

STATES OF JERSEY

Economic Affairs Scrutiny Panel Ports of Jersey Incorporation

WEDNESDAY, 22nd APRIL 2015

Panel:

Connétable J.E. Le Maistre of Grouville (Chairman)

Deputy S.M. Brée of St. Clement

Deputy D. Johnson of St. Mary

Connétable M.J. Paddock of St. Ouen

Witnesses:

The Minister for Treasury and Resources

The Minister for Economic Development

The Treasurer of the States

Chief Officer for Economic Development

Other:

Ms. L. Congdon, adviser

[14:00]

Connétable J.E. Le Maistre of Grouville (Chairman):

Welcome gentlemen. Thank you for coming this afternoon. We have already interviewed the Shadow Board or some members of the Shadow Board this morning and also the C.E.O. (chief executive officer), but we are pleased to see you here this afternoon because we really want to quiz you on the governance and what governance will be in place because that is to be the area

that you are responsible for. If we can start off with asking at the moment how many staff are dedicated to overseeing the various utilities.

The Minister for Treasury and Resources:

Chairman, is it appropriate to do some introductions?

The Connétable of Grouville:

It is. It is the third time we have introduced ourselves. Thank you for reminding me. Yes, if we could go round the table and introduce ourselves, I am John Le Maistre, Chairman of the Economic Affairs Scrutiny Panel.

The Connétable of Grouville:

Thank you for reminding me before I start. I should have introduced Ms Congdon and hope you do not mind if she does ask some questions as well.

The Minister for Treasury and Resources:

No.

The Connétable of Grouville:

If I go back to my question, how many people are overseeing the various States-owned bodies at the moment?

The Minister for Treasury and Resources:

At the moment we have one individual who has the primary responsibility but is supported by...

The Treasurer of the States:

Are you talking about the entire shareholder function?

The Connétable of Grouville:

Yes. You now have ... you are going to have some additional.

The Treasurer of the States:

We have a director level person shared at this point. In terms of the shareholder function it is the single person supported by someone else but during the process of incorporation we have someone who is spending probably about... someone relatively senior... half to 60 per cent of their time on the subject now. We will have to, as we said previously, consider our resources for the function overall.

The Connétable of Grouville:

One of our concerns is that obviously there are now more... what needs to be looked at. We have Visit Jersey, now the Ports, and you know this is a recent one, and what we are asking, I suppose, is when will you have the right resources in place to make sure you have?

The Minister for Economic Development:

Chairman, can I just come in? Visit Jersey's Partnership Agreement is with E.D.D. (Economic Development Department). It does not come under the... it is a separate organisation, just for the record. It would not impact on the book for your companies that the Treasury is dealing with.

The Connétable of Grouville:

But presumably there is some oversight of Visit Jersey.

The Minister for Economic Development:

Not by the Treasury. It is by E.D.D.

The Connétable of Grouville:

That is right.

The Minister for Economic Development:

Okay.

The Minister for Treasury and Resources:

But the point is nevertheless well made and that is one of the reasons that we are reviewing all the arrangements at the moment with the States-owned entities and investment businesses that we have responsibility for as a shareholder. Resources, obviously, is going to be, and capacity capability, I suppose, is the best way of putting it, that process is ongoing but we are looking at those that are likely to be incoming, should the States accept the proposal to incorporate the boards and we are considering what sort of additional resource would be necessary to manage that extra load on top of what we are already managing.

The Connétable of Grouville:

There appears to be a rush to get the Ports incorporated. Are you confident you will get those right resources in place if and when it is incorporated?

The Minister for Treasury and Resources:

Chairman, I am not sure it is so much of a rush. This has been going since 1998, the original suggestion. But the point is well made and, as I have said, I have no doubt that we will be in a

position to be able to manage the relationship appropriately through the timetable that we are currently working to.

Deputy S.M. Brée:

On the question of oversight could you just describe the level of oversight that is currently being applied to wholly-owned States incorporated bodies?

The Minister for Treasury and Resources:

As laid out by the Treasurer a moment ago in terms of senior directors.

Deputy S.M. Brée:

I am not talking about the actual numbers of people doing it. I am talking about what level of oversight do you undertake, as in what do you look at when undertaking a programme of oversight? What are you looking at?

The Treasurer of the States:

We look for active dialogue on an ongoing basis, not just at formal points in terms of what is happening with the business. We have regular meetings with senior executives of each of the businesses. We then have more formal meetings, including the Minister. We expect the directors to keep in touch with things that we really do need to know about under a 'no surprises' policy. We pore over the plans and we pore over the accounts. We look to see whether the plans are borne out in the accounts. So, are the results as we expected? Are they doing the capital transactions we would have expected? We expect to know about changes to remuneration, particularly of directors. That is broadly it. What we do not have and what has been identified we need is the in-depth knowledge of each of the individual businesses. We come at it from a generalist perspective as opposed to necessarily a specialist perspective in respect of each of the businesses, so we are highly dependent on a good relationship with senior executives in providing the information to us that allow us to understand at a high level what makes the businesses tick.

The Connétable of Grouville:

You are proposing a Ports policy group. Could you just confirm who will be sitting on that group?

The Minister for Treasury and Resources:

The intention is that should include Chief Minister, the Department of the Chief Minister, the Treasury, so the Minister for Treasury and Resources and Economic Development, so the Minister for Economic Development. It will either be the Ministers or a designated Assistant Minister from either of those departments.

The Connétable of Grouville:

Has that body met yet?

The Minister for Treasury and Resources:

Not formally, no. There was a discussion through the process between the parties to ensure that the views were aligned as to what the roles would be of those particular individuals as part of that policy group.

The Connétable of Grouville:

Do you think it should be sooner rather than later because it seems to me that you should be involved in...

The Minister for Economic Development:

The Ports policy group comes into existence at the point of incorporation.

The Minister for Treasury and Resources:

The point I was making was that the individuals involved, certainly previously to the last election, so there were some different individuals involved in different roles, met to discuss how it would work in the future and in fact that was part of the development. The idea of this policy group was to ensure proper alignment.

The Minister for Economic Development:

We have the political oversight group at the moment, which I suppose the port policy group will take over from after incorporation.

The Deputy of St. Mary:

Who is the Ports policy oversight group? The same gentlemen?

The Minister for Economic Development:

The political oversight group. Yes, pretty much so, together with the relevant officer support.

The Minister for Treasury and Resources:

When a project is being developed a ministerial oversight group is quite often used and put into place so you could argue that is the shadow arrangement, although it is a large group as it includes officers as well, but discussions about how the policy group would operate through incorporation once the incorporation comes into effect was clearly discussed.

The Connétable of Grouville:

The Ports policy group, how will this be accountable to the States?

The Minister for Treasury and Resources:

The accountability to the States ultimately is through the shareholder responsibility. That is the Minister of Treasury and Resources who, of course, as I have just outlined, sits on that policy group.

The Connétable of Grouville:

This concept of this body is a relatively new idea. The other utilities do not have such a body, do they?

The Minister for Treasury and Resources:

No. It is indeed a new idea and it was born out of the fact that there are competing priorities between the different areas of the Government, certainly in terms of the ownership of an asset such as the Ports. You have the economic considerations. You have the shareholder considerations in terms of maximising value from the particular asset, and it was deemed that putting together the Chief Minister as an oversight to the 2 competing areas of economic growth and shareholder responsibility of maximising value as an appropriate group to ensure the balance was right between those areas.

The Connétable of Grouville:

If the Ports of Jersey as a States-owned company was to act unreasonably that would reflect badly on the States and on the Island. How are you going to ensure that does not happen?

The Minister for Treasury and Resources:

That is contained within the arrangements of the M.O.U. primarily, our relationship that exists from a shareholder point of view with the board, and the board, of course, has the responsibility to ensure that the company and the executives of that company are operating appropriately and in accordance with the arrangements laid down.

The Connétable of Grouville:

I could cite the Jersey Telecoms issue with the direct employees of Jersey Telecoms are the people laying out the gigabit project. I consider they have been treated badly and I think that reflects badly on us. Can you give us some assurance that sort of thing will not happen with the Ports of Jersey?

The Minister for Treasury and Resources:

It is a very difficult issue to compare what might have happened with J.T. (Jersey Telecom) and what has been seen in the media as opposed to the more confidential information that we have been privy to in our discussions with the executive and the board of J.T. in relation to that particular matter. I do not think it is a fair comparison. I do believe and I am confident that the relationship-building is as set out and confined within the terms of the M.O.U. that is proposed for the Ports would work and that we would have sufficient oversight as a result of that to ensure that the board and the executive met their obligations and did operate in an appropriate manner. I would add on top of that we have looked, as part of developing this proposed M.O.U., which you have before you, at a number of others, in particular Jersey Post and Andium. We believe we have taken the best parts of both of those. We have tightened up. Lessons have been perhaps learned in terms of governance and oversight and we believe that as a result this represents a good balanced, measured and appropriate M.O.U. to ensure the relationship.

The Deputy of St. Mary:

May I just query the statement about taking the best out of the other M.O.U.s. We have looked at them and there seemed to be omissions in this one. 2 things; one is the question of materiality is given entirely to the board directors. We have raised that with the shadow board this morning and with the C.E.O. of Ports, that they were happy to concede with our view that it is too much power in their hands and would be prepared to consider being redefined. Would you as well? This gives the Treasury more advantage of course, as we are advocating the directors should not have the final decision to decide what is in their interests.

The Minister for Treasury and Resources:

Yes, I take your point about defining material issues and it is a matter that is open to interpretation and possibly confusion if there is not clearer definition. Of course, it is not just in financial terms. It could be, in the case here, in political terms. There might be issues that would be of material consideration from a political perspective obviously wise but may not be as relevant to the board. The point is a fairly made one and I think clearer definition on materiality is something that would be helpful.

The Deputy of St. Mary:

Still on the M.O.U. for me, one omission there is there is no reference in the M.O.U. itself to the clubs and associations. I know again we have heard commitments by the shadow board and the C.E.O. as to what they intend to do and honour existing commitments but there is no reference to them as a whole, so again I would like to see the M.O.U. amended to include or to recognise their position.

The Minister for Treasury and Resources:

In principle I understand why you are saying that and yes, I think we have to be a little bit careful that you cannot put everything into an M.O.U. I suppose it...

The Deputy of St. Mary:

Just recognise the... what is the expression... the public user stuff, but that does not extend to clubs so it seems only right and proper and equitable that they should be sort of ...

The Minister for Economic Development:

I think it is the intention and an extensive amount of work has been done with the clubs and associations but the ongoing relationship will be managed through the strategic plan, which I think is agreed by the States.

[14:15]

The strategic business plan, so that, if you like, it is a...

The Deputy of St. Mary:

I am not challenging the...

The Minister for Economic Development:

The Minister can ensure that is dealt with properly in the strategic plan.

The Deputy of St. Mary:

Yes. There just seems to be a general not much linkage between the M.O.U. and the memorandum. Commitments are given but they are verbal. We would like that to be reinforced for their benefit.

The Minister for Treasury and Resources:

In terms of definition what exactly do you mean; just reference to the clubs or more detail on that?

The Deputy of St. Mary:

They have been worked on but, as I say, there is not even a reference to them, their interests being recognised. They have been worked on but they are not even given a mention in the M.O.U. at the moment and in the stated objectives it at least should at least say have regard to their interests, and hopefully more but perhaps we could... who would work on that, your department?

The Minister for Treasury and Resources:

We can have a look at it, yes.

The Connétable of Grouville:

Are the M.O.U.s a work in progress? We saw the original one back in March, which we pointed out we thought were flawed because they were basically based on the J.T. ones, which had been severely criticised. Have they now been updated? I do not think we have had an update, have we?

Deputy S.M. Brée:

The latest version we had is 3.0.

The Connétable of Grouville:

The latest?

The Minister for Treasury and Resources:

That is the latest version.

Deputy S.M. Brée:

That is the latest. You have not amended it to reflect the recommendations?

The Minister for Economic Development:

It is an ongoing process.

Chief Officer for Economic Development:

It is an ongoing process. It is being worked on and indeed it was made the point that it would be helpful to completing that process to your satisfaction if the panel were in a position to be more specific about some of the issues that arose from version 3.0, because it is our intention obviously to make sure that the M.O.U is something that you are satisfied with, a critical piece of the information that is associated with the approval of the law. But work is ongoing on modifying that on the basis of what we currently understand are your issues with the M.O.U as it is.

The Deputy of St. Mary:

Is there an updated draft so far we could look at?

Chief Officer for Economic Development:

We can send you some of the latest updates that we have.

The Deputy of St. Mary:

It will save duplicating work, that is all.

The Connétable of Grouville:

We do not mind having input into it but it is not really our job.

The Minister for Treasury and Resources:

No, that is absolutely fine. Some points have been raised this afternoon, 2 in particular, which need a little bit of work and I would suggest that is addressed, so we will take that away and look at the materiality issue, look at the clubs and associations and see what wording might be appropriate to give a fair balance, get those reflected in an updated version and forward back to you for approval, and we can do that very quickly.

The Deputy of St. Mary:

Andium Homes has a different version of material. Whether that can be used and adapted I do not know.

Deputy S.M. Brée:

On the M.O.U. we also had a question mark over the appointment of the first board of directors. That was the shareholder representative, the Minister for Treasury and Resources, has to approve the appointment of the chairman. Nowhere in the M.O.U. is it mentioned the appointment of the first board of directors. The question that we asked of the shadow board was; would they feel it appropriate of the States Assembly, as with other matters, to agree upon the first board of directors? They could see no objection to that whatsoever. Would you confirm that you would approve of such an amendment to the M.O.U.?

The Minister for Economic Development:

I have no problem with that.

The Minister for Treasury and Resources:

In principle, yes. My only concern would be, certainly from a shareholder representative point of view, is continuity, so whether it is done that way or there is an agreed period. If I remember correctly the terms of the existing shadow board run for about a further, on the assumption that approval would go through, it is approved by the States in May for a further year. Is that... if anyone can find that? I think there is about a year to go and it would strike me as sensible to have continuity through incorporation on the basis that they then would have to be reappointed anyway, but I am happy to give away your point.

Deputy S.M. Brée:

Your view is that the existing shadow board of directors, all of them should become directors of the Ports of Jersey Incorporated.

The Minister for Treasury and Resources:

On the basis that if my assumption is correct and there is round about 9 to 12 months to run before their terms would expire anyway, it would seem sensible to have continuity through the process of incorporation. But I am happy to take that away and look at it. I think it is important from a shareholder point of view we do just consider that. Wholesale change of the board that has been through this process of incorporation, to lose that knowledge and expertise in one fell swoop, on the assumption that is a possible outcome, although I accept not likely that the States would not approve it, I think that is just something for you to consider. It is not a die in a ditch point.

Deputy S.M. Brée:

Just on that point I understand that, Mr King, you are a non-executive director of the shadow board.

Chief Officer for Economic Development:

And I will, at the point of incorporation, of course, I will step down because, as you will be aware, the ...

Deputy S.M. Brée:

Okay. There might be a conflict of interest there between you.

Chief Officer for Economic Development:

Yes, there is, but when the shadow board was formed by the former Minister of Economic Development, having an E.D. (Economic Development) representative on that board as we went through the process of incorporation...

Deputy S.M. Brée:

Was the correct thing to do.

Chief Officer for Economic Development:

Was the correct thing to do. Obviously post-incorporation that is not appropriate and therefore the agreement has always been that at that point the Minister's representative, me, would step off the board.

Deputy S.M. Brée:

Okay, but going back to the original question, it would seem appropriate because of the size, nature and scale of the assets that are being transferred to the Ports of Jersey Incorporated, that the States Assembly as representatives of the public of the Island of Jersey should be able to have a say or input into the first board of directors. I cannot see why that would be an issue.

The Minister for Treasury and Resources:

Just for clarity, the first board of directors as opposed to an ongoing arrangement, you are suggesting only in the point of incorporation, not for every successive...

Deputy S.M. Brée:

No, just the point of incorporation.

The Minister for Treasury and Resources:

Okay. I think on that basis that sounds fairly perfectly reasonable.

The Deputy of St. Mary:

On a point of mechanics the memorandum of association has been improvised that the first directors are named there so there has to be some mechanism by which the Assembly approve that memorandum. That is how it was. Moving swiftly on, the draft memorandum implies that 2 individuals will be shareholders. Can you advise what the intention is there? Who will be the shareholders of the company?

The Treasurer of the States:

Does it say 3 or 2? I do not have it in front of me.

The Connétable of Grouville:

Two.

The Treasurer of the States:

Two? The usual practice is for the Treasurer and the Greffier to hold the shares.

The Deputy of St. Mary:

Right. It says about there being individuals, I think.

The Treasurer of the States:

We act on the instructions and we sign.

The Deputy of St. Mary:

I know, but what happens on the death of one of those, for instance?

The Treasurer of the States:

The death?

The Deputy of St. Mary:

Yes. Sorry, a bit macabre, but...

The Treasurer of the States:

It is not held as Richard Bell. It is held as the Treasurer of the States.

The Treasurer of the States:

Yes, okay, right.

The Treasurer of the States:

We assume that on my death, if I am still the Treasurer of the States, that I will...

Deputy S.M. Brée:

There will be another Treasurer after you.

The Treasurer of the States:

... who will be the next Treasurer.

The Deputy of St. Mary:

All right, okay, understood, okay.

The Treasurer of the States:

We act on the decisions of the Minister.

The Deputy of St. Mary:

I realise that. I just asked about the mechanics of if anything goes wrong, unavailability or whatever.

The Connétable of Grouville:

One of our concerns is that the M.O.U.s are not right yet. They need some work done and we would be uncomfortable debating the law and passing it without those being either confirmed or in place or subsequent to that having something in the law saying that they need to be agreed by the

States because it could be that we could pass the incorporation law and then nothing is done. We are concerned that might happen.

The Minister for Treasury and Resources:

The M.O.U. is obviously an integral part of the arrangements that are being put in place. I think we have noted the concerns you have with regard to the M.O.U. As I have said, we will take those away and we will work on them and return very rapidly with them to you, and would hope that if you find them satisfactory then that would suffice.

Deputy S.M. Brée:

I think the point we are trying to make is the law that incorporates the Ports needs to include in it reference to the M.O.U. The 2 cannot be separated, so that should you wish to have the debate on the draft law, that draft law needs to make reference to the M.O.U. If it makes reference to the M.O.U. then there has to be a sufficiently robust M.O.U. available for States Members to look at, at the point the draft law is debated. You cannot separate the 2.

The Connétable of Grouville:

We are concerned from your perspective about the timing because the chances of getting the M.O.U.s ready, I do not know how long it is going to take but they are not going to be ready next week.

The Minister for Economic Development:

No, but it will be authority, and we fully take on board what you are saying and it is quite reasonable and we undertake. It would not be wise for us to enter in a debate without having an M.O.U. that all parties are satisfied with for States Members to refer to.

The Connétable of Grouville:

Can you see the timing as an issue, then? It may delay the debate and that is not what I want to do.

The Minister for Economic Development:

It is a top priority for the political oversight group to get the M.O.U. right. As the Minister for Treasury and Resources said, we will have another draft with you as soon as we possibly can but we are very aware of the timescales we are aiming for.

The Connétable of Grouville:

We will not go too deep into the business case because obviously we did that this morning but we do have some concerns about the vision. The plan put in front of us is a vision. It is not strictly

speaking a business plan as such. We are concerned that the commercial projects, for example, we know some of them are possible rather than definite. The waste from Guernsey exactly, for an example, so on the face of it the company will get £60 million from the first tranche of projects but not all of those we know are going to take place. The second tranche has not been costed at all. Some of them are quite involved and probably will not go ahead and we dispute whether that amount of money will be raised. Interested to know what your view would be.

The Minister for Treasury and Resources:

These in a sense are a moveable feast. Projects come along. I think what they are trying to demonstrate from the list that you had, and I think they are the original 9 projects that we identified early on, and I think they were just trying to demonstrate that with greater agility and without the shackles of Government processes and suchlike there were opportunities to generate revenues and those were some of the examples of areas where they believed that could be done. Clearly things change over the passage of time. Other opportunities I am sure will present themselves. Some will be more profitable than others but nevertheless I think it is indicative of what the opportunity is with the ability to operate in a more agile, commercial way.

The Connétable of Grouville:

But you would accept that the £60 million and the further £30 million, there could be a scenario in those figures quite significantly.

The Minister for Treasury and Resources:

I think they have been looked at. The board has looked at them and at the time they were assessed that was a reasonable estimation. Clearly those figures over the passage of time could change. Other opportunities could come in. Those ones may or may not deliver at the exact level. I could not guarantee, obviously, that they are going to generate the exact revenues identified there but they are indicative.

Chief Officer for Economic Development:

I think it is fair to say that we looked at a far larger number of potential projects than the original number that are in the business case, business plan, and each of those projects that we have looked at that have been included have had work done on them, have had the potential to be assessed; and that has been built into the model. There is a range of other projects that will be open for consideration. You are right in that what exactly will be developed is not, cannot be defined at the moment because it is subject to individual project evaluation and indeed the planning system. But the underlying point here is that incorporation, one of the key planks of it is to make the Ports and Incorporated Ports of Jersey self-sustaining, and that does mean taking what is a very substantial undeveloped asset base with unrealised value and generating that value

to reduce the burden on harbour dues and aeronautical charges. Because the fact that to maintain business as usual has got a capital requirement cannot be argued, and if that capital requirement cannot be satisfied from some of the development projects or part of it when burden has been looked at, that burden will fall either on the user or on general taxation. The whole modus operandi of the corporate entity will be to look at its asset base, to deliver things that are consistent with what the Island needs, the harbour needs, the airport needs, and generate those terms as a consequence. That is what it is for. Is this a proposition which is absolutely guaranteed or risk-free? No, it is not.

The Connétable of Grouville:

We accept that. What we are trying to say is the £60 million plus the £30 million are probably high targets which we are likely to fall short of them, even by a little.

[14:30]

Some of the projects will not, particularly in the first 9, we know simply are not going to happen, so that money will not come in, so we will fall short or there is a risk and people need to be aware that it is unlikely you will get to those high targets but we will be aiming for them, which is what you could say.

Chief Officer for Economic Development:

Yes, absolutely.

The Minister for Treasury and Resources:

I suppose the other point to make is if you look back at recent or even slightly further back history of the Ports and their ability to deliver additional revenues above and beyond core activities, it has been very few commercial projects entered into by the Ports under the management of Government, if you like. The figure may not be absolutely spot on but you can be sure of one thing in my view that in the absence of incorporation there would not be the opportunity there to generate these extra revenues, as Mike has said, and made the Ports ultimately self sustaining which is what we wanted to do, remove it as a burden to the taxpayer by ensuring that it is self sustaining over the long term.

Deputy S.M. Brée:

Can I just ask a question here? With regards to the commercial projects contained within the business plan that supported the case for incorporation which the shadow board put forward, has either the Treasury department or the Economic Development department undertaken your own independent due diligence on these figures?

The Treasurer of the States:

No, there was the piece of work which was done by consultants, also Harbours and Airports are part of E.D. (Economic Development).

Chief Officer for Economic Development:

During the process of preparing the business case there was independent validation of all of the capital programme and the capital assumptions which was undertaken by Capita Symonds.

Adviser:

It would be fair just to give you some idea of some of these we have uncovered. In looking at the case for incorporation and financial modelling we have not done the full due diligence exercise because it was well outside the scope of what we were seeking to do but we spotted a number of anomalies and financial discrepancies that we would have expected the board to have spotted or somebody in Government to have spotted. There is no point going back and saying, "The financial model was loose", which is the term I have been using but where we have advised the panel is how the criticality of the strategic business plan and the governance arrangements because that is basically your mechanism for controlling and monitoring the company going forward which is fine as a principle. What we are concerned to try and understand and advising the panel to probe today is by what processes that strategic business plan is going to be scrutinised and improved after incorporation because that is how the States will control effectively what the company can and cannot do, and also knowing what it is likely to deliver going forward. This is heightened because we have spotted some anomalies and discrepancies within the financial model. It is not the capital plan that was monitored by going through variables, it is some vague assumptions and in particular the commercial projects.

The Treasurer of the States:

Can I just be clear here? When we moved to an incorporated entity the board becomes responsible for running the business. I would not propose, and I see this *in extremis*, for the Treasury to be hiring people to do forensic analysis of every decision that the board would make. It is back to my point about relying upon the expertise within the team as a department as is currently the case. That is the limitation of where we would be as a Treasury. You get to the point of every decision having to be scrutinised in depth by the Treasury. You may as well not have a board of directors unless accountability needs to be with the board of directors and they need to be held to account so in the event that there were things that transpired not be the case. Another point that relates to the issue of materiality and remarks that were made earlier around J.T. and I am not saying that Gigabit is wrong, I am not saying, I just want to be clear there, you will not spot things. You will not spot everything that is going to go wrong. The nature of business as people

keep telling me is that you will become less risk averse in making decisions and inevitably in business from time to time as in government things do go wrong. You cannot eliminate all of them. The important thing is to try and put this at arm's length and to have a board of directors that you hold to account. If I were to match the team that would be necessary within Ports of Jersey in the Treasury then you start to ask your question as to whether you would go down the path so I think it is clearly for the board of directors to get that right. It has to be taken on by you with a sense check if you like from a Treasury perspective that it does make sense, it looks plausible, it looks like it will work rather than doing all the work of the board of directors again as we have a board of directors, in particular why you would have a non executive board of directors and why was your point at the start or halfway through it is very important you get the right people on that board. That is clearly what the States does by putting bodies into incorporated entities. Those responsibilities are left to, or are clearly made the responsibility of the board as opposed to oversight.

Adviser:

I understand and I suppose it follows the work we have been doing with another airport owned by local government in the U.K. (United Kingdom) in trying to put in place an effective governance structure. One thing that we spent a lot of time discussing with the shareholders was the level of information they would expect to have presented to them as shareholder in order for them to be able to approve a business plan. What level of information would you expect to be seeing in terms of the business cases for projects within the Treasury to enable you to say, "Yes, I am satisfied. I can now sign off this business plan which includes this investment"?

The Treasurer of the States:

For material transactions, so material in the line of business or in particular capital investment I would want to be seeing a high level business case that proved the viability, proved the business case for that project. Would I be going down to 500 pages depth? No, I would not. In part because we are not resourced to do so but in part if you go down to 500 pages depth you feel like you are doing the job for them, and I say *in extremis*. I can imagine some scenarios but I am not going to talk about them but very, very significant capital projects you might think that the risk may be a particularly high risk and therefore you would go and hire the assistance of experts to give you some advice on those particular projects. It would be on a project by project basis.

Adviser:

What level of supporting evidence would you expect from the underpinning assumption?

The Treasurer of the States:

If it was something that was say outside of the experience or if it was something that was of such considerable size I would expect to have seen that they may have used expert external advice to validate what they had in terms of their assumptions.

Adviser:

That was not done, for example, with the cargo centre project.

The Treasurer of the States:

Did it come to the Treasury? When was that? What year was that?

Chief Officer for Economic Development:

This is the one that is being undertaken at the moment so it would have been approved last year but that was a decision that the commercials on that were obviously undertaken by Ports of Jersey in its current incarnation, which were endorsed by shareholder board and put forward to the Minister for Economic Development as part of the business plan for the Ports of Jersey for that year. Through the analysis undertaken both at officer level and board level the Minister then relies upon that in order to make the decision for the capital to be released from the trading fund to make the investment. That is a pretty triple-locked evaluation.

Adviser:

Yes. I am still not quite sure what explanation you have of the underlying assumptions.

Chief Officer for Economic Development:

In making the final decision? Although the final business case that was presented to the Minister in that instance and then would have gone on to the Treasury to release the funds from the trading fund was the complete commercial or financial analysis of the commercial case for the construction of the cargo centre. It was endorsed by the board or presented to the board.

Adviser:

Yes, but did you get an explanation of the underlying assumptions, the market assessment, the underlying assumptions about take up and revenue generation?

Chief Officer for Economic Development:

In that particular instance that was in part based on the fact that the cargo centre will to an extent be occupied by displacement from the former cargo centre, which will be obviously demolished for the greater yet unknown commercial projects and the requirement for light industrial space both aeronautically related and non aeronautically related is something that was fed into that on the basis we were anticipating a certain occupancy profile based on the direct aeronautical market, the

displacement from the existing cargo centre and the fact that that facility provides capacity for high quality light industrial space for which there is a significant demand on the Island. Much of our current light industrial space both for aeronautical and non aeronautical use is of very poor quality and there is a demand for quality light industrial space.

Adviser:

Thank you.

The Connétable of Grouville:

The C.E.O. (Chief Executive Officer) this morning produced the draft strategic business plan. At what point do you think you will be seeing that because you need to see that sooner rather than later presumably?

The Treasurer of the States:

It is worth mentioning, Chairman, and I am sure the group chief executive would have said this that the draft strategic business plan is in no small part based on the business case that has been already prepared for the purpose of incorporation. That is imminent in terms of it has been supplied to both the Minister for Economic Development but more particularly the Minister for Treasury and Resources.

The Connétable of Grouville:

The business plan will be more robust than the plan?

The Treasurer of the States:

Yes, exactly but it draws in as I said no small part from the relevant information that has been put together in terms of the creation of the business case and incorporation.

The Connétable of Grouville:

Obviously we feel that it is really important that is put in place as I say very early on so that we will know whether the 60 million is robust because it will be more accurately updated and be validated in a better way.

Adviser:

Yes, and hopefully we can get any discrepancies that have been picked up before approval.

The Minister for Treasury and Resources:

The discrepancies that you are referring to presumably you identified earlier on.

Adviser:

That was identified by management previously and they have remodelled and taken some of them into account. We were just a bit surprised to find that the board had not been asking the questions that we had asked and we would have expected a board that was functioning to have picked up some of the questions that we asked, for example, around cargo centre income was one that we had picked up where the income that is being shared with the cargo centre was the gross income not net income, to have to take into account the displacement that leads into the cargo centre. We would have expected the board to have asked the question of that net and gross and have picked that up at the earlier stage. It is not in its own terms a massive sum but it is the sort of thing that we would expect a functioning governance to have picked up and identified before the plan was in.

Deputy S.M. Brée:

If I could just ask one question going back to the M.O.U. (Memorandum of Understanding) and its particular reference to the strategic business plan while within the M.O.U., I think it is under clause 8, there are areas, articles we will call them relating to the strategic business plan there is one that I must admit causes me great concern which is the last one, 8.5: "The Minister's consent to a strategic business plan and any modifications to the strategic plan will not be unreasonably withheld". Perhaps you would like to explain what that is meant to mean.

The Minister for Treasury and Resources:

That is a fairly standard statement. I am surprised that you are concerned at it.

Deputy S.M. Brée:

I am querying it because it is basically saying that the onus is on you as the Minister or shareholder representative to explain in much greater detail why you are withholding consent. Unreasonable is perhaps the incorrect word to be used there because it is saying if the board of directors deem your refusal to consent is unreasonable then you are breaking the M.O.U.

The Minister for Treasury and Resources:

It is fair to say that the Minister should have a reason for doing so. I do not think that is anything other than a standard statement. You see those in many contractual arrangements let alone something like an M.O.U.

Deputy S.M. Brée:

I just wanted to get your clarification on that.

Chief Officer for Economic Development:

Is it worth, Minister, just pointing out the fact that the strategic business plan I am sure when it is submitted to the Minister as shareholder you will not just receive a brown envelope with it in with an expectation that it will be approved or unreasonably withheld, there will be a process of discussion and debate, informal discussion and debate, prior to its submission to ensure that there is alignment between the Treasury's objective as a shareholder and the incorporated entity?

[14:45]

With that as a given that clause is probably better contextualised.

The Treasurer of the States:

Yes, you are right. There is ongoing dialogue. In terms of unreasonable I suppose perhaps some of my thoughts are around materiality. It gets to be a very lengthy, very in-depth document if you want to capture every single circumstance were it exceptional or otherwise that you want to have in a rulebook for the management of an entity. I put it the other way round in terms of what is reasonable. It is reasonable if it is within the objectives of the organisation. It would therefore be reasonable to withhold that agreement if it fell outside of the objectives rather looking at the unreasonable end looking at the reasonable end and when would it be reasonable to withhold. It would be reasonable to withhold if it looked as though in the eyes of the shareholder it was adding too much risk for what the shareholder might think or taxpayer might think. It is the other way round in terms of what is reasonable for the business to be doing as opposed to unreasonably be withheld is the way that I interpret it. It would be quite unreasonable for the shareholder just to say no but not give any reason as to why they are saying no. That is the way I interpret that line.

Deputy S.M. Brée:

One of the questions on the strategic business plan I just wanted clarification on from your side of things is the involvement of the Ports policy group in the approval of the strategic business plan. It talks in the M.O.U. under clause 8 again relating to: "The board shall deliver to the Minister for his or her consent", and then in 8.3 it brings in the involvement of the Ports policy group. Who consents or are there different levels of consent, if you see what I am getting at there? There seems to be two bodies that are consenting to the strategic business plan. Is that intentional?

The Minister for Economic Development:

It is being developed in partnership really. It is about working together. We would not envisage the board coming and presenting a business plan and saying, "There is our business plan", I very much see it as a joint venture.

Deputy S.M. Brée:

No, I am talking about the Ports policy group which consists of the Chief Minister, the Minister for Treasury and Resources, and the Minister for Economic Development.

Adviser:

In the terms of reference we sought the report from this group that that was the body that approved the strategic business plan annually but the M.O.U. says the Minister.

The Treasurer of the States:

It clearly says: "Each strategic business plan will be developed in accordance with the overall policy objectives and dividend policies of the Ports of Jersey".

Adviser:

This is in terms of reference for the Ports policy group which gives them responsibility for approving the S.B.P. (Strategic Business Plan). I hope you got some of that.

Deputy S.M. Brée:

There is more clarification required on that point.

The Treasurer of the States:

Yes, I see the point in terms of it being clear. The law clearly makes the shareholder the Minister for Treasury and Resources so you cannot avoid that responsibility and I take the point on clarifying. The Ports policy group, you could envisage a world, it is hard to envisage a world in which the Minister for Economic Development and the Minister for Treasury and Resources do not work together but you could imagine a world in which that would take place where it might be that the policies of the Minister for Economic Development be completely at odds with what the shareholder is asking. I make that point in terms of the clarity, in terms of agreeing that. Ultimately our shareholder falls to the Minister for Treasury and Resources and equally so for those powers that rest with the Minister for Economic Development they are agreeing between them to come together to agree it but the formal agreement of the strategic business plan rests with the Minister for Treasury and Resources.

The Minister for Treasury and Resources:

Who effectively takes advice therefore from the policy group, or takes into consideration the views expressed by them.

Adviser:

It might be sensible to incorporate that into the agreement as well.

The Minister for Treasury and Resources:

It is a fair point.

The Connétable of Grouville:

We had some good discussions with the C.E.O. this morning about staff and how they are transferring. The evidence that we have had from both the unions to some extent and also from everybody else is that staff are being treated well. The C.E.O. agreed that it might be appropriate to have a year's grace as it were so that when the staff move across to the incorporated body they are given a year where there will be no detrimental effect on any of their contracts although it will allow others to develop and look for better contracts. Was that something that you would consider putting in the M.O.U.?

The Minister for Treasury and Resources:

It is something I am happy to take away and give some consideration to. It is a matter of continuity from the chief executive that he is not concerned about it. It is a matter that I am sure we can progress. I have no particularly strong feelings but the undertakings have been given that staff are going to be transferred as you know. They are being transferred on existing terms and conditions. As I understand it the Ports, the executive team, have no plans to make any specific or dramatic changes to staffing so I do not see that it is a particular issue.

The Connétable of Grouville:

That was the point that the Prospect Union made to us is that if they would have confidence that all their terms and conditions were going to be carried forward and that was what was being promised there was no reason why that was not going to happen.

The Minister for Economic Development:

It is exactly what is happening. Staff are being transferred and identical.

The Connétable of Grouville:

Yes, but the terms and conditions are not guaranteed after day one.

The Minister for Economic Development:

In reality it would be highly unlikely of transferring everybody on a like for like basis which is what is needed to continue the operation. That a big raft of changes would be **[Interruption]**.

Chief Officer for Economic Development:

On what business case has been predicated upon.

Deputy S.M. Brée:

The undertaking that we had from the C.E.O. this morning was that upon the recommendation of this panel he would accept the fact that he would provide employees that had been transferred over with a one year guarantee that there would be no degradation in their terms and conditions. I am not talking about a guarantee of employment. We are talking about the degradation in terms of conditions.

The Minister for Economic Development:

I am talking about that too. Yes.

Deputy S.M. Brée:

We are merely asking the question, is that acceptable to the Ministers here present?

The Minister for Economic Development:

I would see that really as a management call. The key matter here is getting on with the incorporation and the chief executive might be prepared to make that as a concession perhaps. I see that as a management decision but personally speaking I have no problem with it although I am not sure it will achieve much other than maybe give some of the staff some more peace of mind.

Deputy S.M. Brée:

I think it is about peace of mind for the employees that are transferring over there. I am not looking for guarantee of employment. It is just there will be a guarantee of no degradation in terms of conditions.

The Minister for Treasury and Resources:

I do not think that it is a particular issue.

Deputy S.M. Brée:

No, good.

The Connétable of Grouville:

We touched on that earlier when Deputy of St. Mary mentioned it but similarly the clubs and associations they are all quite happy with the arrangements at the moment, the relationship with the C.E.O. and members of the board who they have interacted with is really good but all of them are thinking, "Yes, what happens in 7 years time?" and is there a way in which the M.O.U.s not necessarily guarantees but certainly an opportunity for clubs to appeal to Ministers if they feel they are being treated unfairly or if their fees or charges or rents are going up by a considerable

amount, whether they would have an opportunity to come to the Ministers and it would be an issue that he could discuss with the relevant body.

The Minister for Treasury and Resources:

I raise my point again from earlier that we have to be careful not to try and put everything into an M.O.U. and in reality first of all the executive of the boards have made it very clear how they are planning to treat with the associations, clubs and such like. I do take the point over the past time people change and therefore policies could change or attitudes could change. It is fair to say that if there were particular issues with the way that a club or association were being treated in the future by an incorporated port to contain something within an M.O.U. is an option for the representatives of that organisation to express their views to the shareholder is fine. I suspect though they would do it anyway and knowing the access that people have to political representation I think there is little doubt that the case if it was unfair would be very difficult for the boards to not take notice of. I do not think in either way it matters very much because the associations and clubs are going to be looked after and they will have plenty of opportunity to have their voice heard if a particular issue arises in the future.

The Minister for Economic Development:

As I said earlier the safety net of the way that the support that the board will provide for the clubs and associations has to be part of the strategic business plan.

The Deputy of St. Mary:

I know it has been said. It is not in written form, however vague it might be.

The Minister for Treasury and Resources:

When you say it is vague, in terms of clubs and associations being able to appeal **[Interruption]**.

The Deputy of St. Mary:

The clubs and associations say in particular there is no reference to them at all in the M.O.U.

The Minister for Treasury and Resources:

Yes.

The Connétable of Grouville:

I do not know if you agree but if you could give some comfort through the M.O.U.s the clubs would have somewhere to appeal although they might be able to do it anyway but this is one of the great concerns in 5 or 7 years time things might change. The M.O.U.s would not prevent change. It

may be that fees have to go up but it would just give them comfort that they would have a way of appealing any decisions.

The Treasurer of the States:

Are you asking for the Minister to veto the board?

The Minister for Treasury and Resources:

No, just an appeal.

The Minister for Economic Development:

It could end up in a veto though, could it not, if their appeal was successful?

The Minister for Treasury and Resources:

That the Minister could listen to, they would have somebody to go to presumably to raise their concerns. The Minister then would not be bound necessarily.

The Minister for Economic Development:

That is just a clear appeal.

The Minister for Treasury and Resources:

That is just my judgment of what you have said.

The Connétable of Grouville:

The whole point of incorporation is to be at arm's length but it is still a Government body and there needs to be some way of appealing because at the moment the clubs are being treated by the Government extremely fairly. They are all paying below market value rents, some of them significantly below market value. Those have been pretty much agreed to carry forward with the incorporation and the agreement is that what it is for R.P.I. (Retail Price Index) to be applied at no more than R.P.I. That is the vision but that might change if the harbour falls into the sea and they then need to generate a lot of cash, things might change very quickly.

The Minister for Economic Development:

I still see it if that is set out in the strategic business plan from day one that the arrangement will continue and I do not think the boards will be able to change if that is in the strategic business plan that the boards will continue provide this kind of support from day one then I do not think the boards will be able to renege on that.

The Deputy of St. Mary:

The strategic business plan will not be produced until after incorporation?

The Treasurer of the States:

I imagine the most appropriate place, finessing around the words, would be the M.O.U. It would stand in the M.O.U.

Adviser:

It seems to me that if you have to be a good employer in the M.O.U. it would be a decision that is rejected, something around supporting clubs and societies.

The Deputy of St. Mary:

Yes, yes.

The Connétable of Grouville:

Being a good employer within the M.O.U. as it is written needs to be quite well defined but from what we understand the financial control or oversight of the utilities is really good but these in depth issues there are not resources to look at that sort of thing but how we deliver that goal of being a good employer and will you make sure that happens?

The Minister for Treasury and Resources:

Being a good employer in terms of the existing legislation is effectively the issue, is it not?

The Connétable of Grouville:

You will base being a good employer on carrying out all your legal requirements because being a good employer can be more than that of course.

The Minister for Treasury and Resources:

Yes.

The Connétable of Grouville:

Being a good employer would be providing maternity leave longer than is needed. There are other measures.

The Minister for Treasury and Resources:

Yes.

The Connétable of Grouville:

I am just wondering whether you will be looking at that level.

The Minister for Treasury and Resources:

Let us be clear. It should provide a minimum of meeting all the legislation that is available and in force at a given time. That is what the minimum should be.

The Connétable of Grouville:

That is not really a good employer if all you are doing is complying with the law. That is merely being a legal employer.

The Minister for Economic Development:

It would be expected beyond any doubt from the Ministers that the board would be not only following the best employment practices.

The Connétable of Grouville:

The point I am making we do not really have any definition of what a good employer is.

[15:00]

A good employer to me is more than somebody who complies with all our laws because that is what you have to do.

The Minister for Treasury and Resources:

The difficulty, Chairman, is that if you ask 10 people you get a different definition from each that is why I made the point that you have to start from a minimum. Clearly you get good employers and better employers who will do more and more but what this is trying to identify is that you have to at least meet the minimum standards.

The Connétable of Grouville:

I am not saying this is going to happen but they may have a whole load of zero hour contracts and exploit that loophole if that what it is as opposed to using it as we know that there are zero hour contracts that people are happy with. They do the right amount of hours. They are happy with it. There are also people who are exploited and it would not be a bad employer legally because they are legally entitled to do it but it is the sort of thing that you could ... it is one of the areas you could say: "Well, we do not think you should have zero hour contracts where they are inappropriate."

The Minister for Treasury and Resources:

And I think it is fair to say if we take J.T. as an example where there are some zero hour contracts to be utilised on the gigabit project and clearly you are aware of some of the challenges. Much of

what went on there is not in the public domain and that is why the picture has been somewhat distorted. Nevertheless, as shareholder representative we made clear our views on the way in which staff should be treated and that has been taken on board by the company and they have acted upon it, and I think what we will see moving forward is a very different approach as a result of that intervention so I think it positive. You can see what is contained in terms of the wording existing at the moment with J.T. and that is a good employer but they take the direction from the shareholder representative and act upon it and I would expect similar to happen through the Ports incorporation.

The Connétable of Grouville:

So I mean you could set parameters for what would be considered to be a good employer so you could, for example, say, you know, that zero hour contracts could not be used unless appropriate. I am using that as an example but there are other good employment practices which are above the law which one might like to impose if you want to be a good employer.

Chief Officer for Economic Development:

I think the danger is that you become increasingly prescriptive. So you have just used the word "appropriate", how do you define "appropriate"? It is like the word "good" I think. I mean you get into some very difficult territory. As I think the Minister has said the absolute minimum is legal compliance. Over and above that is it at the discretion of the Board as to, you know, what it defines as a good employer? I think creating an arms' length body and then being absolutely prescriptive about what terms like "good employer" mean very rapidly becomes quite a difficult and subjective thing to achieve.

The Minister for Treasury and Resources:

And over the passage of time that would change probably anyway.

The Connétable of Grouville:

Yes, I am sure it would.

The Minister for Treasury and Resources:

Or could. Expectations of what fair is, I suppose that definition could change in due course. It is very different now to what it would have been 10 years ago, for example.

The Connétable of Grouville:

One concern that the general public have is about the assets and being transferred and from what we gather that they could not be transferred without the agreement of the Minister for Treasury and Resources. Do you think that should go further and it really should be the States of Jersey

that decide what assets are ... when we are talking about strategic assets, bigger assets, you know, a bit hard to do that but some of the important things? Do you think those decisions should be taken by the States rather than the Treasurer?

The Minister for Treasury and Resources:

No, I do not necessarily. I think a Minister for Treasury and Resources would take a view in future if there were any particular proposals put forward that were going to make a material change that if it was so significant he or she may well decide that review from the Council of Ministers would be obtained and support gained and a view as to whether, indeed, the broader States should have a view if it was so material.

The Connétable of Grouville:

At the moment if the States want to dispose of one of its properties, I think it is the Minister for Treasury and Resources that makes that decision or it would be ... I am not sure who makes the decision, but you merely notify the States that you are going to do it ...

The Minister for Treasury and Resources:

Currently the Minister for Treasury and Resources and Property Holdings residing as it does in Treasury; that may well change in the not too distant future.

The Connétable of Grouville:

That is quite a good process because we have notified most of the transactions but occasionally there are transactions which the general public are against. I am just wondering whether there should not be a safeguard like that with the assets of the Ports.

The Minister for Treasury and Resources:

So effectively the cooling off period so notify to the States ...

The Connétable of Grouville:

Yes, a warning so something does not happen without people knowing.

The Minister for Treasury and Resources:

A 14-day cooling off period?

The Connétable of Grouville:

I think it is a 14-day notice period.

The Treasurer of the States:

Yes, yes, 15.

The Minister for Treasury and Resources:

Sorry, 15.

The Connétable of Grouville:

I think it would give members of the general public some comfort as well to know that things are not going to be sold without them knowing.

The Treasurer of the States:

But on all transactions in this arm's length organisation would undertake, all property transactions would have to be presented to the State for a cooling off period; is that what you are suggesting?

The Connétable of Grouville:

Well that is what I am suggesting. Sorry, I thought that he was saying that was what was going to happen. No, I am suggesting that something like that would give people a lot of comfort.

Deputy S.M. Brée:

If I could just make a point here that one of the concerns is because of the very large portfolio of assets that the public of the Island of Jersey will effectively be transferring over to the new incorporated body. There may be the occasion where the Minister for Treasury and Resources has a conflict of interest. If the Ports of Jersey Incorporated decided to sell off an asset in order to raise a special dividend that the Minister for Treasury and Resources is demanding as shareholder in order to balance his books in other areas, then there is a conflict of interest there. What we are saying is that any disposal of assets that are included in the transfer or later acquired by the Ports of Jersey Incorporated need to be reviewed independently or the opportunity to be reviewed independently by the States as a whole. That is only fair and equitable.

The Minister for Treasury and Resources:

Two points I would make straight away. First of all, there is the added protection, for want of a better description, here with the Ports Policy Group so in the description you have made that the Minister for Treasury and Resources might be for treasury reasons deciding to support the sale, whereas of course you would have the Economic and Chief Ministers sit on that particular policy group so I think there is protection there anyway. Secondly ...

Deputy S.M. Brée:

It is limited.

The Minister for Treasury and Resources:

Well I am not so sure that would be the case. Secondly, I would just make the point that you reference States or public assets but, of course, in the incorporated body those assets that have been transferred into an incorporated ports are still the assets of the public. The company is still owned effectively by the company so ...

Deputy S.M. Brée:

They are but the public, and that includes I believe States Members, will not be able to see the full accounts, they will only be able to see the abridged as is the case with other incorporated bodies. The Minister for Treasury and Resources is the only person who sees the full accounts. Therefore, one cannot as a member of the public or indeed a States Member look below the figures, and so I would suggest that there is a possibility of a hiding of certain activities in abridged accounts. It is quite possible to do so, particularly if you are dealing with subsidiaries which the incorporated body possibly could acquire. It would be more comforting to be able to see the full accounts.

The Minister for Treasury and Resources:

Conspiracy theories abound but ...

Deputy S.M. Brée:

No, no, no. I can understand where it is commercially sensitive information, where there are competitors. In this instance there are no competitors so, therefore, it cannot be commercially sensitive.

The Minister for Treasury and Resources:

Of course, a Scrutiny Panel or Public Accounts Committee would have the ability to require access to the information that you are referring to, so it so still available and there are protection mechanisms in place as you would expect.

The Deputy of St. Mary:

The concern is that, you know, that might be too late. The Board will have control over certain assets. I mean I can see the conflict. We do want not to interfere with day-to-day management of the company. I fully understand that, but in the case, for instance, in one of these companies I see that there is scope for the States being advised of the directors to be nominated on a particular Board and those nominated shall be deemed approved unless there are objections within 10 days, and all I am saying and I think all that Simon is saying really is that we must in that case make sure we are made aware of it before the events happen. It might be limited to material ones, I do not know.

Adviser:

But I think my understanding of the Chairman as I was reading it, is it is up to the Board to decide whether to dispose of an asset is material or not. That is the definition of whether it is material ... It then goes to the Minister. The Ports Policy Group does not have a role in those material changes to the S.V.P. as it has defined in its terms of reference, it only has a role in relation to the overarching objectives and the S.V.P. It is entirely at the discretion of an individual Minister, the Minister for Treasury and Resources in the first instance, to say: "We wanted a regular meeting" so it would be perfectly possible even if the Board decide whether the disposal of something was material, for it not to go anywhere near the Ports Policy Group before a decision was taken. I am not saying it could happen with the current personnel but it could happen in theory at some time in the future.

The Minister for Treasury and Resources:

I mean I see theoretically what you have described could clearly happen. From a political point of view that is most unlikely which is the purpose of setting up that policy group but I understand your point.

Adviser:

The Government's arrangements needs to be water tight not just ...

The Minister for Treasury and Resources:

And I understand what you are saying.

Adviser:

There seems to be some gaps in the process.

The Minister for Treasury and Resources:

So to be clear going around in a complete circle on this, your primary concern is that there is some form of notification process before disposal as is the case with other properties and that would be a matter that would cause you to have some comfort.

The Connétable of Grouville:

Not just us.

The Minister for Treasury and Resources:

No, no, you are raising it on behalf of everybody clearly.

The Treasurer of the States:

So can I ask for clarity? You are asking, therefore, that the States would have the power to call those in and debate them?

The Minister for Treasury and Resources:

As is the current case.

Deputy S.M. Brée:

Yes. I see no reason why should public opinion and public interest be great enough that the States should have the ability because at the end of the day we are the shareholders. Now we have a shareholder representative in the body of the Ministry for Treasury and Resources but ultimately the shareholder is the public of the Island of Jersey and elected representatives in the Assembly. So a shareholder can at any time under company law with the right backing call an extraordinary general meeting which they could do in the event of the company wishing to dispose of an asset, that the shareholders the majority of which did not feel was correct to do, so they are merely following normal company practice.

The Connétable of Grouville:

I think they are talking about property and land here rather than the fire engine at the airport but ...

Deputy S.M. Brée:

Yes, we are talking about land.

The Treasurer of the States:

Well normal company practice is not a challenge to lodge with the Parliament each of the land transactions that the company is going to undertake. That is why I am after clarity. What you say is a political standard and I see no quarrel with a political standard. I just wanted clarity on whether that is what you wanted.

The Minister for Treasury and Resources:

Yes, I think there might be some confusion. You are not suggesting that any proposed sale is lodged, you are just simply saying that it is notified to the States but a ...

The Connétable of Grouville:

It is notified and, therefore, then ...

The Minister for Treasury and Resources:

... 15-day cooling off period which would give an opportunity for any States Member should they so choose to lodge a proposition.

The Minister for Economic Development:

Requesting the Minister for Treasury and Resources ...

The Treasurer of the States:

That is why I seek clarity. The notification is one thing and then the lodging is another thing.

Deputy S.M. Brée:

The commercial transaction is in the hands of the Parliament.

The Connétable of Grouville:

In some ways it comes to the same thing because you notify and, of course, if anybody has got an objection or something to make sure it does not happen, but it is a shorter process for most things which will happen on the nod, one would assume, because the same question arises. If you agree to use an asset as security for a loan, for example, you would not ... I do not know ... I think there is some discomfort in the fact that you can do that because you could lose the asset.

The Treasurer of the States:

We will have to come back with how we ... It strikes me there may be some legal changes that will have to be made to accommodate that because, of course, at the end of the day they would be States of Jersey assets, the freehold or the leasehold would be held in the name of the company.

The Connétable of Grouville:

I got it wrong this morning. I forgot but all the historic harbours of course remain the ownership of the Crown so ...

The Deputy of St. Mary:

Correct. They are on a leasehold for the Ports of Jersey ..

The Connétable of Grouville:

They could not be sold anyway or certainly not under the present circumstances ...

The Deputy of St. Mary:

They could not be used as an asset.

The Connétable of Grouville:

... but obviously you have got other assets like La Folie, for example. One might just ...

The Treasurer of the States:

To save another meeting, all material, once we have defined material, all transactions ... Pardon?

The Connétable of Grouville:

That might depend on how materiality was described.

Deputy S.M. Brée:

Personally, I would like to see all property classed as material.

The Deputy of St. Martin:

Regardless of scale?

Deputy S.M. Brée:

Yes.

The Treasurer of the States:

So a 9-year lease to a café ...

Deputy S.M. Brée:

No, we are talking about disposal of an asset, not of a lease.

The Treasurer of the States:

Not disposal of a lease? So the freehold transactions only?

Deputy S.M. Brée:

I would have said so, yes.

The Treasurer of the States:

Okay.

Deputy S.M. Brée:

Because at the moment, of course, leasehold transactions are all notified as well.

The Treasurer of the States:

Yes, but I would say freehold transactions to dispose of assets.

The Connétable of Grouville:

There is certainly a feeling among the general public that we could lose assets, which, I think somebody described it as we all love, for want of a better ...

The Treasurer of the States:

Yes. It is just good for clarity because at the moment the current rules are very ...

[15:15]

Deputy S.M. Brée:

There are leasehold assets held, leased from the Crown which we understand, the foreshore and the seabed. I mean the historic harbours. They cannot be sold so we are not talking about that instance. We are talking about an instance whereby an asset owned by the public of the Island prior to incorporation which is being transferred freehold to the Ports of Jersey Incorporated is then sought to be disposed of.

The Treasurer of the States:

I thought I heard you say earlier anything that they buy in the meantime as well.

Deputy S.M. Brée:

Yes.

The Treasurer of the States:

So not just ...

Deputy S.M. Brée:

Without drawing breath, I then go on to say that they use revenue to then purchase because effectively that is the property of the shareholders not ...

Adviser:

Well we came across this in the other outfit, which I was referring to very recently, and I think one of the definitions they used there, I will have to check the fine print, but it was around the long -- if it was a very, very long lease holding, for instance, which was the case in point that came up there recently. It was a 99-year lease and that was deemed by the accountants, and I am not an accountant, to be effectively equivalent to a disposal because it was such a long lease but a 5-year lease, a 10-year lease, you know, 25-year lease almost certainly would not have been called that.

Chief Officer for Economic Development:

I would have to say that knowing what I do know about it, the probability of the Ports of Jersey disposing of assets is very small because it is the very assets ...

Deputy S.M. Brée:

That slightly contradicts what we heard this morning.

Chief Officer for Economic Development:

I do not think we have discussed -- we may be developing them but I think disposing of them is rather a different matter.

The Connétable of Grouville:

A lot of what we have spoken about this afternoon is governance and reassurance and reassuring the general public and then if this reassures the general public then we should do it if it is not going to make any difference to the, you know, eventual outcome.

The Minister for Treasury and Resources:

That is a fair principle and we saw that.

The Connétable of Grouville:

Good. Do you have any further questions?

The Minister for Treasury and Resources:

If I may, I am not sure that I am necessarily supposed to be asking questions but it would be ...

The Connétable of Grouville:

No, we ask the questions.

The Minister for Treasury and Resources:

It was more a question of clarification perhaps around materiality because we will take away points you have raised in this area but if there is a particular view that you have around the definition, that would just be helpful.

The Deputy of St. Mary:

Well you were talking about coming in live on a financial basis but given what we own or what Jersey own, I think it is going to be more than that, is it not?

Adviser:

Yes, it is a difficult one, I mean at present I am looking at this other airport where their articles are far from perfect and they are being drafted ... 12 months ago but certainly they have very specific financial amounts in their articles that said below that the Board can determine, above that you need to refer back to the shareholder and did say the disposal of the lease, effectively a long lease, that was all covered by the shareholder agreement in the articles.

The Minister for Treasury and Resources:

Okay, so that would be based on a sort of capital value or essentially turnover or where it was appropriate.

Adviser:

It was an absolute figure but I do not want to sort of suggest to the panel here that those numbers from that airport are necessarily the right ones for yourselves; it is just the principle of having a sum definition in the articles that says below this it is not material but above this it is, or the point was made there may be political decisions that always seems to attract consequences that may not be financial and that is pretty much harder to define.

The Treasurer of the States:

Yes. So you would want some threshold but you would also want a formal meeting, so I will not use the language of it, but those ones that said well I know it is below the threshold but you should have told us about that. It is a catchall.

Adviser:

Sometimes it might be environmental, for example. You know, you lodge a concern at that particular airport from the population about environmental indications so there were processes put in place to make sure that there was a green policy and a plan and a process by which that was scrutinised almost independent of the shareholder relationship, for example, so you might want to consider environmental constraints so you could intervene if there was something that the airport reports were doing ...

The Minister for Treasury and Resources:

Social or political which are quite difficult at times. It comes as sort of a 'no surprises' policy and the relationship does develop between the shareholder and the ...

Adviser:

I am just trying to look at it, because I entirely understand where you are coming from about that relationship because we did have a dysfunctional relationship at this other airport and I spent a lot of time saying informal dialogue, informal dialogue, informal dialogue, do not try to enshrine it all in

the paperwork, but nonetheless you need to have some of it enshrined in paperwork because personalities can change.

The Minister for Treasury and Resources:

It is about getting the right balance and I accept that. The points I have been making about trying to capture everything into an M.O.U. are difficult for the reasons I think you have recognised.

Adviser:

I think it may be some generic terms about consideration. It might be you cannot define materiality as a specific line in the sand, but you could perhaps give better clarity as to the things that would be taken into account when determining if something is material. In other words, in determining materiality what you would expect the Board to have regard to and then at least you have got an audit trail that says: "Did they have regard to all of these things?"

The Minister for Treasury and Resources:

I mean that sounds perfectly reasonable. You will not capture everything but you will give a far clearer line to areas that would raise concern.

The Deputy of St. Mary:

I am not sure if it helps at all, material in the M.O.U. for Andium is described as: "It shall take its reading from the concept of materiality as from time-to-time understood for the purposes of auditing the annual accounts of Andium Homes in line with accounting principles generally accepted in the Island of Jersey." And it goes on about: "Andium Homes may otherwise agree to the limits of materiality in any financial year." I mean that might be a starting point, I do not know.

The Minister for Treasury and Resources:

That is helpful, thank you.

Deputy S.M. Brée:

I just have one question. It has come up on a number of occasions. Obviously the idea about incorporation of the Ports is to allow it to take a lot more opportunity, faster reactions to commercial opportunities so it becomes an organisation that through its generation of income covers all of the expenditure, the costs of running the ports and the harbours, and basically it does not need to come back to the States, or the shareholders should one say, for any additional funds. There is a concern with the historic harbours. Over the past few years, we will quote St. Catherine's ... as having major structural problems which have to have work done to them above and beyond normal maintenance. This could happen on the other historical harbours as well. With the best will in the world, you know ... I notice there is a crack at La Rocque starting. It could

be nothing but it could be something so the point is that kind of work is incredibly expensive just by the nature of what you have to do and I believe they are listed structures anyhow. What would happen if the Ports of Jersey Incorporated suddenly had this incredible pressure on its cash flow to sort out a historic harbour which it has responsibility for and it was not able to meet it through its own reserves? It would have to obviously come back to the shareholder.

The Minister for Economic Development:

The same as what would probably happen now if it happened even if it was not incorporated. A solution would have to be found and probably ...

Deputy S.M. Brée:

No, it was just merely to get your thoughts on the matter because once it is incorporated, effectively the concept is that it is a self-contained unit which by generation of income, commercial projects and commercial opportunities is able to fund things but if an extraordinary item like that ...

The Minister for Treasury and Resources:

I suppose you have got 2 circumstances; have you not? You have got some catastrophe, unplanned accident or whatever ...

Deputy S.M. Brée:

Well one would hope insurance might deal with that.

The Minister for Treasury and Resources:

Exactly. You would also potentially in an incorporated function, we can talk about governance but the oversight, the Board, the management team would manage their assets and their capital programme and ensure that the assets they have responsibility for are properly managed and maintained and so on. Ultimately, if something comes to light that had not been identified as a material cost then there are courses to the shareholder, but it is the same whether it is incorporated or not incorporated because ultimately the problem is going to fall to the State. It does not give you much comfort but it is a fact.

Deputy S.M. Brée:

So that is an acceptable scenario?

The Deputy of St. Martin:

I think it is unlikely the States would let Ports Incorporated go under because of one of its problems.

The Minister for Treasury and Resources:

No, exactly right but that applies to the other partly-owned entities like J.T. or Jersey Post; you could draw the same comparison with those.

The Treasurer of the States:

J.T. already has, not the circumstances you are mentioning, but the gigabit project. There was investment from the shareholder so there is some precedent there. You cannot establish all the circumstances under which you may have them. But following on from the Senator's point I suppose the line would be the incorporation makes the need to come to the shareholder and equally the shareholder if you did not ... if you see what I mean, less likely than the current model but that is not to say that you are eliminating all risk or you are eliminating that as an option going forward.

The Deputy of St. Mary:

Just a couple of small points on the standard tables that has been adopted as the Articles of Association and one small thing that is the general meetings provides that the Chairman of the Board of Directors shall decide when that meeting is. It occurs to me that the Minister for Treasury and Resources himself might be presiding at the meeting of the shareholders rather than give the Board control of it.

The Minister for Treasury and Resources:

Are you happy to do that?

The Deputy of St. Mary:

Yes, okay. I mean otherwise it seems to me that ... The concern I have is otherwise the Board is controlling everything and it would seem to be an extra safeguard for the Treasurer. One other small point I think, knowing how ... it is in alternating the standard articles seem to have left in abeyance who should be responsible for issuing un-issued shares and I know it is ... point but technically it should be back to resolution by the shareholder so I can comment in an email to ask ...

The Minister for Treasury and Resources:

That is fine, please do.

The Connétable of Grouville:

Anything else, David?

The Deputy of St. Mary:

Sorry?

The Connétable of Grouville:

Anything else?

The Deputy of St. Mary:

No, that was all.

The Connétable of Grouville:

That is about it, gentlemen. Thank you very much.

Deputy S.M. Brée:

Thank you for your time.

[15:26]