

2.10 Deputy P.V.F. Le Claire of the Chief Minister regarding the Chairman of the Waterfront Enterprise Board

Will the Chief Minister advise whether the current chairman of the W.E.B. (Waterfront Enterprise Board) began his work with A.I.B. (Allied Irish Bank) before or after his appointment to W.E.B., when the Chief Minister was made aware of the chairman's A.I.B. involvements, what interests of the directors of W.E.B. were at the time of the debate on the waterfront including shareholdings, and whether those interests can be accessed by the public?

Senator F.H. Walker (The Chief Minister):

Mr. Voisin was appointed as chairman of W.E.B. by the States on 19th July 2006 officially taking up his post on 20th August 2006. He was later appointed a non-executive director of Allied Irish Bank (Channel Islands) Limited in November 2006 and was appointed chairman in March 2007. He informed me after accepting the post as non-executive director of A.I.B. (C.I.) Limited and I advised him to ensure there would be no conflict of interest on his part. Consequently, Mr. Voisin checked with the bank and was assured that A.I.B. (C.I.) Limited had no dealings with Harcourt. I think the most useful comments in relation to Mr. Voisin's potential conflict of interest are contained in a Comptroller and Auditor General's report which I, with your permission, Sir, would quote from. He says: "The effect of his review is that I have found no evidence that the decisions made by W.E.B. were distorted by Mr. Voisin's failure to disclose his relationship with A.I.B. (C.I.) Limited." He goes on to say that in his view: "Mr. Voisin should have disclosed to W.E.B. his appointment to the board of A.I.B. (C.I.) for inclusion in the register of director's interests. He did not do this." He goes on further: "On a strict interpretation, Mr. Voisin's appointment to the board of A.I.B. (C.I.) 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 W.E.B.'s transactions with Harcourt were discussed. Notwithstanding this strict interpretation, it would have been wise for Mr. Voisin to make such disclosures. I have found no evidence that Mr. Voisin's failure to disclose his interest distorted W.E.B.'s decisions." The Comptroller and Attorney General has also identified some shortcomings in the procedures for reminding directors to update their declarations of interests. However, he also notes that all directors have now updated their declarations and that he has inspected those declarations. I will ask the board of W.E.B. to publish them on their website.

The Deputy Bailiff:

Can I remind Members that the question here very properly referred to the 'chairman of W.E.B.' and Standing Orders say you should not really identify people by name unless it is absolutely essential, so the Chief Minister should, if I may say so, have referred there to the chairman of W.E.B. in accordance with the question.

Senator F.H. Walker:

I accept that, Sir; my apologies.

2.10.1 Deputy P.V.F. Le Claire:

In his response, the Chief Minister refers to the Comptroller and Auditor General's interim report which is tabled today. In it the Comptroller and Auditor General states quite clearly on page 19: "There is no question in my mind that these interests should have been disclosed to W.E.B. and placed in the register of director's interests." Notwithstanding that the decisions taken, in his view, were not distorted, given that the Chief Minister was told orally by the chairman of W.E.B. that he had taken this appointment, and as the Chief Minister is now responsible to the States of Jersey and, through the Council of Ministers, for W.E.B., at any time given and knowing this did the Chief Minister inform the Council of Ministers of the report to him by the chairman?

Senator F.H. Walker:

No, Sir, I did not. This was a matter for the Waterfront Enterprise Board and I did, as I said in my original answer, advise the chairman that there should be no conflict of interest on his part and he should ensure that. He has himself accepted that he should have disclosed the directorship and the chairmanship to the board of W.E.B. which is normal practice, but the Comptroller and Auditor General has emphasised that he has not broken the Companies Law by failing to do so and nor has his position in any way affected the decisions of W.E.B.

2.10.2 Deputy P.V.F. Le Claire:

I was attempting to try to tie in the accountability of the chairman of W.E.B. through to the Chief Minister through to the Council of Ministers through to the States of Jersey. In that supplementary what I was trying to get the Chief Minister to tell us is whether or not he had done and also whether he believed it was necessary for him to do so. He has told us that he has not informed the Council of Ministers that he was informed by the chairman that he had that appointment. That appointment was significant in my view because of the fact that they were funding projects on the Waterfront through their parent company, A.I.B., and in the Comptroller and Auditor General's reports it does state that A.I.B. was funding some of the developments known as Liberty Wharf, also the Island site, under contract from W.E.B. and, whether one wants to get into semantics or not, what I am trying to ask now is whether or not the Chief Minister does not believe that he should have told the Council of Ministers that he had informed the chairman once the chairman had told him that he should be sure that there was not a conflict? It certainly was significant enough for the chairman to inform the Chief Minister. Why was it not deemed significant enough for the Chief Minister to inform the Council?

Senator F.H. Walker:

The chairman informed me as a matter of courtesy. The fact is that W.E.B. is a limited liability company which has to set its own standards of corporate governance including declaration of members' interests and I did, as I have already stated twice, emphasised to the chairman that he should make sure that there was no conflict and I assumed - I must admit, obviously wrongly - that he would be informing the board of his interests because that would be the normal thing to do. However, the Comptroller and Auditor General again emphasised that he has not breached the Companies Law in doing so. It was not considered by me at the time, nor should it have been, I do not think, a matter of such importance that I needed to inform the Council of Ministers. It was a matter and remains a matter in the main for the board of W.E.B.

2.10.3 Deputy P.V.F. Le Claire:

I accept the Chief Minister was acting in good faith, but did he know at the time that Harcourt - and this is knowledge that has come through me through the Comptroller and Auditor General's interim report - that A.I.B. (C.I.)'s ultimate holding company in Dublin as in the words of the report has: "A relationship as banker with the group of companies in which Harcourt Development Limited (Harcourt) forms a part"? Harcourt undertook the development of the Liberty Wharf site also known as the Island site under contract from W.E.B. It is also the preferred developer for the Esplanade Quarter site. Did the Chief Minister know that there was that connection at the time that the chairman told him of his involvement with this bank?

Senator F.H. Walker:

No, Sir, I did not know and can I remind the Deputy - I do not recall whether he was at the presentation put on by the directors of W.E.B. last week; I do not believe he was - where the chairman read out a letter from, I think, the Chief Executive of A.I.B. (C.I.) which emphasised that Mr. Voisin in their view had no conflict whatsoever, had never played a part in any decisions relating to the A.I.B. in Ireland and that A.I.B. (C.I.) had no financial connection with Harcourt whatsoever.

2.10.4 Deputy R.C. Duhamel of St. Saviour:

Are the standards of disclosure as practised by the Waterfront Enterprise Board for an L.L.P. (Limited Liability Partnership) as high as perhaps they are in other organisations?

Senator F.H. Walker:

I think it is very clear from my answer and from the Comptroller and Auditor General's report that they lapsed for a temporary period. However, the Comptroller and Auditor General has now confirmed that they are pretty well up to speed, certainly in terms of declarations of interest. What I believe we should be doing now is awaiting the Comptroller and Auditor General's final report, which is due in September, which will be making proposals, I understand, on the restructuring of W.E.B., and I believe those are necessary. I think W.E.B. does need restructuring and clearly we need to be absolutely certain that the disclosure in all respects is absolutely up to best practice.

2.10.5 Deputy J.A. Martin:

I think the Minister may have just covered something I really want clarified. We are always told, and even when we elected the present Chairman, and my memory was for about 3 months: "Do not worry because W.E.B. is wholly owned by the States and totally accountable to the States, so we will be kept informed at every juncture." Did the Minister just not answer and say: "Well, they do. They are. They have to act as a limited liability company"? Which is it, Sir? Can we have a direct answer, because the 2 do not tie up and this is why we have not been informed of what has been going on and they do not seem to be wholly accountable to the States as always we are told in every debate?

Senator F.H. Walker:

I would point out that W.E.B. is not a department of the States. W.E.B. is a limited liability company which functions under the Companies Law of Jersey, and all directors have to meet the requirements of that law. It is also true to say that, to the best of my knowledge, the board of W.E.B. have not mis-performed or done anything other than a good job for Jersey in the way they have been involved in working with the Planning Minister and others in creating the Masterplan and potentially an excellent deal for Jersey. What they have done and what we are noting has fallen somewhat short in standards of corporate governance. There is no information to suggest they have underperformed, misbehaved, undertaken any misdemeanour or unacceptable conduct of any shape or form, nor that they have cost the shareholders, the Island of Jersey, the people of Jersey, any money; indeed rather the reverse.

Deputy J.A. Martin:

Sorry, he did not answer. It is a direct question. Are they a limited liability company answerable to themselves? Are they wholly owned by the States who have to answer to the public? The Minister did not answer either of those questions directly.

Senator F.H. Walker:

They do answer to the public for their general performance. At the same time, they are a limited liability company and there are restrictions imposed on what a limited liability company can disclose and what it cannot. Generally speaking, to the best of my knowledge, W.E.B. have met those requirements. This is where I have always made the point about public ownership and public accountability. If it was felt that W.E.B. had underperformed or misbehaved in any shape or form, then we, the States and shareholders, have the right to remove the board from office. Of course, we have a proposition before this House later which seeks to remove the chairman and the 2 remaining States-appointed non-executive directors. So the public does retain ultimate control. Whether the board of W.E.B. should be dismissed for the infractions of corporate governance outlined in the Comptroller and Auditor General's report is of course a matter for Members.

2.10.6 Deputy G.P. Southern:

Notwithstanding his previous answer does the Chief Minister accept the conclusion on page 22 that notwithstanding the strict interpretation of declaration of interest, it would have been wise for the chairman to make such disclosures by the Comptroller and Auditor General, and does he also accept the conclusion elsewhere in the report that there is a fundamental intrinsic conflict between being a States Member and a member/director of the board?

Senator F.H. Walker:

The answer to the first question is yes, I do accept the conclusion of the Comptroller and Auditor General. The answer to the second question is it is a bit more complex but it is also, in effect, yes. The fact is that the States agreed in 2006 to set up the Waterfront Enterprise Board with 3 States Directors, and the Memorandum and Articles of Association say that W.E.B. cannot function without at least 2 States directors and a quorum has to include 2 States directors. Now, those States directors, I know, and it does not apply to individuals ... this would apply to any Member of this House who was a director, and the Deputy may recall we had a similar problem with the Jersey Electricity Company not so many years ago. There is a conflict between adhering to the Companies Law and doing one's duty as a director to the company. The Companies Law is very specific in that respect, but then, as a States Member doing one's duty to this House and the public, there is a conflict. I believe it is one of the issues that the Comptroller and Auditor General will be addressing in his September report.

2.10.7 Deputy P.V.F. Le Claire:

In a couple of his responses, the Chief Minister refers to a temporary lapse of the procedures. That temporary lapse, I assume, includes the fact that from 2005 to 2008, declarations of interest were not updated with W.E.B., as pointed out by the C.A.G. Also, he seemed to infer that because I did not attend the briefing by Harcourt and the chairman that I had somehow not been able to assess whether or not the public probity issue had been satisfied. Does he not agree with me that my concerns relate to the probity of and the correct functioning of the mechanisms that relate to the reporting process of the chairman through his declarations to the States of Jersey? As he had, at the time of his appointment, quite rightly found it appropriate to declare his interest to A.I.B., why did he take until June 2008 to tell the States that he had that interest?

Senator F.H. Walker:

I think it is agreed that the interest should have been declared. I am certainly supporting that view. The Comptroller and Auditor General has made that view clear and I have already indicated that I accept the Comptroller and Auditor General's report. I certainly did not mean to imply any omission by the Deputy in not attending the presentation by the board of W.E.B. I merely put it forward because I think many Members left that presentation better informed than when they arrived. I think it was of benefit. So there is no doubt that the corporate governance procedures - I will repeat this again - have not been adhered to as they should have been. However, there is absolutely no evidence that the public have suffered in any way as a result, nor that W.E.B.'s decisions, and the Comptroller and Auditor General confirms this, have in any way been distorted as a result. Had they been, I would suggest we would be in a completely different position from the one we find ourselves in at this time.

2.10.8 Senator J.L. Perchard:

Does the Chief Minister regret not informing the directors of W.E.B. of 2 vitally important bits of information? One, that the chairman of the Waterfront Enterprise Board was being offered and taking a seat on A.I.B. (C.I.) Limited, and secondly, that he was aware that there was litigation in Nevada and that him and 2 of his ministerial colleagues were aware of that. Does he regret not informing the board of W.E.B. of these 2 vitally critical bits of information which may have influenced the board's decisions?

Senator F.H. Walker:

I do not. It is not the Chief Minister's job to inform the board of W.E.B. of such issues. It is very clearly a job for the chairman and the executives. I have already apologised to this House - and that is a question of a vote of censure later in this sitting - for not disclosing or not agreeing with Deputy Baudains at the time that there was a legal dispute in Nevada. It is not the Chief Minister's job to inform the board of W.E.B. of those circumstances. It is very clearly the chairman and the executive. I have already said that I regret that corporate governance is not being adhered to, to the extent it should be. I do not believe I can say anything further in that respect.

2.10.9 Deputy G.P. Southern:

Does the Chief Minister not accept that declarations of interest are not just about potential or real harm but avoiding the perception of damage or real harm?

Senator F.H. Walker:

Yes, Sir, I do.

2.10.10 Deputy J.J. Huet:

Can I just restate that the Minister is aware that A.I.B. Jersey have stated that A.I.B. (C.I.) Limited has no dealings with Harcourt Developments Limited. Will he confirm that, please?

Senator F.H. Walker:

Yes, that was contained in a letter read out to States Members last week from Mr. Moynihan who, I believe, is the Chief Executive of A.I.B. Channel Islands.

2.10.11 Deputy P.V.F. Le Claire:

That is regrettable because I would like to ask a supplementary question. Would he also confirm, as I read out, that the Comptroller and Auditor General has released an interim report today stating on page 18, number 63: "A.I.B. (C.I.)'s ultimate holding company in Dublin has a relationship as a banker with a group of companies of which Harcourt Development Limited (Harcourt) forms a part. Harcourt undertook the development of the Liberty Wharf site, also known as the Esplanade site, under contract from W.E.B. It is also the preferred developer for the Esplanade Quarter site." Is it not the case?

Senator F.H. Walker:

I have no reason to question anything that is in the Comptroller and Auditor General's report. I accept it as drafted.

2.10.12 Deputy J.A. Martin:

It is just, as the meeting last week has been mentioned, it was asked by Deputy Le Fondré ... and I was going to ask the same question that we all had, and for Members who were not there, there was a very long briefing and lots of slides ... but before we had the debate today that these were all given to States Members. I cannot find them, and other States Members cannot seem to find them. Are we going to have them before we have the debate P.98?

Senator F.H. Walker:

Sorry, I did not pick up exactly what it is she has requested. I do apologise, Deputy.

Deputy J.A. Martin:

The meeting we attended at the Halliwell Theatre at 1.00 p.m. on Thursday where the chairman went through the whole W.E.B. and we asked if we could have the slides because it was a lot to take in, and it was promised then we would have them before the debate. Nobody has got them, so can you make sure, please that we get them?

Senator F.H. Walker:

I understand they are being distributed today.

2.10.13 Senator B.E. Shenton:

Will the Chief Minister confirm that the ultimate owners of A.I.B. plc are exactly the same as the ultimate owners of A.I.B. C.I.?

Senator F.H. Walker:

Yes, I understand that to be the case, but I again would emphasise that the Comptroller and Auditor General - not me - Comptroller and Auditor General has said that A.I.B. Channel Islands has no financial involvement with Harcourt.