

STATES OF JERSEY



WATERFRONT ENTERPRISE BOARD LTD: REMOVAL OF STATES DIRECTORS AND CHAIRMAN FROM OFFICE (P.98/2008) – COMMENTS

**Presented to the States on 3rd July 2008
by the Council of Ministers**

STATES GREFFE

COMMENTS

The Council of Ministers opposes this Proposition in its entirety. The Proposition states that the Directors should be removed from their positions as they “have been shown to have failed in their duties to the States” and that the Chairman should be removed from his position as “the potential conflict is clear”.

The dismissal of a Chairman and/or Director of a company is the most serious sanction available to the States and the case for such a dismissal must be unequivocal. The Council of Ministers firmly believes that no such case has been made to implement such a sanction.

In summary, since the current Board’s term of office, the Council believes that the Directors and Chairman of the Waterfront Enterprise Board (WEB) have performed extremely well in negotiating the current deal proposed for the Waterfront. In addition, the removal of the Directors and Chairman of WEB could have a serious impact on the successful progression of the Waterfront development.

Deputy Southern’s Proposition has highlighted 3 issues –

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

In addressing the first point, it has been explained in the report of the Waterfront Rescindment Proposition that the States were not being asked to approve the Harcourt deal. The Proposition was to transfer land to create a consolidated land holding in order to allow the Masterplan to proceed. The report included details of the Harcourt deal in order to assure Members that the Masterplan represented a commercially viable scheme which would produce a significant financial return.

Once the States had approved the land transfer, WEB would undertake further due diligence and would negotiate detailed guarantees before proceeding further. That work is in hand, but would be terminated, or seriously delayed, if this Proposition were to be agreed. In any event, the appointment of the final developer will have to be approved by the Minister for Treasury and Resources before proceeding. The Minister for Treasury and Resources will appoint an independent, professional firm of international standing, expert in development appraisal and financial capability, to advise him in making this decision.

The PwC report was a confidential report to WEB and cannot properly be regarded as directly relevant to Part (b) of the original proposition (P.60/2008).

The second point raises the question as to whether the Board of WEB properly considered the PwC report and whether their decision to continue to progress the Harcourt deal was reasonable. The Chairman and Board of WEB invited States Members to a briefing on 25th June 2008 where they explained the range of due diligence, legal and reputational checks that have been carried out in respect of Harcourt. A copy of the slide presentation has been circulated to States Members with a note to the questions which were asked. There have been –

- 3 reviews of the reputation and integrity of Harcourt and its Directors (2004, 2005 and 2007)
- 2 PwC Financial Capacity Audit (2004 and 2007)
- a third and Final Capacity Audit started after the States debate
- a review of outstanding court cases is also underway.

The Waterfront Enterprise Board took account of all of this information, rather than just relying on one section of one report which is then later qualified in the same report. It also decided that, in order to minimise any risks, it would require a solid guarantee backed by an independent bank or insurance company, which would be called upon, should Harcourt default on any of the terms in the development agreement.

The Comptroller and Auditor General has taken a view of this issue which is set out in his report published to States Members. The relevant section is set out below with paragraph 83(1) shown in bold.

81. *In July 2007, WEB agreed Heads of Terms with Harcourt that required bank or insurance company guarantees for the sum of £95 million to be arranged by Harcourt in a form acceptable to WEB. In October 2007, the board considered a draft 'Financial Capability' report prepared by PricewaterhouseCoopers (PWC) as a part of WEB's due diligence checks on Harcourt. That report indicated^[1] that Harcourt's balance sheet was strong but suggested that:*

- (1) the Esplanade Quarter project was substantial in comparison to the size of Harcourt thus appearing to raise a question about the possibility that the project was 'too large' for Harcourt to manage successfully; and*
- (2) that Harcourt was involved in litigation in Dublin which WEB should investigate further.*

82. *The board minute records that the view of the board was that the report was 'satisfactory' which in view of the two matters I have mentioned above may be thought over-stated and thus may be thought possibly to have been a distorted view.*

83. *On reflection and further examination, I have discarded this negative view:*

- (1) **the basis on which the PWC report questioned the size of Harcourt was the application of a 'rule of thumb' which was intended to indicate instances in which WEB should show caution in proceeding rather than to suggest that WEB should not proceed. Whatever the board minute may have said, WEB has proceeded carefully by, for example, requiring Harcourt to agree to provide acceptable bank guarantees (in accordance with the Heads of Terms signed in July 2007) that it will meet its obligations under an eventual development agreement. It should also be remembered that WEB has experience of Harcourt successfully completing an (admittedly smaller) project.***
- (2) I understand that WEB has made arrangements to investigate the Dublin litigation further in time for the results of that work to be available when further decisions had to be made.*

With regard to the comments made by the Directors during the debate that Harcourt is a low gearing company, the Council of Ministers would like to draw Members' attention to page 15 of the PwC report which states that Harcourt has –

“modest gearing levels (in comparison to the level of the reported gross assets)”.

The PwC report also provides further information in respect of the valuation of the Group's gross and net assets which would further support the gearing level.

As part of the third issue, Deputy Southern's Proposition also implies that the Directors presented the data outlined in the report in a falsely positive light. The fundamental flaw of this argument is that Deputy Southern fails to address the PwC report in full. He selectively quotes one section of the report, which will of course lead to a bias and distorted understanding. The Deputy fails to highlight other important areas of the report, such as –

- *“One of Ireland's largest privately owned property development companies.”*
- *“D&B statistics suggest that Harcourt demonstrates a lower risk of failure than the industry average”.*
- *“Harcourt's apparent low turnover levels do not fully reflect its activities in the development*

market”.

- *“Information provided by Harcourt suggests that the reported gross and net asset values do not fully reflect the value of the Group’s property portfolio (and its capacity to deliver schemes)”.*
- *“Debt only represents 58% of the value of the Group’s gross assets (with further potential value reflecting any uplifts in market values of investment properties and “marking to market” of hotel assets and development properties having the potential to reduce this gearing level further)”.*
- *“Harcourt has demonstrated a significant track record at delivering (and financing) major development projects”.*
- *“Also suggests that in advancing funds such banks had confidence in the ability of Harcourt to deliver schemes and repay debt as it falls due”.*
- *“These confirmations are dated May 2007 and confirm that the Group have long standing relationships with the respective banks with no concerns noted on Harcourt’s track record in operating its accounts”.*
- *“A range of historic evidence to support Harcourt’s claim that it will be able to secure and contribute the level of equity funding necessary to progress the proposed scheme”.*
- *“Less likely to fail than industry average”.*

The Council of Ministers suggests to Members that they should do as the Board of WEB correctly did, and view the report in its entirety, therefore placing this important section into context. Once Members have read the report in full, it will be clear that the Directors did not present the facts in a falsely positive light; more that they had seen the entire report and so were afforded a more rounded understanding of the issues raised therein. As a result, they did not concentrate on the few reservations raised in the report as this Proposition does.

It is clear from the above information that the Directors of WEB have taken their responsibilities seriously and have undertaken a thorough and comprehensive evaluation of Harcourt. The Council of Ministers therefore asks Members to reject Part (a) of the Proposition.

Part (b) of the Proposition asks the States to remove Mr. Francis Gerald Voisin as a non-States Director and Chairman of the Company.

Members have received a copy of the Comptroller and Auditor General’s interim report. His conclusions in relation to Mr. Voisin are as follows –

79. *Having formed the view that it would have been wise for Mr. Voisin to make a disclosure to his colleagues, I have considered whether any of WEB’s decisions may have been distorted by his failure to make a disclosure.*

80. *To check this, I have considered all of the decisions taken by WEB’s board since Mr. Voisin’s appointment to the board of AIB CI. As a result of this review, it seems to me that there is only one occasion on which there may be a case for suggesting that a decision may have been distorted.*

and also –

84. *The effect of this review is that I have found no evidence that the decisions made by WEB were distorted by Mr. Voisin’s failure to disclose his relationship with AIB CI.”*

85. *In my view:*

- (1) *Mr. Voisin should have disclosed to WEB his appointment to the board of AIB CI for inclusion in the Register of Directors' Interests. He did not do this.*
- (2) *On a strict interpretation, Mr. Voisin appointment to the board of AIB CI did not represent a conflict of interest as defined by Companies Law and thus was not required to disclose a conflict of interest at board meetings at which WEB's transactions with Harcourt were discussed.*
- (3) *Notwithstanding this strict interpretation, it would have been wise for Mr. Voisin to make such disclosures.*
- (4) *I have found no evidence that Mr. Voisin's failure to disclose this interest distorted WEB's decisions.*

Mr. Voisin was appointed as Chairman of WEB by the States on 19th July 2006, officially taking up the post on 20th August 2006. He was later appointed a non-executive Director of AIB (CI) Ltd. in November 2006 and was appointed Chairman of AIB (CI) Ltd. in March 2007. To be clear, Mr. Voisin was appointed Chairman of AIB (CI) Ltd. after his acceptance of the position of Chairman of WEB, this potential conflict did therefore not exist when he was appointed.

Harcourt were appointed preferred developer of the Esplanade Square site in March 2005 and the Board of WEB agreed to enter into Heads of Terms with Harcourt for the Esplanade Square site on 15th August 2006 (meeting Chaired by Mr. Pierre Horsfall). Mr. Voisin was conscientious to ensure that there would be no conflict of interest with his chairmanship of both Boards. He informed the Chief Minister after accepting the post as non-executive director of AIB (CI) Ltd. The Chief Minister then advised Mr. Voisin to ensure there would be no conflict of interest on his part by accepting this position. Consequently, he checked with the Bank, and was assured that AIB (CI) Ltd. had no dealings with Harcourt.

AIB (CI) Ltd. has written a letter to confirm that there is no conflict of interest by Mr. Voisin maintaining both positions. This letter is at Appendix 1 of this report for Members' information. AIB (CI) Ltd. has no business dealings with Harcourt whatsoever and AIB plc. provide no funding to Harcourt's projects in Jersey. Mr. Voisin has no involvement in the business of AIB plc.

WEB's solicitors have been asked to investigate the allegations of a conflict of interest and have advised WEB that there is no such possibility. As Members are aware, WEB is governed by the Companies (Jersey) Law 1991. The company is not a public body and is consequently governed in a very different way. Under Article 75 of the Companies (Jersey) Law 1991 (revised), it is the responsibility of a company's Directors to disclose any interests "which to a material extent conflicts or may conflict with the interests of the company and of which the director is aware", and the Directors and Chairman of WEB complied as such.

Not only did Mr. Voisin accept the role of Chairman of WEB during a period of considerable flux for the company, but he accepted the role as an interim measure pending renewal of the structure and responsibilities of the company. He has worked tirelessly to ensure that the previously unpopular plans have been totally revised. The current excellent scheme which has received the support of a vast majority of States Members is a testament to his commitments to the Island's best interests.

The Comptroller and Auditor General has said that he will be issuing a full report on WEB in September, 2008. That report will review the corporate governance, board structure and related matters, and will provide a sound basis to make proposed changes of Board structure for approval by the States Assembly. These will be brought forward as soon as possible. If Mr. Voisin were to be removed as a Director of the Company then another Chairman would have to be appointed for a short interim period, which could introduce unnecessary uncertainty at a critical stage in relation to the current scheme.

It should also be noted that if these Propositions were to be agreed they could lead to the dismantling of the Waterfront Enterprise Board. The quorum for a Board meeting is 2 States Directors and 2 non-States Directors. If the Board is not quorate then it cannot transact business. WEB is currently negotiating a project on the Hotel

Phase 2 site (c.£4 million) and has an ongoing range of contracts in relation to existing and completed developments. If the company ceases to be able to function because it does not have a functioning Board, then it could be open to losses or claims for damages. Thus, the States as stakeholder would be open to significant risk.

In the Press release issued by WEB (attached at Appendix 2) Mr. Voisin–

1. recognises the oversight of not disclosing his Chairmanship of AIB (CI) Ltd.;
2. confirms his intention to step aside from his current role once a new company structure is in place, as will be outlined in the C&AG report;
3. accepts and welcomes the findings of the interim report issued by the C&AG.

In summary, it is clear that whilst there have been failings in managing declarations, there would appear to be no evidence that the decisions made by WEB were distorted by Mr. Voisin's failure to declare his relationship of ABI (CI) Ltd. Indeed, the current Board has overseen a number of schemes which have considerably raised the quality and the benefit of the Waterfront. The Council of Ministers therefore believes there is no case to implement this most serious of sanctions.

The Council of Ministers ask States Members to reject Part (b).


AIB Jersey

Our ref: DJM/cj

23 June 2008

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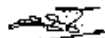
Dear Mr Izatt

I have been requested by the Chairman of AIB Bank (CI) Ltd Mr Gerald Voisin to clarify a number of points:

- AIB Bank (CI) Ltd has no dealings with Harbour Developments Ltd.
- In his role as Chairman of AIB Bank (CI) Ltd Mr Voisin has had no dealings on our behalf with Harbour Developments Ltd.
- In his role as Chairman of AIB Bank (CI) Ltd Mr Voisin has had no involvement with any business conducted by Allied Irish Bank Plc in Ireland or indeed in any decisions taken by them.

I trust this is sufficient for your purposes but should you have any further queries please let me know.

Yours sincerely


Joe Moynihan
 Managing Director

 Direct Telephone Line: 01534 882050
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AIB Jersey is the registered business name of AIB Bank (CI) Limited (AIB Bank (CI) Limited) which is regulated by the Jersey Financial Services Commission as a company conducting business under the Banking Business (Jersey) Law 1998 and is also regulated by the Jersey Financial Services Commission as a company conducting business under the Jersey Financial Services (Jersey) Law 1998. AIB Bank (CI) Limited is a wholly owned subsidiary of AIB Bank (CI) Limited which is a wholly owned subsidiary of Allied Irish Bank (AIB) plc. The registered office of the company is AIB House, 25 Esplanade, St Helier, Jersey JE1 2A6.



PRESS RELEASE

As Chairman of the Waterfront Enterprise Board Limited I welcome and accept the findings of the interim report issued by the Comptroller and Auditor General this morning regarding the declaration of directors' interests.

I am pleased that he has confirmed that under Companies Law and the Articles of Association of WEB my appointment to the Board of AIB (CI) Limited did not represent a conflict of interest and that there is no evidence that my failure to declare distorted WEB's decisions. However I fully accept that it would have been preferable to have declared my role with AIB (CI); it was an oversight. It was a matter of public knowledge and I declared it to the Chief Minister.

When I was invited to become a Director of AIB (CI) I checked with their Chief Executive to ensure that there was no conflict and I have since asked WEB's lawyers to reassess the position. They have confirmed that I have complied with the Companies Law.

The report also recognises that WEB maintained a register of directors' interests as a matter of good practice and that as soon as we became aware that the register had not been updated all Directors updated their declarations.

The CAG has also made an interim evaluation of the Board's decision to progress the Harcourt deal in the light of the PWC financial capacity study. He has accepted that the requirements to provide a strong guarantee and the experience of Harcourt were sufficient justification to continue.

When I accepted the role as interim Chairman of WEB in September 2006, it was on the understanding that it would be for a short term until an alternative structure could be agreed for WEB. I knew it would be a demanding role at a critical time for the development of the Waterfront. I am extremely pleased that working together with the Board and Ministers we have been able to bring forward a completely revised plan for the Esplanade Quarter, which will provide a development to be proud of and which will serve the Island well for many years to come. We have also increased the financial return to the Island by a very substantial sum and created a deal that removes all of the financial risks from the States of Jersey.

THE WATERFRONT ENTERPRISE BOARD LIMITED

CHAIRMAN: F.G. Veisin MANAGING DIRECTOR: S. Izatt
OTHER DIRECTORS: Jurat J.C. Tibbo, Senator P.F. Routier, Deputy J.J. Huet, P. Crespel

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I hope that the Comptroller and Auditor General's final report produces a revised structure for WEB which will create a stronger company structure for the future. I am committed to working to bring these changes to fruition and as soon as they are in place I reaffirm my commitment to step aside from the current role to allow the Chairman of the revised company to be selected in an open appointment process.

F.G. Voisin
Chairman
Waterfront Enterprise Board

1st July 2008

