

STATES OF JERSEY



STATES OF JERSEY DEVELOPMENT COMPANY: AMENDMENTS TO THE BOARD OF DIRECTORS AND ARTICLES OF ASSOCIATION

**Lodged au Greffe on 2nd June 2020
by Minister for Treasury and Resources**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

1. To approve the following appointments and extensions under Article 21(b) of The States of Jersey Development Company Limited's Memorandum and Articles of Association –
 - (a) to appoint Paul Masterton as Chairman of the Company with effect from approval by the States Assembly, in accordance with the Memorandum and Articles of Association, to take effect from the delivery to the Company of the notice referred to in paragraph (e) below;
 - (b) to extend the term of office of Paul Masterton as a non-executive director until 20th December 2023 in accordance with the Memorandum and Articles of Association, to take effect from the delivery to the Company of the notice referred to in paragraph (e) below;
 - (c) to extend the term of office of Ann Santry as a non-executive director until 20th December 2022 in accordance with the Memorandum and Articles of Association, to take effect from the delivery to the Company of the notice referred to in paragraph (e) below;
 - (d) to appoint Nick Winsor as a non-executive director of the Company with effect from approval by the States Assembly, in accordance with the Memorandum and Articles of Association, to take effect from the delivery to the Company of the notice referred to in paragraph (e) below;
 - (e) to authorise the Greffier of the States for and on behalf of the States of Jersey to deliver a notice to The States of Jersey Development Company Limited in accordance with Article 21(b) of the Memorandum and Articles of Association to give effect to such appointments and extensions.
2. To approve the passing of a Special Resolution of the Company to amend Articles 23 and 29 of the Articles of Association of the Company to provide that directors may serve for a period up to 3 years and that the number of directors shall be a minimum of 3 States Appointees and a maximum of 5 States Appointees and to authorise the Greffier of the States for and on behalf of the States to deliver a notice to The States of Jersey Development Company Limited in accordance with Article 21(b) of the Memorandum and Articles of Association to give effect to such Special Resolution.

MINISTER FOR TREASURY AND RESOURCES

REPORT

Background

In 2010 the States Assembly, by adopting [P.73/2010](#), approved the establishment of The States of Jersey Development Company Limited (the “SoJDC”) as the successor to the Waterfront Enterprise Board Limited. The new company, with a revised remit, came into effect in June 2011 following adoption by the States Assembly of [P.32/2011](#) appointing a new board of Non-Executive Directors.

In approving [P.73/2010](#) the States Assembly further approved the revised Memorandum and Articles of Association of the Company. Article 23 of the Memorandum and Articles details the required number of Directors and Articles 29 and 30 deal with the appointment and retirement of Directors of the Company.

Article 21(b) of the Memorandum and Articles provides that “The States whilst a member of the Company shall be entitled to execute a resolution in writing or any other notice in writing by means of an instrument in writing signed by the Greffier of the States, the Deputy Greffier of the States or any another officer appointed to discharge the functions of the office of the Greffier of the States under Article 41(15) of the [States of Jersey Law 2005](#). Any such resolution, notice or instrument shall take effect upon delivery thereof to the office.”

The Board of SoJDC have requested that the States of Jersey, as Shareholder, approve the following proposals –

- (a) the appointment of Paul Masterton as Chair of SoJDC with effect from 19th June 2020;
- (b) the extension of the appointments of Paul Masterton and Ann Santry, beyond the normal 9 year maximum term;
- (c) the appointment of Nick Winsor to the Board of the Company to fill the non-executive director vacancy with effect from 19th June 2020; and
- (d) a change to the Company’s Articles of Association to allow the appointment of an additional non-executive director.

A formal process chaired by the Jersey Appointments Commission (“JAC”) has been undertaken by SoJDC in an attempt to recruit a new Chair, the outcome of which is covered in the below.

Request in detail

A. Appointment of Paul Masterton as Chair with effect from 19th June 2020

Nicola Palios is currently the Chair of SoJDC and her term of office, as a non-executive director, expires on 19th June 2020 by which time she will have served a total of 9 years on the board.

The Remuneration and Nomination Committee of SoJDC commenced a recruitment search process for a replacement for Mrs. Palios as Chair and non-executive director in September 2019. This process involved the use of a leading external search consultant and the JAC were consulted at every stage.

After an extensive and targeted search, which included both local and national advertising, the process only resulted in four candidates being eligible for short-listing, with 2 candidates subsequently withdrawing from the process having accepted other positions. The two remaining candidates were interviewed on 10th February 2020.

The interview panel concluded that neither of the two remaining candidates should be appointed as Chair, although both possessed the relevant skills. The Board, as a consequence, decided that the Company needed stability in its governance, in particular the Chair position, not least as a result of the additional risks arising from the Covid-19 pandemic.

In line with the UK Corporate Governance Code requirements, Mrs. Palios is due to stand down from the Company on 19th June 2020. Mrs. Palios has advised that she has other business commitments elsewhere and therefore would not be able to consider extending her tenure.

Accordingly, the SoJDC board reached the unanimous decision that it would be in the overall best interests of the Company for SoJDC's senior independent director, Paul Masterton, to be appointed to the role of Chair to coincide with Mrs. Palios' retirement.

Mr. Masterton is a highly experienced non-executive director and Chair, with an in-depth understanding of Jersey, from both a business and political perspective. Having been the senior independent director of SoJDC for the past three years and being locally resident, the Board believes that he has provided support to the business as and when required, including mentoring of the executive directors.

It should be noted that Mr. Masterton currently also acts as Chair of the Channel Islands Competition and Regulatory Authorities (CICRA). Mr. Masterton was appointed as an interim Chair of CICRA principally to run the Chair recruitment process and to ensure the CICRA board could continue to operate. Mr. Masterton will not remain as Chair of CICRA if his appointment at SoJDC is supported by the Assembly.

Mr. Masterton's appointment will only take effect from when, and if, his appointment is supported by the Assembly.

The Company will therefore be in breach of its Articles of Association following Mrs. Palios' retirement as Chairman until a replacement Chairman is appointed.

B. Extension of appointments of Paul Masterton and Ann Santry

The terms of office of Paul Masterton and Ann Santry expire in May and July 2021 respectively, this being the end of nine years serving on the Board of SoJDC as non-executive directors and States' Appointees, as defined in the Company's Articles of Association. Given their extensive knowledge of the Company and corporate governance, the Board of SoJDC is keen that their terms of office should be extended to ensure effective risk management and stability in a period of significant change and risk, with both candidates expressing their willingness to remain in post.

The SoJDC board is mindful of the importance of having a managed rotation of non-executive directors with ideally only one non-executive director cycling off the board in any one 12-month period. Their retirement at approximately the same time is to some

extent due to the limitations placed on Director's terms within the Memorandum and Articles of Association. To that end, the board proposes the following –

- Paul Masterton's 9 year term of office is due to expire on 11th July 2021 and it is requested that his term of office be extended to 20th December 2023; and
- Ann Santry's 9 year term of office is due to expire on 29th May 2021 and it is requested that her term of office be extended to 20th December 2022.

It should be noted that the extensions are intended as the maximum length of time that Paul Masterton and Ann Santry will serve and therefore, depending on the timing of the successful recruitment of new replacement non-executive directors, they may retire before the end of these extended periods.

C. Appointment of Nick Winsor as an additional non-executive director

Nick Winsor is the former CEO of HSBC Channel Islands and was short-listed for the position of Chair of SoJDC. Whilst the interview panel concluded that, on balance, Mr. Winsor was not suitable for the Chair role at this time, they did consider that he would make an excellent non-executive director for the company. He is a very experienced banker and senior business leader, with strong links to Jersey, and is very keen to join the Board in a non-executive capacity. The proposed succession plan for the Board would provide him with the opportunity to apply for the role of Chair in the future.

The Board are seeking approval to appoint Nick Winsor as a non-executive director of SoJDC with effect from 19th June 2020.

Mr. Winsor's appointment will only take effect from when, and if, his appointment is supported by the Assembly.

The Company will therefore be in breach of its Articles of Association following Mrs. Palios' retirement as a States' Appointee until a replacement States Appointee is appointed.

D. Change to the Articles of Association of the Company

The Board of SoJDC consider that, to assist with future succession planning and board diversity, there would be real advantage in having an additional non-executive director on the board. The Board acknowledges that, should the notion of an additional non-executive position be supported by the Shareholder, there would need to be a change to the Company's Articles of Association, which currently sets a limit of five non-executive directors at any one time. Such a change to the Articles of Association requires approval by the States Assembly. The current limit was set by the States Assembly in the approval of P.73/2010.

Minister's recommendations –

a. Appointment of Chairman

Nicola Palios' term of office as a non-executive director is due to expire on 19th June 2020 and she has indicated that she is unable to consider extending her tenure, due to other business commitments.

The SoJDC board reached the unanimous decision that, given the unsuccessful recruitment process for a new Chair, it would be in the overall best interests of the Company for SoJDC's senior independent director, Paul Masterton, to be appointed to the role of Chair to coincide with Mrs. Palios' retirement. This proposal is supported by the JAC.

Mr. Masterton also acts as Chairman of the Governors of Highlands College and interim Chair of CICRA.

Following the appointment of a new Principal at Highlands College it is desirable that Mr. Masterton remains Chairman of the Governors for the foreseeable future to ensure continuity and support for the new appointee.

Mr. Masterton, in his role as interim Chair of CICRA, is involved in the interview process for the recruitment of a new Chair of CICRA in June 2020. Mr. Masterton has agreed however, to step down from his role as interim Chair of CICRA by the end of June 2020 in view of his proposed appointment of Chairman of SoJDC.

A brief biography for Mr. Masterton appears at Appendix A.

The Assistant Minister for Treasury and Resources recommends to the States that Mr. Masterton be appointed as Chairman of the Board of SoJDC.

It is further recommended, under Article 21(b) of the Company's Articles of Association, that the Assistant Minister requests the States to authorise the Greffier of the States, for and on behalf of the States of Jersey, to deliver a notice to SoJDC to give effect to such appointment.

b. Extension of appointments of Paul Masterton and Ann Santry

The extensions of the terms of office take the directors beyond the UK Corporate Governance Code's recommended maximum 9-year term. However, in this instance the extensions are recommended to continue the ongoing operations of the Company and to manage the succession planning for new non-executive directors in the future, particularly given the current challenges being faced as a result of the Covid-19 pandemic.

The JAC has approved the extension of terms of office of both directors for the reasons outlined in the main body of the report above.

The Assistant Minister for Treasury and Resources recommends to the States that the terms of office of Paul Masterton and Ann Santry be extended to 20th December 2023 and 20th December 2022 respectively.

c. Appointment of Nick Winsor as an additional non-executive director

The JAC has confirmed that from a process perspective there is no requirement to further advertise the post of non-executive director as Mr. Winsor had been successfully short-listed for the Chair role and taken through a thorough and independent interview process. On that basis, the Board of SoJDC has approved the appointment of Mr. Winsor as a non-executive director, subject to shareholder and States Assembly approval.

Mr. Winsor's financial background, links to the local economy and significant business experience make him a suitable candidate as a non-executive director and his appointment is supported.

A brief biography for Mr. Winsor appears at Appendix B.

The Assistant Minister for Treasury and Resources recommends to the States that Mr. Winsor is appointed as a non-executive director of the Company.

d. Change to the Articles of Association of the Company

Article 23 of the Company's Articles of Association currently requires three States appointees in addition to the Chair and the Ministerial Appointee on the Board of SoJDC. If the States Assembly approve the principle of an appointment of an additional non-executive director, this will require the adoption of a Special Resolution to amend the Articles of Association.

In order to provide the Board with greater flexibility in succession planning, minor changes to the Articles of Association are proposed as follows –

1. To provide that Non-Executive Directors are appointed for a period up to three years, rather than for a fixed term of three years; and
2. To provide for a minimum of three States Appointees (in addition to the Chairman and the Ministerial Appointee) and a maximum of five States Appointees (in addition to the Chairman and the Ministerial Appointee).

The New Article 23 will read –

“23. Unless and until otherwise determined by the Company by ordinary resolution, or during the period of any vacancy, the Board shall comprise the Chairman, the Managing Director, the Finance Director, the Ministerial Appointee, and a minimum of three States Appointees (in addition to the Chairman) and a maximum of five States Appointees (in addition to the Chairman).”

The New Article 29 will read –

“29. Subject to Article 30 and Article 32, the Non-Executive Directors shall be appointed for periods of up to three years duration. Each Non-Executive Director shall enter into a non-executive directors' service agreement with the Company upon such terms as the Board shall determine. Upon the expiration of the period of office for which they are appointed the Non-Executive Directors shall, ipso facto, retire from office but shall be eligible for re-appointment.”

The Special Resolution to adopt these changes appears at Appendix C.

The Assistant Minister for Treasury and Resources recommends to the States that the Articles of Association of the Company be amended and the Special Resolution be lodged with the Jersey Financial Services Commission.

The Assistant Minister is confident that these proposals will help contribute to the continued success of SoJDC. It is not anticipated that the maximum of five States Appointees will be required in the immediate future but it provides the Board with greater flexibility for succession planning and avoids some of the issues that have been created and are referred to earlier in this report. The Board will still consist of an outstanding mix of both local and off-Island experience in order to ensure that the complex local environment is well understood and represented at the strategic level.

Financial and manpower implications

The remuneration level for the Non-Executive Chairman of SoJDC is £40,000 for a minimum 24 days' commitment per annum. This remuneration level was set in 2011 and has not been subsequently changed.

The remuneration for a Non-Executive Director of SoJDC is £22,000 for a minimum 15 days' commitment per annum. This remuneration level was set in 2018 and has not been subsequently changed.

The cost of remuneration will be borne by SoJDC and not by the States of Jersey. There are therefore no financial or manpower implications for the States.

Paul Masterton (Chairman)

Paul Masterton has spent most of his career in the printing and communications industry in the UK, USA and Asia, including being President of the European operations for RR Donnelly, the world's premier global print provider.

Paul has a number of directorships in finance, insurance and property development and in 2012 was appointed as the founding Chairman of Digital Jersey, a partnership between the States of Jersey and the digital sector to represent and promote the industry. Paul stood down as Non-Executive Chairman in June 2017.

From 2008 until early 2013, Paul served as Chief Executive of The Durrell Wildlife Conservation Trust, an organisation whose mission is to save endangered species from extinction. Headquartered in Jersey, Durrell manages conservation programmes worldwide, working with some of the most endangered species in the most threatened habitats.

APPENDIX B

Nick Winsor (Non-Executive Director)

Nick Winsor is an independent consultant with more than 35 years of retail and commercial banking experience with HSBC Group in a number of international markets: Brunei; Hong Kong; India; Japan; Qatar; Singapore; Taiwan; United Arab Emirates and the United Kingdom.

He was Chief Executive Officer and Vice President of HSBC Bank (Taiwan) Limited, Chief Executive Officer of HSBC's businesses in the Channel Islands and Isle of Man and a Director of HSBC Bank Middle East Limited. Before this, he was Head of Personal Financial Services for the Asia Pacific region. Nick is a Non-Executive Director of Schroder Oriental Income Limited and a member of its Audit, Management Engagement and Nomination committees.

He is also the Chair of Autism Jersey.

Nick holds a Masters in Physics from Oxford University and is a Fellow of the Institute of Directors.

THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED
("the Company")

We, being the Shareholders of the Company, being entitled to vote on resolutions if they were proposed at a general meeting of the Company, in accordance with the provisions of Article 95 of the Companies (Jersey) Law, 1991, as amended, hereby pass the following resolution as a Special Resolution of the Company:

SPECIAL RESOLUTION

THAT

- 1) Article 23 of the Company's Articles of Association be deleted in its entirety and replaced by the following Article:-

“23. Unless and until otherwise determined by the Company by ordinary resolution, or during the period of any vacancy, the Board shall comprise the Chairman, the Managing Director, the Finance Director, the Ministerial Appointee, and a minimum of three States Appointees (in addition to the Chairman) and a maximum of five States Appointees (in addition to the Chairman).”

- 2) Article 29 of the Company's Articles of Association be deleted in its entirety and replaced by the following Article:-

“29. Subject to Article 30 and Article 32, the Non-Executive Directors shall be appointed for periods of up to three years duration. Each Non-Executive Director shall enter into a non-executive directors' service agreement with the Company upon such terms as the Board shall determine. Upon the expiration of the period of office for which they are appointed the Non-Executive Directors shall, ipso facto, retire from office but shall be eligible for re-appointment.”

SIGNED

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Treasurer of the States
Shareholder
Date:

.....
Greffier of the States
Shareholder
Date: