationship with the States of Jersey's Strategic Investments dated June 2013 – paper attached in full.)

The MoUs ensure that business decisions of major significance to the Island are brought to the attention of the Minister for his approval (see the comments on P.61/2014 concerning the potential sale of the Broad Street Post Office). The Minister can choose to escalate such matters to the Council of Ministers or the States Assembly if he or she so chooses.

From time to time the different entities will have their own individual issues that arise. The Memoranda of Understanding have now been extensively tested during periods of significant uncertainty, for example with Jersey Post as a result of the LVCR withdrawal.

Legislation ensures that the shareholding and regulatory roles are separated with differentiating Ministerial responsibility. As an example, the following are extracts from the Telecommunications (Jersey) Law 2002:

Article 7 – Duties of (Economic Development) Minister and (Channel Islands Competition Regulatory) Authority

- (1) The Minister and the Authority shall each have a primary duty to perform his, her or its functions under this Law in such manner as each considers is best calculated to ensure that (so far as in his, her or its view is reasonably practicable) such telecommunication services are provided, both within Jersey and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising.
- (2) In so far as it is consistent with paragraph (1) to do so, the Minister and the Authority shall each –
  - (a) perform his, her or its functions under this Law in such manner as each considers is best calculated to protect and further the short-term and long-term interests of users within Jersey of telecommunication services and apparatus, and perform them, wherever each considers it appropriate, by

promoting competition among persons engaged in commercial activities connected with telecommunications in Jersey;

- (b) perform his, her or its functions under this Law in such manner as each considers is best calculated to promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey;
  - (c) perform his, her or its functions under this Law in such manner as each considers is best calculated to further the economic interests of Jersey;
  - (d) perform his, her or its functions under this Law in such manner as each considers is best calculated to impose a minimum of restriction on persons engaged in commercial activities connected with telecommunications in Jersey;
  - (e) in performing his, her or its functions under this Law, have regard to the need to ensure that persons engaged in commercial activities connected with telecommunications in Jersey have sufficient financial and other resources to conduct those activities; and
  - (f) in performing his, her or its functions under this Law, have regard to any special needs of persons who are disabled or have limited financial resources or have particular needs.
- (3) The Minister and the Authority shall, in considering whether the services referred to in paragraph (1) satisfy the demands referred to in paragraph (1), have regard to –
- (a) whether the services are accessible to and affordable by the maximum number of business and domestic users;
  - (b) whether there is innovation in the services and their provision;
  - (c) whether the services are of high quality and are reliable;
  - (d) whether users are able to express their views about the provision of the services; and
  - (e) any objectives that the States prescribe by Regulations, including, but not limited to –
    - (i) the provision of a universal service, a social service or any form of cross-subsidized service, and
    - (ii) the provision of certain services at uniform tariffs or at tariffs that are cross-subsidized by other tariffs.

### Article 32 – Nature of Company

- (5) The Minister for Treasury and Resources may exercise the powers of the States in their capacity as holder of securities in a principal company (or in any other capacity regarding a principal company), but not the following powers (which may be exercised only by the States) –
- (a) the power to dispose of the shares or share rights in a principal company, or create or dispose of security interests over those shares or share rights or otherwise charge those shares or share rights;
  - (b) the power to authorize the issue of shares or share rights in a principal company to any person other than the States;
  - (c) the power to vote on a resolution to wind up a principal company;
  - (d) such other powers as the States have prescribed by Regulations.
- (6) In that exercise of powers, the Minister for Treasury and Resources shall act in the interests of the States as holder of securities in a principal company.

The Shareholder function should be exercised in whichever way best achieves the objectives of the States continuing to hold those companies as Strategic Investments. Those objectives include sound corporate governance, proper and regular reporting and clear accountability. The arrangements should allow the executive to focus on policy matters, and the Boards to focus on operational matters and improving business performance within the context of the overall objectives set for them within the MoU. These objectives are best achieved through a dynamic relationship with a single Minister. The States Assembly is in no doubt who to hold account for matters relating to those companies – the Minister.

If P.100/2014 were to be adopted by the Assembly, what would this mean in practice?

- Accountability would be blurred. The Assembly, and the Public via the Assembly, would not know who to hold to account. What would happen if the majority view of the Panel was different to that of the Minister? The Minister would be able to deflect accountability behind the Panel and effectively abrogate any direct responsibility for major decisions.
- There would be a blurring of policy, regulatory and operational matters. The Deputy appears to envisage a world where queries on individual Islanders' accounts would be taken up with one of 4 States Members, who would then raise those matters with the company concerned. At the same time, those States Members would be dealing with those companies on matters such as the Gigabit project or the development of the Jersey International Finance Centre. There would be no clarity for these 4 members, the Assembly, the companies or the Public.

- The arrangement would be confusing for the Boards of the companies. Instead of one Minister to deal with, there would be 4 States Members. What would happen if the Board received conflicting decisions, directions or opinions from those States Members? Who should the Board approach for any swift decisions or advice?
- The position of the Boards would be undermined. Under the existing arrangements, they have clear day-to day responsibility and accountability for operational matters. The directors are operating under a statutory obligation to act in the best interests of the companies. If they were instructed to act in a way they did not believe to be in the best interests of the companies, they are likely to have little choice but to stand down. Currently, the Boards can make unencumbered business decisions within the boundaries and context set by the MoUs. The Panels envisaged by Deputy Baudains would not afford such freedom – a freedom which is essential if these companies are to grow and thrive in a competitive environment. Customers would not see the benefit of service improvements and competitive pricing.
- Other Ministers have areas of responsibility which touch on matters involving the States-owned companies; for example the Minister for Economic Development with his regulatory role. Currently, he needs to deal with one other Minister. If Deputy Baudains' proposition were adopted, this would no longer be the case. Finally, such a move would be confusing for staff of the companies involved. The status of the companies now is clear – the staff know they operate in the private sector with all the risks and rewards that that sector offers. They know that their interaction with the States is focussed through a single Minister. This proposition sends mixed messages about whether staff are or aren't part of the public sector, and whether they are or aren't subject to States employment policies and practices.

What would be added if P.100/2014 were to be adopted? It is difficult for the Minister to find anything positive to say other than it would be seen as positive by those States Members who prefer to deal in operational detail rather than policy. Those individuals aside, the proposition would make matters worse whichever viewpoint and perspective is adopted – the Public's, the Assembly's, the Boards', the staff's and the customers'.

Work continues to be ongoing with the States-owned companies. The Treasury is currently undertaking a strategic review to confirm the long-term objectives of JT. This review is being carried out in full co-operation with the Minister for Treasury and Resources. Once the review is complete, objectives will be sharpened and the accountability and responsibility described above becomes even clear. The current structure and process allow such ongoing review and improvement to take place – they allow the focus to be on improvement rather than just administration.

The Minister strongly opposes this proposition and urges all States Members to oppose it.

# Briefing for Public Accounts Committee

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## Relationship with the States of Jersey's Strategic Investments

10<sup>th</sup> June 2013

## Introduction

The Public Accounts Committee (PAC) has requested a briefing

“To understand the relationships with the Utility Companies and discuss the Gigabit project”.

This briefing note outlines the relationships with the Utilities and addresses the following topics:-

- The States of Jersey’s current shareholdings.
- The current governance structure.
- How the shareholder relationships are managed within the Treasury and Resources Department.
- The Dividend Policy recently published.

A separate paper has been prepared in relation to the Gigabit Jersey Project and the States of Jersey’s financial support provided for the project to date.

## The States of Jersey’s current shareholdings in the Utility Companies

The shares the States own in the Utility Companies, relate to JT Group Limited, Jersey New Waterworks Company Limited, Jersey Post Limited and Jersey Electricity plc. These four shareholdings are reported as Strategic investments, which are classified in the Accounts under financial instruments. They have an estimated accounting value of £311million applying fair value valuation techniques.

The Strategic Investments are companies outside of the accounting boundary in which the States of Jersey has a controlling interest.

In the States Annual report, it defines the purpose of the Strategic Investments as:-

*“The States owns controlling investments in these utility companies, but as it does not exert direct control these are accounted for as Strategic Investments in the Accounts.”*

In addition to the Strategic Investments the Minister is responsible for the shareholding of the wholly owned subsidiary company - States of Jersey Development Company Limited (SOJDC). It was originally incorporated in 1996 as the Waterfront Enterprise Development Board (WEB), and vested with responsibility for the co-ordination and promotion of development in the St Helier Waterfront Area on behalf of the States of Jersey.

In 2010, the States approved proposition P73/2010, which set out proposals for the restructure of WEB into the SOJDC, clarifying the role of the company and widening the company’s remit to cover all designated “Regeneration Zones”. This Company is consolidated in full in the States accounts and therefore is not accounted for as a Strategic Investment.

Types of Strategic Investments shareholdings are as follows:-

By Company	Equity Shares (Ordinary Shares)	Preference shares
Jersey Electricity plc	✓	
Jersey New Waterworks Company Limited	✓	✓
Jersey Telecom Group Limited	✓	
Jersey Post International Limited	✓	



A summary of the specific holdings is detailed below, which has been extracted from the States Accounts:-

#### Jersey Electricity plc

The States of Jersey holds all the ordinary shares in Jersey Electricity plc which represents approximately 62% of the Company's total issued share capital as at 31 December 2012 (86.4% of the total voting rights). Jersey Electricity plc also has "A" shares in issue which are listed on the London Stock Exchange, and two classes of preference shares, which hold 3% of the voting rights.

#### Jersey New Waterworks Company Limited

The States of Jersey hold 100% of the issued 'A' Ordinary Shares, 50% of the issued Ordinary shares and 100% of the 7.5%-10% cumulative 5<sup>th</sup> Preference shares in the Jersey New Waterworks Company Limited as at 31 December 2012.

In addition, Jersey New Waterworks Company Limited has 6 other classes of preference shares issued.

Each ordinary share carries one vote. Whilst 'A' ordinary shares are in the ownership of the States of Jersey, the total number of votes carried by these shares is twice the number of votes cast in respect of all other shares. Every holder of a preference share holds one vote, irrespective of the number and class of such preference shares.

#### States of Jersey Investment Limited

The States of Jersey owns 100% of the share capital of States of Jersey Investments Limited (SOJIL), this is a company used to hold the investments in Jersey Telecom Group Limited and Jersey Post International Limited. Due to its nature as a holding company, SOJIL is consolidated in full and included inside the Consolidated Fund. This has the effect of treating the investments in Jersey Telecom and Jersey Post as part of the Consolidated Fund.

#### Jersey Telecom Group Limited

SOJIL holds all the Ordinary shares in the Jersey Telecom Group Limited. During the year, the 9% cumulative preference shares were redeemed by the company at their par value of £20 million.

#### Jersey Post International Limited

SOJIL holds all the Ordinary shares in Jersey Post International Limited.

#### Infrastructure Investment in Jersey Telecom Group Limited

The Currency Fund owns £10 million 2.5% Preference Shares in JT, as part of an Infrastructure Investment for Gigabit Jersey (This was approved in December 2011).

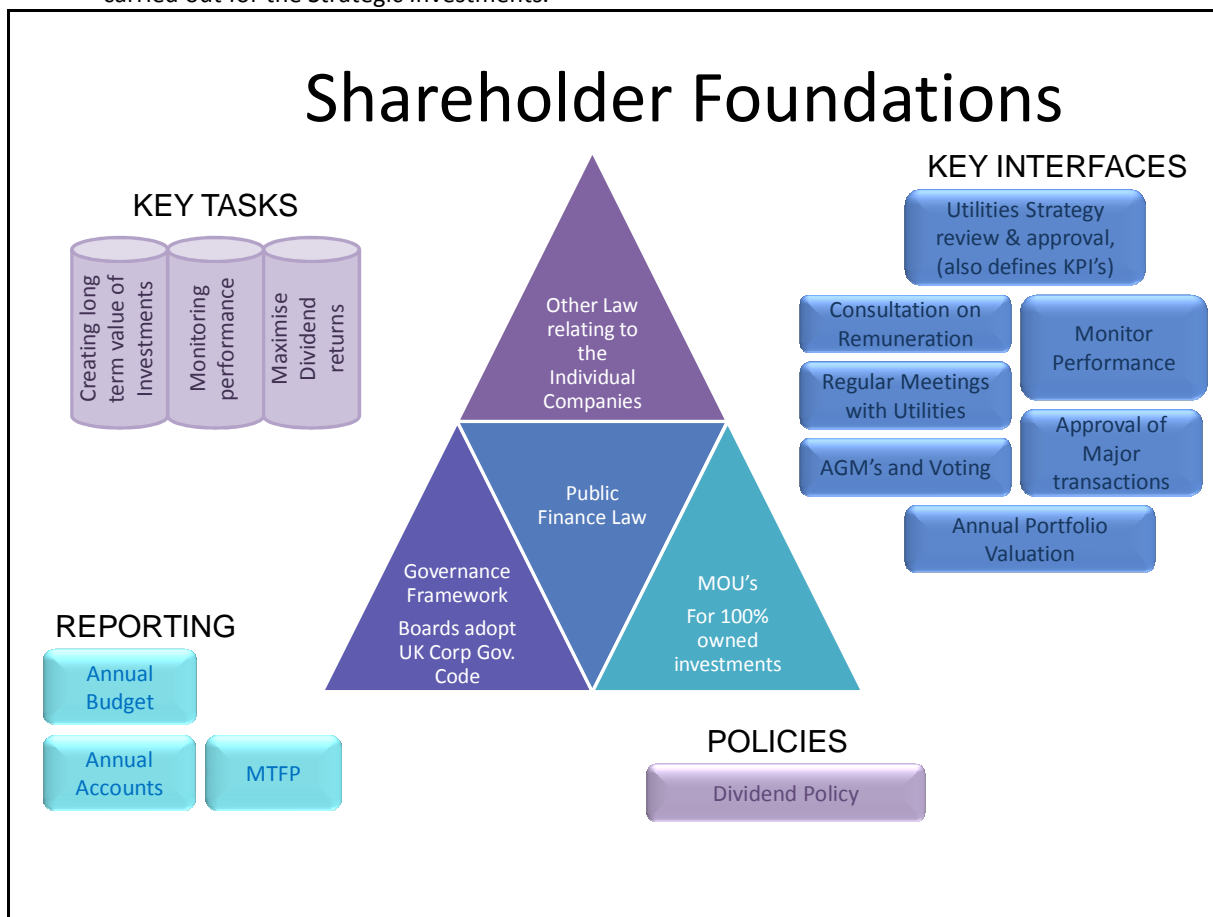
#### **How the Shares are currently held**

The Shares owned by the States of Jersey for the Strategic Investments are held in the following names, on behalf of the States of Jersey:-

- Shareholdings in JEC, JNWWC and SOJDC are held in the names of the Greffier and Treasurer on behalf of the States.
- Shareholdings for 100% owned companies - JT and Jersey Post are mainly held by the States of Jersey Investments Limited, with two shares in total being held in nominee form by two directors of the company on behalf of the Treasury and Resources Minister. This company is a Holding company wholly owned by the States of Jersey which was created solely for this purpose.

### **The Current Governance Structure in Operation**

The Following diagram reflects the current governance structure in operation for the Shareholder role carried out by the Minister on behalf of the States. It summarises the key interfaces in operation with the Utility companies; the types of work carried out and reporting carried out for the Strategic Investments.



The Utilities are managed in accordance with the relevant Laws and Regulations; Memorandums of Understanding (MOU's) and the Individual Boards Governance Frameworks (e.g. The UK Corporate Governance Code of Conduct).

### **The Laws and Regulations**

Under the Public Finance (Jersey) Law 2005 Article 68, the Minister for Treasury and Resources is responsible for the managing the States' shares in a company wherever incorporated, on behalf of the States, and may exercise the rights and is responsible for any liabilities attached to the Shares.

In addition there are powers set up under the individual Laws and Regulations governing each of the Companies. Most of these Laws were created when the Companies were incorporated and are listed as below:-

#### **JT Group Limited**

- Telecommunications (Jersey) Law 2002 - Articles 32 describe the nature of the new company and the powers of the Minister. Article 33 discusses the States holding in the Company.

- Telecommunications (Transfer) (Jersey) Regulations 2002 – Regulation 3 refers to the exact securities to be held by the States, upon transfer.

#### Jersey Post International Limited

- Postal Services (Jersey) Law 2004 - Articles 27 describe the nature of the new company and the powers of the Minister. Article 28 discusses the States holding in the Company.
- Postal Services (Transfer) (Jersey) Regulations 2006 – Regulation 3 refers to the exact securities to be held by the States, upon transfer.

#### Jersey Electricity Plc

- Electricity (Jersey) Law 1937 – Article 23 details the States powers with regards to dividends and Article 29 – refers to the Rights the States has to purchase shares back under certain conditions.

#### Jersey New Waterworks Company Limited

- Water (Jersey) Law 1972 – Article 23 details the States powers with regards to dividends on the Ordinary and Preference Shares and Part 6 – refers to the Powers of the Minister for Planning and Environment.

### **Memorandums of Understanding (MOU's)**

MOU's are currently in place for the States 100% Shareholdings. These are JT Group Limited, Jersey Post International Limited and States of Jersey Development Company. There are no plans currently to introduce MOU's for companies which are not 100% owned as it is appreciated that it would be unfair to other shareholders to obtain information which they are not a party to.

In relation to the MOU's in operation for JT Group Limited and Jersey Post International Limited, they are there specifically to provide a framework to ensure appropriate conduct of the Companies and put in place a framework appropriate to each of the Company's business nature. The MOU's aim to foster a sound working relationship between the Minister and the Company with regards to the following areas:-

1. Set the expectations of the States with regards to Strategic Planning, Budgets and other information requirements. Establishing Key performance Indicators.
2. Ensure there is a regular dialog on key issues which emerge and develop and most importantly to ensure a "no surprises" policy. They should ensure the Minister in exercising his responsibilities is kept informed of key business decisions which have a potential impact on the States of Jersey's interests as owner of the companies.
3. Operate half-yearly reporting and presentations to the Minister.
4. Provide for management meetings between the Officers on behalf of the Minister to meet with Senior Management of the companies – currently this happens twice a year.
5. Ensure ongoing communications and accountability between the Minister, the chairman and the Board.
6. Other factors which directly relate to the individual businesses – e.g. Postal Unions, Regulatory Cooperation, Insurance, being a good employer.

The MOU's have been in operation since the incorporation of the Companies but are considered and reviewed regularly as to the relevance of the content.

#### **Individual Boards Governance Frameworks**

Each of the Companies in their Financial Accounts detail the current governance frameworks in place. The Utilities accounts are presented to the States annual in an electronic format by the Minister for Treasury and Resources.

Most of the Companies follow the UK Corporate Governance Code of Conduct however in addition Jersey Electricity Company Plc is required to follow the Jersey Stock Exchange listing rules as it is a listed company, which provides further obligations on the company.

A list of the current Objectives for Treasury are:

1. To manage the States shareholding to ensure the Minister votes at all Annual General Meetings (AGM's) in a timely manner.
2. Present the Utilities accounts to the States when they are available.
3. Manage the Holding Company – States of Jersey Investments Limited.
4. Attendance and documentation of meetings with shareholding companies.
5. Completion of the Annual valuation for the shareholdings, for inclusion in the States Accounts.
6. To review the existing MOU's and ensure that they are operating effectively.
7. To collect the Dividends from the companies and reclaim the tax element.
8. Prepare forecasts for the Strategic Investments in consultation with the Utility Companies.
9. Adhoc work – reviews of financial cases (e.g. Gigabit Jersey).

#### **Medium Term Financial Plan 2013-2015**

The Dividend Policies for the Strategic Investments' were published for the first time in Appendix Two of the Medium Term Financial Plan. A copy is attached for ease of reference.



## Appendix Two – Dividend Policy for Strategic Investments

344. The States of Jersey holds varied share holdings, as detailed below. For the Medium Term Financial Plan it is assumed that the existing shareholdings will remain unchanged for the Consolidated Fund:-

Note: A further new preference share is forecast to be taken out in Jersey Telecom Group Limited during 2012, relating to Gigabit Jersey. This will be reflected as an Infrastructure Investment in the Currency Fund.

345. The following dividends have been forecast for the Strategic Investments:-

	Budget	Forecasts			
	2012 £'000	2012 £'000	2013 £'000	2014 £'000	2015 £'000
Jersey Electricity plc	2,358	2,551	2,615	2,680	2,747
Jersey New Waterworks Company Limited	1,527	1,896	1,932	1,969	2,007
Jersey Telecom Group Limited	9,020	8,857	2,391	5,034	4,119
Jersey Post International Limited	513	5,013	623	744	655
<b>Total</b>	<b>13,418</b>	<b>18,317</b>	<b>7,561</b>	<b>10,427</b>	<b>9,528</b>

### Existing Shareholdings

346. **Jersey Electricity plc** – The States of Jersey holds all the ordinary shares in Jersey Electricity plc which represents approximately 62% of the Company's total issued share capital as at 31 December 2011 (86.4% of the total voting rights). Jersey Electricity plc also has "A" shares in issue which are listed on the London Stock Exchange, and two classes of preference shares, which hold 3% of the voting rights.

	Budget	Forecasts			
	2012 £'000	2012 £'000	2013 £'000	2014 £'000	2015 £'000
Jersey Electricity plc	2,358	2,551	2,615	2,680	2,747

347. **Jersey New Waterworks Company Limited** – The States of Jersey hold 100% of the issued 'A' Ordinary shares, 50% of the issued Ordinary shares and 100% of the 7.5%-10% cumulative 5th Preference shares in the Jersey New Waterworks Company Limited as at 31 December 2011.



	Budget	Forecasts			
	2012 £'000	2012 £'000	2013 £'000	2014 £'000	2015 £'000
Jersey New Waterworks Company Limited	1,527	1,896	1,932	1,969	2,007

348. **States of Jersey Investment Limited** – The States of Jersey owns 100% of the share capital of States of Jersey Investments Limited (SOJIL), a company used to hold the investments in Jersey Telecom Group Limited and Jersey Post International Limited. Due to its nature as a holding company, SOJIL is consolidated in full and included inside the Consolidated Fund. This has the effect of treating the investments in Jersey Telecom and Jersey Post as part of the Consolidated Fund.
349. **Jersey Telecom Group Limited** – SOJIL holds all the Ordinary shares and all the 9% cumulative preference shares in the Jersey Telecom Group Limited.
350. **Jersey Post International Limited** – SOJIL holds all the Ordinary shares in Jersey Post International Limited.

	Budget	Forecasts			
	2012 £'000	2012 £'000	2013 £'000	2014 £'000	2015 £'000
Jersey Telecom Group Limited	9,020	8,857	2,391	5,034	4,119
Jersey Post International Limited	513	5,013	623	744	655
<b>Total</b>	<b>9,533</b>	<b>13,870</b>	<b>3,014</b>	<b>5,778</b>	<b>4,774</b>

351. **Basis for calculation of Forecast Dividends:-**  
The following assumptions have been made:-
- *Where available, dividend forecasts have been provided by the entities, at the current agreed dividend policy rates, with the exception of Jersey Telecom Group Limited.*
  - *Jersey Telecom Group Limited's dividends forecasts for 2013 onwards are based on a new dividend strategy and the adoption of a revised capital structure for the company. This will allow Jersey Telecom to develop its business in line with the industry's peer groups with the intention of maintaining and delivering long term growth in shareholder value for the States.*
352. For quoted or listed companies – current dividend returns have been used and increased by the States Inflationary assumptions for any ordinary shareholdings.
- *The forecast dividends include the interest receivable on all preference share holdings.*
  - *All dividend income is forecast gross, before any deductions of income tax.*



**Financial Return Policy for States of Jersey Development Company (SOJDC)**

**353. Existing Shareholdings**

The States of Jersey holds 100% of the issued share capital for the States of Jersey Development Company Limited. However for Statutory Accounting purposes, this is consolidated in full in the accounts and therefore not accounted for as a strategic investment.

354. For the Medium Term Financial Plan it is assumed that the existing shareholdings will remain unchanged and that the Financial Returns will be reported separately under the Consolidated Fund.

355. The following Financial Returns have been forecast for SOJDC:-

	Budget	Forecasts			
	2012 £'000	2012 £'000	2013 £'000	2014 £'000	2015 £'000
States of Jersey Development Company (SOJDC)		759	759	759	759

**356. Basis for calculation of Forecast Financial Returns:-**

The following assumptions have been made:-

- *Where available, forecasts have been provided by the States of Jersey Development Company. They relate to specific returns for individual sites.*
- *The above forecast returns, solely relates to a receipt for the Esplanade Car Park (MD-TR-2012-0006). At the time of forecasting we were not aware of any other financial returns.*
- *All financial returns are forecast gross, as income tax deductions are not relevant.*