

STATES OF JERSEY



THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED: NEW ARTICLES OF ASSOCIATION (P.26/2024) – COMMENTS

Presented to the States on 11th June 2024
by the Minister for Treasury and Resources

STATES GREFFE

COMMENTS

Introduction

1. I am grateful for the consideration by the Corporate Services Scrutiny Panel of these new Articles of Association for the States of Jersey Development Company (“SoJDC”). I note the positive comments of the Panel and the conclusion that “the Panel does not believe that the new Articles are inappropriate.” The Panel did raise some questions and concerns on which they asked me to provide further clarity in advance of the debate. I am pleased to do so in this comments paper.

Panel’s Observations

2. At paragraph 10 of the Comments, the Panel expresses concern as to whether the specific requirements and operational context of the SoJDC are being specifically addressed as a result of the aim of having consistency across the Articles of Association for all States Owned Entities (“SOEs”).
3. Given the Articles are simply the internal rulebook of the operations of the Company and Board, I believe a measure of consistency is desirable but would point out that the Articles are not entirely the same across the SOEs. As an example, the power to direct within Article 64 is not consistently applied with other SOE Articles.
4. However, it should be borne in mind that the governance of SoJDC in the light of the “specific requirements and operation context” is not just relevant to the Articles. It should also be read in conjunction with the Memorandum of Understanding (“MoU”), policies issued by Ministers (of which the Panel highlights an example at paragraph 20 of their Comments) as well as the provisions of P.73/2010 which contains detailed supplementary guidance as to the operations and oversight of SoJDC and its activities, including the interaction with, and the oversight of, the Regeneration Steering Group.
5. At paragraph 14 of the Panel’s Comments there is reference to Article 7.1 of the MoU stating that the Non-Executive Directors being appointed by the States Assembly and suggesting a potential inconsistency with Article 5 of the new Articles. However, this reference is to the old MoU adopted in early 2012.
6. The new Articles are entirely consistent with the MoU adopted in May 2022 which states, at section 14 of Schedule 2, that directors shall be appointed in accordance with the Companies (Jersey) Law 1991 as amended, the Company’s Articles of Association and Schedule 2 of the MoU.
7. Paragraphs 15 and 16 of the Comments relate to matters of Remuneration of the Board and senior officers. The Panel is correct to highlight the controls within the MoU but, more broadly, SoJDC is obliged by the MoU to comply with the Principles of the 2018 UK Corporate Governance Code. One such Principle is that:

“A formal and transparent procedure for developing policy on executive remuneration and determining director and senior management remuneration should be established. No director should be involved in deciding their own remuneration outcome.”

Conclusion

8. Paragraph 25 of the Panel’s Comments summarise their specific concerns and seeks the Minister for Treasury and Resources’ comments on these ahead of the States Assembly debate. These follow below.

Articles 22, 23 and 24

9. The Panel is correct at paragraph 18 of the Comments that, were one to read Article 22 in isolation, the Directors could theoretically issue unissued shares thereby potentially diluting the interests of the States to another party. However, there are no unissued shares – the authorised share capital noted in the Company’s Memorandum of Association is £20,000,000 divided into 20,000,000 shares of £1.00 each, all of which have been issued and held ultimately by the States of Jersey.
10. Article 23 therefore must be read in conjunction with Article 22, in the sense that, were the directors desirous of issuing additional shares they could only do so pursuant to a Special Resolution to alter the Company’s share capital, which would naturally be a shareholder decision.
11. Notwithstanding the above, I am satisfied that there are sufficient controls within the MoU and the power to direct, as described further below, to ensure that the directors could never simply unilaterally issue additional shares to a third party.

Article 64

12. Paragraph 17 of the Panel’s Comments expresses the view the power to direct conferred on the Minister by Article 64 appears unusual. However, it is consistent with a similar power to direct at Article 41 of the new Articles of Andium Homes adopted by the Assembly on 16 April 2024. The power to direct provision is also consistent with the current Articles of SoJDC at Article 22
13. I nevertheless agree with the Panel that the power to direct provision does emphasise the ultimate control lies with the Minister which should provide a level of assurance to the Assembly.
14. In closing, I agree with the Panel’s assertion at paragraph 26 that any future scrutiny of the operations of the SoJDC would be required through consideration of the MoU rather than the Articles of Association, which goes to the heart of the principle that the Articles are simply the internal rulebook of the company.
15. Finally, the Panel at paragraph 21 highlights the importance of keeping the MoU under review. The MoU does require a formal review of the MoU no less frequently than every three years. It is my intention that such a review will commence in the second half of the year.
16. I hope these Comments are helpful to the Panel, and Members, in advance of the debate.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

This comment was submitted after the noon deadline stipulated in Standing Orders. The Corporate Services Scrutiny Panel’s comment on P.26 was presented to the States in the afternoon on 5th June 2024, and sought clarification in a number of areas. This comment, responding to the Panel’s comments paper, has been drafted and approved in as timely a manner as possible, but regrettably not within the formal timelines set out in Standing Orders due to the specific circumstances in this case.
