

STATES OF JERSEY



STATES OF JERSEY DEVELOPMENT COMPANY LIMITED: APPOINTMENT OF CHAIRMAN AND NON-EXECUTIVE DIRECTORS (P.32/2011) – AMENDMENT (P.32/2011 Amd.) – AMENDMENT

Lodged au Greffe on 1st June 2011
by Senator B.E. Shenton

STATES GREFFE

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OF CHAIRMAN AND NON-EXECUTIVE DIRECTORS (P.32/2011) –
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PAGE 2, PARAGRAPH (a) –

After the words “Mr. Mark Boleat (Non-Executive Chairman)” insert the words “provided that the appointment of Mr. Mark Boleat as Non-Executive Chairman shall not become effective unless he has, within a maximum of 7 days of the adoption of this proposition, resigned as Chairman of the Jersey Competition Regulatory Authority”.

SENATOR B.E. SHENTON

REPORT

On Friday 20th May 2011, I e-mailed the Chief Minister, the Minister for Treasury and Resources, and the Assistant Minister with responsibility for States property, as I was concerned that their choice of Chairman for the States of Jersey Development Company would be conflicted in that role as he is Chairman of the JCRA.

I reproduce extracts from the e-mail below –

Dear Philip, Terry & John,

If we were looking for an independent Chair for the JCRA would we consider the Chairman of Dandara or the Chairman of Sandpiper for the post?

Of course not as there would be an absolute conflict of interest. Would we consider the Chairman of what is potentially the largest development company on the Island, the SOJDC? I very much doubt it. Yet by appointing Mr Boleat as Chair of SOJDC this is effectively what we are doing.

Deputy Higgins resigned from scrutiny because of a perceived conflict of interest following a complaint from a Minister. Yet a few short weeks later you have lodged a proposition containing a clear and absolute conflict of interest which, if passed, calls into question the whole viability of the JCRA – because if it is not seen to be independent then it is worthless.

Will we in future read headlines such as;

“SOJDC signs lucrative contract with DHL after JCRA opens up the postal market” or “SOJDC revenue from phone masts increases due to actions of JCRA” or “Mark Boleat invites new oil company to the Island with his JCRA hat on, and signs lucrative contract giving significant rent free period with his SOJDC hat on” or “JCRA rules that awarding Waterfront Development contract to one single developer does not cause competition issues. “I’m delighted with the JCRA’s conclusion” says Mark Boleat – Chairman of SOJDC.”

You could not even begin to defend this.

I look forward to hearing from you without delay.

Best wishes,

Ben

I have subsequently spoken to the Minister for Treasury and Resources and Mr. Boleat concerning this, and both remain convinced that there would neither be a perception by the public of conflict of interest nor an absolute conflict of interest, despite the cosiness of the arrangement.

I therefore believe that it should be up to the States Assembly, and the public, to decide whether an absolute or perceived conflict of interest exists – as numerous other parties with whom I have discussed this matter have expressed their dismay at this choice of Chairman.

Furthermore, the public of Jersey need to fully understand that the States of Jersey Development Company is a very different animal to the Waterfront Enterprise Board – especially as they will have to carry the cost of any poor development projects or speculative activities. It is therefore vital that we have in place an independent Board that is beyond reproach. We cannot afford to get this wrong.

Financial and manpower implications

There is no long-term financial or manpower cost for the States arising from this amendment.

Note:

Extract from JCRA website –

About JCRA

The Jersey Competition Regulatory Authority (JCRA) was set up by the States of Jersey in 2001 under the [Competition Regulatory Authority \(Jersey\) Law 2001](#) as an **independent** body, accountable to the Minister for Economic Development, with responsibility for promoting competition and consumer interests through economic regulation and competition law.

**Excerpts from Hansard – SOJDC debate 13th October 2010 – my speech
highlighting difference between WEB and SOJDC**

1.1.9 Senator B.E. Shenton:

“I have got a number of points to make. The C.&A.G. (Comptroller and Auditor General) recommended that we remove the States directors from W.E.B., and this is something that is happening and is something that I agree with and I think this debate has borne out the type of conflict of interest that directors of W.E.B. have. All 3, I believe, have spoken in this debate and all 3 have spoken, I believe, as directors of W.E.B. When they are in the Assembly they are elected to represent their Parishes and they are not elected to speak as directors of W.E.B. within the Assembly. I would, therefore, ask that given that they do appear to be in the Assembly as W.E.B. directors today that they abstain from voting because they do not have a vote as a W.E.B. director in the Assembly.

This proposition or this move is going to put substantial risk on to the people of Jersey. Substantial risk because the new company will become a property developer, and the residents of Ireland at the moment are bailing-out property developers 10 a penny because these are people that they thought it was so easy to make money out of property development.”

“If you get it right you will get a nice fat bonus and if you get it wrong the people of Jersey will, in effect, pick up the pieces going forward. The DTZ report on page 13 states that the new company may **retain all the development risk itself**, and it has certainly been mooted that they will become developers simply because the developers are not out there, and unless you are quite naïve you would also think that there are banks queuing up for new buildings out there. That is not the case; there are empty sites there at the moment that are not being developed. Page 216 of the DTZ report says that **the States of Jersey Development Company will retain more risk than is typical in the U.K. so not only are we setting up a structure with risk, we are setting up a structure with more risk than would be typical for a similar sort of structure in the U.K.** The people that have got the Waterfront so wrong, we are going to give them the keys to the casino and an open cheque book and then we will pick up the pieces at a later date. Page 230, and this is probably the key part because this is where it mentions the States of Jersey: **“Clearly, the States of Jersey will need to be satisfied that it is aware of the risks that the States of Jersey Development Company will bear.”** Has this been made clear in the proposition? Has this been made clear in the speech of the Chief Minister or the speeches of the Council of Ministers? We are, as an Assembly, taking on an enormous risk by giving these powers to the States of Jersey Development Company, and they will go back to the proposition and they will go back to that statement that the States of Jersey must be aware of the risk they are taking on in the future if anything goes wrong and if it is passed today. Senator Le Marquand spoke about the problems with novation if the W.E.B. were to be liquidated. But I see this as slightly a red herring because if you were taking over another property company you would not normally liquidate it. You would normally retain the leases in the name of that company and it would simply become a wholly-owned subsidiary of the new company. There are no problems with novation or transfer of leases. The whole thing would be quite seamless so why has the Council of Ministers suddenly led us up this little alley which does not really

exist? There would be nothing to stop us setting up a new company with a proper structure and a proper board and for that company just to acquire the shareholding of W.E.B. and the assets that lie within that company. In my view, within this proposition, there is – and this is just my view – a lack of openness about what we are doing today. I am deeply disappointed that it was not referred back to Scrutiny so that they could finish the job because certainly I would have some input into the Scrutiny, having heard some of the speeches which, in my opinion, were slightly light of the true facts.

I do not believe that there is the demand out there at the moment. The reason the States of Jersey want to become a property developer is because no one else in this environment is willing to take the risk. It is our money that they are playing with and our assets. If private enterprises and private equity are not willing to invest at this time why should we put the burden on the people of Jersey? None of us are particularly happy with what has gone up there. The majority of people I speak to do not want an underpass. They do not want the soul ripped out of St. Helier. They do not want to live for the next 10 years as a building site. I wandered around the new Dandara development the other day. My wife and I refer to it as Little Torremolinos, because that is what it is. It is just low quality, high density, money in your pocket, let us make it (a) to (j), get the (j)s in there, get the people in for the finance industry. This has got nothing to do with Jersey. It has nothing to do with the people of Jersey. Ultimately, my wife and I are the ones that are going to be taking the risk to make all this happen. So as an investment in the sort of words of Dragon's Den, we are not delivering, it is too risky and it is not going to deliver and on that basis I am out."