

STATES OF JERSEY



PROPERTY AND INFRASTRUCTURE REGENERATION: THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED (P.79/2009) – SECOND AMENDMENT

**Lodged au Greffe on 20th October 2009
by the Council of Ministers**

STATES GREFFE

PROPERTY AND INFRASTRUCTURE REGENERATION: THE STATES OF
JERSEY DEVELOPMENT COMPANY LIMITED (P.79/2009) – SECOND
AMENDMENT

1 PAGE 2, PARAGRAPH (a) –

After the words “as set out in Paragraphs 2–11 of the report of the Council of Ministers dated 2nd June 2009” insert the words –

“except that in section 7, on page 9 –

- (a) in the first introductory paragraph, after the words ‘The restructured company will.’, insert the words ‘, in accordance with the arrangements set out in this report,’;
- (b) delete the words ‘In addition to its continuing activities’ and insert the words ‘In addition to its continuing responsibilities on the Waterfront which will be discharged in accordance with arrangements set out in this report’.

2 PAGE 2, PARAGRAPH (a) –

After the words “as set out in Paragraphs 2–11 of the report of the Council of Ministers dated 2nd June 2009” insert the words –

“except that in section 7, on page 13 –

- (a) in the first sub paragraph after the heading ‘Composition’, in the fifth bullet point delete the word ‘Two’ and insert the word ‘Three’.
- (b) in the last sentence under the heading ‘Scope of Activities’, after the words ‘the existing activities of the Waterfront Enterprise Board Limited’, insert the words ‘, in accordance with the arrangements set out in this report,’.

3 PAGE 2, PARAGRAPH (b) –

In paragraph (b)(i) of the Proposition delete the word “extended” and insert the words “changed in accordance with the arrangements set out in the report of the Council of Ministers dated 2nd June 2009”.

4 PAGE 2, PARAGRAPH (b) –

In paragraph (b)(ii) of the Proposition after the words “as set out in Appendix 2 of the report of the Council of Ministers dated 2nd June 2009” insert the words –

“except that –

- (a) on page 4 of the said Articles of Association in the sentence relating to ‘States Appointees’, delete the word ‘two’ and insert the word ‘three’

- (b) in Article 23 of the said Articles of Association, delete the word 'two' and insert the word 'three' ”.

COUNCIL OF MINISTERS

REPORT

The Chief Minister has recently published his response to the Corporate Services Scrutiny Panel's report on the Jersey Development Company (S.R. 9/2009), accepting all its recommendations.

S.R. 9/2009, has identified, amongst other things, the need for enhanced clarity around the role the States of Jersey Development Company. This amendment seeks to address this issue, and also to increase the number of non-executive directors on the Board from two to three. The report to this amendment also seeks to provide further clarity with regard to accountability for the company, the transfer of property and the transition process, all of which form part of the Chief Minister's response to S.R. 9/2009.

The Role of the States of Jersey Development Company

In terms of the States of Jersey Development Company, it is important to make absolutely clear that it will have a different and indeed more limited operational role than that currently undertaken by the Waterfront Enterprise Board (WEB). It will not become WEB by another name. The Panel rightly points out that, whilst the States of Jersey Development Company would have a wider geographical remit than that currently played by WEB, its operational remit would be more limited and believes that this should be made clearer. Whilst the Council of Ministers believes that the role and remit of the States of Jersey Development Company is clearly set out within the report (see **Appendix 1** of this report), it wishes to make sure that its intentions in this area are conveyed clearly to members. It should be noted that the Proposition seeks approval of this remit, which will therefore be a binding decision of the States Assembly.

Within this proposition it is not the intention that WEB would continue its activities in exactly the same way as it has always done, rather these activities will be discharged in accordance with the new arrangements set out in the report. In terms of its operational remit, the key differences are that the States of Jersey Development Company will –

- (a) not be involved in masterplanning or the development briefing process as these will be the responsibility of the Minister for Planning and Environment;
- (b) be directed by and receive guidance from the Regeneration Steering Group in terms of the activities it undertakes;
- (c) be responsible for delivery within defined masterplans and development briefs within particular geographical areas;
- (d) work under a Memorandum of Understanding with the Minister for Treasury and Resources to ensure that the risks to the public are minimised and activities are conducted within States of Jersey Policies.

As part of this, there is also no intention for the States of Jersey Development Company to hold onto assets when developments have been completed. It is the

intention that the Company would transfer assets as soon as possible after a development has been completed.

Whilst the Council of Ministers believes that the role of the States of Jersey Development Company is clear in the body of the document, and in particular Section 10, it accepts the view of the Corporate Services Scrutiny Panel that, in some areas it has not made clear that the company will not be the same as WEB. In particular the wording of (b)(i) of the Proposition and Section 7 could be made clearer and the above amendments seek to achieve this.

Transition Period – Development of detailed arrangements

Recommendations 2.12 to 2.15 of S.R.9/2009 set out the need for further detail relating to transfer of assets, the activities of company and the assets it holds, risk management and the purchase of privately owned property. These recommendations are all accepted and work has been initiated to address these areas.

The Minister for Treasury and Resources has committed to ensuring that the above reviews are completed and the Memorandum of Understanding is in place before any special resolution is passed bringing effect to P.79/2009. As part of this, the Minister for Treasury and Resources will share the detail of these arrangements with the Corporate Services Scrutiny Panel before the company becomes operational. In terms of the transition to the new structure, this is an important commitment as it will enable detailed arrangements to be developed and agreed before moving forward.

Accountability

Turning to the matter of accountability for the States of Jersey Development Company, recommendation 2.10 of S.R.9/2009 seeks clarification as to the relationship between the company, the Regeneration Steering Group and the Minister for Treasury and Resources, in particular which body is ultimately accountable for the States of Jersey Development Company.

In his response to the Panel's report, the Chief Minister makes it clear that ultimate political accountability for the States of Jersey Development Company will be with the Minister for Treasury and Resources. This is identified within the revised Memorandum of Association, where the Minister is identified as 'politically accountable' for the company.

In terms of the Regeneration Steering Group, in general the decisions it makes as far as they relate to the States of Jersey Development Company will be discharged through the Minister for Treasury and Resources. There may be occasions where the Regeneration Steering Group contractually employs the States of Jersey Development Company to undertake work on particular projects. In such circumstances, the relationship between the two will be defined by the terms of any agreement established for such work.

In addition, the Regeneration Steering Group will direct Jersey Property Holdings in terms of the release of public sites for regeneration projects. For the avoidance of doubt, property transfers will –

- (a) comply with detailed protocols for the transfer of assets, which will be based on the principles set out on **Appendix 2** of this report;
- (b) be subject to a published Ministerial Decision of the Minister for Treasury and Resources;
- (c) allow transparency and scrutiny through Ministerial Decisions relating to the States of Jersey Development Company being subject to a 15 day 'grace' period as per Standing Order 168(2).

Non-Executive Directors

Since the publication of P.79/2009, consideration has been given to the strength of the Board of the States of Jersey Development Company and the number of non-executive directors that has been proposed. It is believed that the addition of one additional non-executive would not only provide the opportunity for the Board to be strengthened, it would provide an odd number of directors (7), which may be of practical benefit in the conduct of business.

The above amendments to Section 7 of the report and the Articles of Association seek to achieve this and would result in a Board structure as follows –

- An independent Chairman, appointed by the States Assembly.
- A Managing Director.
- A Finance Director.
- A non-executive director appointed by the Minister for Treasury and Resources.
- Three non-executive directors with relevant financial, banking, commercial and/or property expertise, appointed by the States Assembly.

Financial and manpower implications

As part of the Chief Minister's response to S.R.9/2009 the departmental resource implications of this proposal have been clarified.

The financial and manpower implications of this amendment relate to the additional non-executive director on the Board of the States of Jersey Development Company. Any increased costs as a result of this would be borne by the States of Jersey Development Company, which will be financially self supporting.

**Section 10 of the report of the Council of Ministers
Responsibilities within the regeneration process.**

10. The Regeneration Process

The proposed regeneration process is fundamentally identical to a typical property development process with the addition of the need to establish overarching policy guidelines and master-plans within which site-specific plans may be developed. This leads to a succession of inter-related activities with the following phases:

Responsibility of the States Assembly:

- **Approving the Island Plan** – which identifies Regeneration Zones.

Responsibility of the Minister for Planning and Environment:

- **Strategic master-planning** – developing the major environmental and socio-economic planning objectives in order to establish clear policies and political direction for property and infrastructure regeneration. This leads to a Masterplan for a defined area.
- **Masterplanning** – developing an overall development strategy for a defined area which includes both present property uses as well as future land development plans.
- **Development Briefs** – developing a brief which provides information on the type of development, the design thereof and layout constraints relating to a particular site.

Responsibility of the Regeneration Steering Group:

- **Development Planning** – the development of economically viable Development Plans to meet the objectives of the Masterplans and Development Briefs.

Responsibility of the States of Jersey Development Company:

- **Design development** – the development of detailed design proposals for the redevelopment / regeneration of specific sites.
- **Promotion** – the promotion of specific site proposals through the planning process to secure relevant development permissions.
- **Commissioning** – the entering into of a construction contract with an independent contractor, the procurement of a development partner or the disposal of a site to a developer able to finance and implement the development.
- **Financing** – the provision of risk finance to procure the implementation of the development.
- **Implementation** – procurement and management of the construction of the development.
- **Utilisation** – marketing and securing occupiers for the completed development and the overall investment interest where appropriate.

**Protocols for the Transfer of assets to States of Jersey Development Company
(SoJDC)**

1. Principles

- 1.1 The prime purpose of SoJDC is to deliver regeneration projects which add value to States' property assets. This will be in the form of enhancing the value of existing properties through refurbishment, the development of new properties, infrastructure and public realm. Regeneration assets may be retained by the Public or disposed of to realise capital proceeds.
- 1.2 Jersey Property Holdings is required by law to ensure that the Public receives full commercial value for any property transactions.

Transfers to SoJDC

- 1.3 Jersey Property Holdings (JPH) will ensure that the full Market Value (MV) of property assets currently owned by the Public or acquired by the Public for the purpose of site assembly for a regeneration project is returned to the States.
- 1.4 The definition of Market Value assumes the most probable value of a property which might reasonably be obtained in an unrestricted market at a specific time.¹
- 1.5 JPH will engage an independent professional property valuer to determine the Market Value of any assets immediately prior to transfer
- 1.6 Where a regeneration project requires significant forward funding for infrastructure delivery the Minister for Treasury and Resources may elect to defer some or all of the value of assets transferred to meet these costs. In these situations SoJDC will provide a justification for the reduced initial transfer value and enter into an undertaking to meet the shortfall in transfer value in accordance with an agreed timeframe. This will be incorporated in a project specific development agreement.
- 1.7 The land which forms the basis for a Regeneration Zone will generally comprise a combination of property currently in Public ownership and privately owned property which will be acquired by mutual agreement or by Compulsory Purchase at Market Value prior to development.
- 1.8 Where property is acquired by JPH of behalf of the Public under Compulsory Purchase powers for transfer to SoJDC, SoJDC will meet the full acquisition costs inclusive of all fees and disbursements at the time of transfer.

¹ In accordance with the RICS Appraisal and Valuation Manual 6th Edition Practice Statement 3 Market Value (MV) is defined as

“The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arms-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.”

The Transfer of assets from SoJDC

- 1.9 Unless otherwise agreed in a Development Agreement, the transfer of Assets from SoJDC, either to Property Holdings (acting on behalf of the Public) or to a Parish shall be at a nominal sum.
- 1.10 Public realm and infrastructure transferred back to the Public must be accompanied by an appropriate fund which provides sufficient income to meet the future estimated property operating costs

2. Accounting Issues

- 2.1 Any transfer of assets to SoJDC at less than open market value (see 1.6) will require a balancing adjustment to JPH's target for the delivery of capital proceeds from disposal (currently £20 million over the next five years).
- 2.2 In accordance with GAAP accounting requirements, assets must be transferred at "carrying value" with this being re-assessed by external valuation prior to transfer at Market Value. As SoJDC will be a limited company, any assets transferred by JPH at less than Market Value will result in a revenue charge to JPH and a balancing budget allocation by Treasury from the consolidated fund at the time of transfer

3. Detailed Protocols

- 3.1 Detailed protocols will be prepared for the transfer of assets in accordance with the principles set out above.