

WATERFRONT ENTERPRISE BOARD LIMITED

INTERIM REPORT

30 JUNE 2008

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SECTION ONE ~ INTRODUCTION

1. On Monday 16 June 2008, I announced my intention of conducting a review of various matters which had come to public attention concerning Waterfront Enterprise Board Limited (WEB). In general, these matters relate to the decisions of WEB regarding development of what has come to be known as the Esplanade Quarter. The terms of reference for this review are as follows:

“To investigate the circumstances surrounding the decisions made by the board of WEB concerning the proposed development to establish:

(1) Whether proper rules of corporate governance have been established and applied by WEB;

(2) In particular, whether proper arrangements were made by the board of WEB to identify potential conflicts of interest and ensure that Board decisions were not affected by them;

(3) Whether in all the circumstances, the decisions which were made by the Board of WEB in respect of the development were appropriately based on all of the commercial evidence and advice which the Board might reasonably have been expected to obtain and to take into account; and

(4) Any other issues that appear relevant to the matters set out in (1), (2) and (3) above”.

2. In the time since I commenced this review, it has not been possible to reach a conclusion on all of the matters which fall within the terms of reference set out above. However, it appeared to me that it would be of assistance to the States for me to prepare an interim report which sets out the conclusions that I have been able to reach, indicating the nature of the work that remains to be completed.

3. The review has consisted of an examination of records held by WEB itself, augmented by discussions with each of the members of WEB’s board (both past and current members) and with senior officers of WEB. I have also spoken to a number of others who appeared to have relevant information about the matters with which I have been concerned. A list of those people to whom I have spoken in the course of this review is set out as Appendix One.

4. The matters on which I have reached provisional conclusions and which are set out in this interim report are as follows:

(1) what were WEB’s procedures concerning the declaration by directors of their business interests?

(2) have these procedures operated effectively?

(3) what were WEB’s procedures concerning the declaration by directors of actual or potential conflicts of interests (i.e. instances in which their private interests may conflict with the interests of WEB)?

(4) have these procedures operated effectively?

(5) is there evidence that, in particular cases, these procedures have not operated effectively so that decisions of the board may have been distorted by undeclared conflicts of interest?

5. The matters on which I am continuing to work include:

(1) the general adequacy of corporate governance within WEB;

(2) whether the board took account of all reasonable commercial evidence and advice when making decisions; and

(3) any related issues.

6. These matters will be dealt with in a subsequent report.

7. In accordance with my normal practice, copies of a draft of this report were provided to all of those people who assisted me in this review so that they were able to alert me to any respects in which the report inadvertently distorted their recollection of events. I have sought to reflect their observations on matters of fact. I am grateful to all of those who have assisted in the conduct of the review and the preparation of this report.

8. My conclusions are set out in the following sections of this report and summarised in the following paragraphs.

SUMMARY OF CONCLUSIONS

Register of Directors' Interests

9. It is the policy of WEB to maintain a register of directors' interests. I regard this practice as representing good practice. (Section Two of this report).
10. It is evident that between 2005 and 2008, whilst WEB continued to hold the Register that had been prepared in 2005, directors were not asked by WEB to up-date their declarations and in practice did not do so. As a result, WEB's Register was not accurate. I have not enquired into what happened before 2005.
11. It is also evident that WEB has up-dated its records recently. (Section Three of this report).

Disclosure of conflicts of interest

12. The evidence suggests that WEB's board generally observed normal practice with regard to the disclosure of conflicts of interest^[1]. (Section Five of this report).

Conflicts of interest ~ cases of difficulty

States Members of WEB's board

13. In my view, the States should re-consider its customary practice of appointing members of the States to be members of WEB's board (Section Six of the report).

Mr Voisin

14. In my view:
 - (1) Mr Voisin should have disclosed to WEB his appointment to the board of AIB CI Limited (AIB CI) for inclusion in the Register of Directors' Interests. He did not do this.
 - (2) On a strict interpretation, Mr Voisin's appointment to the board of AIB CI did not represent a conflict of interest as defined by Companies Law and thus he 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 distorted WEB's decisions (Section Six of this report).

SECTION TWO ~ DIRECTORS' DECLARATIONS OF INTEREST ~ PROCEDURES

Introduction

15. In this Section of the report, I will review the procedures which have been established by the board for the declaration of business interests by members of the board

Internal Audit review

16. At some point in the Spring of 2005, WEB was visited by the States' Internal Audit Department. This is established by the fact that the minutes of a meeting of WEB's Audit Committee on 18 March 2005 recorded that the Committee was looking forward to the visit and that the minutes of the subsequent meeting of the Committee recorded the outcome of the visit in the following terms:

"The proposed visit by the States Internal Audit department in April 2005 was noted and welcomed."^[2]

17. WEB holds a copy of a draft report produced at the end of this visit which concludes:

"At the commencement of our audit, there was no Register of Interests available for scrutiny at the offices of WEB. This was particularly surprising given the prior political questioning of this area in 2003. Subsequently a hard copy of the register, which had been previously held on the web-site was provided to use which was dated 22 may 2004. Also as a result of our audit all the Board members were asked to update their list of interests and we have now seen copies of these latest records."^[3]

Outcome of the Internal Audit review

18. I have been given to understand by Mr Rafe Woolf, that he was charged with dealing with the internal audit team's observations and recommendations. As a part of this exercise, Mr Woolf proposed that directors should be asked to make declarations of their business interests which would provide the foundation for a register of business interests. Mr Woolf also proposed that directors should be requested regularly by WEB to up-date their declarations to ensure that the information in the register remained current.

19. Mr Woolf's proposals were considered by the Audit Committee at its meeting on 20 July 2005 and the outcome was recorded in the Committee's minutes in the following way:

"Procedures to ensure the register was kept up to date were discussed.

The company Secretary had previously intended to circulate Directors each quarter to prompt them to declare changes in interest but Jurat Tibbo thought this should be done on an annual basis.

The above notwithstanding, it was generally agreed that if there were any changes during that year then it was up to the director in question to notify the Company Secretary as quickly as possible."^[4]

20. The minutes of this meeting were circulated to members of the board^[5] although the board did not refer to this particular subject.

Subsequent events

21. I have not found evidence from the minutes of either the board or the Audit Committee that further consideration has been given to the original decision that a register of directors' business interests should be created. This policy therefore appears to remain in force.

Conclusion

22. It is the policy of WEB to maintain a register of directors' interests. I regard this practice as representing good practice.

SECTION THREE ~ DIRECTORS' DECLARATIONS OF INTEREST ~ PRACTICE

Creation of the register

23. Following the Audit Committee's interest in arrangements for the disclosure of directors' business interests, declarations were made by all members of the board. These are still held by the company secretary of WEB. They were not in fact recorded in a formal register but were retained in a file of papers.
24. The company secretary also holds printed copies of pages from the version of the company's website which was current in 2005. These copies show that each director's business interests appear to have published on the website for public examination. My understanding is that this goes beyond what would have been considered normal practice in the Island at that time (or now) although this is considered good practice for public bodies on the mainland.

Maintenance

25. As I have explained, the Audit Committee decided that it should be the responsibility of each individual director to up-date the declaration of his interests which had been submitted for the purposes of the register. From the documents that have been shown to me, it seems that:

- (1) no director up-dated his or her original declaration of interest at any point before June 2008.
- (2) no directors who joined the board after the initial declarations of interest had been made in 2005 were requested to make similar declarations of their own interests. This would have applied to three directors Senator Perchard^[6] (who joined the board on 1 April 2006), Mr FG Voisin (who in fact became a States director in 2005^[7] and made a declaration at that time but who re-joined the board on 20 August 2006 after a short gap and then became chairman) and Mr S Izatt (who joined the board on 7 May 2007).
- (3) neither the chairman or managing director took any steps before June 2008 to remind members of the board of their obligation to maintain their declarations of interest, and requesting them to do this. For example, there were no reminders to directors of their obligation to up-date there declarations.

26. In other words, the register was not up-dated and may not even have been remembered by members of the board. In any case, in its un-refreshed state, the register became less useful.

27. Further, at some point WEB's website was changed and the latest version does not contain the information on directors' business interests that appeared on the website in 2005.

June 2008

28. On 11 June 2008, Mr FG Voisin, WEB's chairman wrote to the company secretary in the following

terms:

“I am concerned that Senator Perchard claims to have been unaware of my involvement in AIB CI Limited. I therefore make a new declaration of my external interests for your files . . .

In order to ensure that our records are fully up to date I suggest that the Company writes to all Board members inviting them to update their external interests.”

29. Subsequently, all board members have submitted such declarations which are now held by the company secretary. I have inspected all of these declarations.

Conclusion

30. In my view, it is good practice for boards (especially those within the public domain such as WEB) to maintain registers of directors’ business interests (or records which serve the same purpose).

31. It is evident that between 2005 and 2008, whilst WEB continued to hold the Register that had been prepared in 2005, directors were not asked by WEB to up-date their declarations and in practice did not do so. As a result, WEB’s Register was not accurate. I have not enquired into what happened before 2005.

32. It is also evident that WEB has up-dated its records recently.

SECTION FOUR ~ DIRECTORS' DECLARATIONS OF CONFLICTS OF INTEREST ~ PROCEDURES

Review

33. I have not discovered any procedures adopted by WEB (either in its Memorandum and Articles of Association or elsewhere) over and above the normal obligation imposed by the Companies (Jersey) Law 1991 (the Companies Law).^[8] That law requires that any director:

“ . . .who has, directly or indirectly, an interest in a transaction entered into or proposed to be entered into by the company or by a subsidiary of the company which to a material extent conflicts or may conflict with the interests of the company and of which the director is aware, shall disclose to the company the nature and extent of the director’s interest.”^[9]

34. There appear to be three elements of this provision which would make a disclosure mandatory^[10]:

- (1) the director must have a direct or indirect interest in the transaction in question.
- (2) the interest must conflict to a material extent with the interests of the company (in this case WEB).
- (3) the director must be aware of the interest.

35. Elements (2) and (3) above are to a greater or lesser extent matters of judgement which in the first place must be formed by the director who may be obliged by the Companies Law to make the declaration.

36. I regard the Companies Law requirement as representing a minimum standard. Since these are matters of judgement, and there may be room for interpretation of the significance of any particular interest, in my view it is good practice for directors to err on the side of caution when making declarations. The effect of this is that, in cases of difficulty, the whole board can take a view of the significance of the matter and the action, if any, that should be taken. The board is then able to consider all aspects of the potential conflict and its implications.

37. I regard this approach as best practice.

Consequences

38. WEB’s Articles of Association provide that:

“A Director may not vote in respect of any transaction, arrangement or proposed transaction or arrangement, in which he has an interest but provided that he has disclosed any such interest in accordance with these Articles he may be counted towards a quorum at any meeting of the Directors at which any such transaction or arrangement or proposed transaction or arrangement shall come before the Directors for consideration.”^[11]

SECTION FIVE ~ DIRECTORS' DECLARATIONS OF CONFLICTS OF INTEREST ~ PRACTICE

Review

39. It is impossible to reach a general conclusion on whether all directors have properly observed the procedure by which actual or potential conflicts should be declared. This would require a knowledge of all of a directors' interests past and present and a comparison between those interests and the business considered by the board at all of its meetings.
40. What can be done however is to examine WEB's board minutes to establish whether they include references to declarations of conflicts (both actual and potential) having been made by directors.
41. I have inspected the board's minutes for meetings from the beginning of 2004 to the beginning of June 2008. It is indeed the case that there are frequent references to declarations of conflicts and, on occasion, to members of the board withdrawing from the board's discussions.

Conclusion

42. Thus it cannot be said that the obligation to declare conflicts of interest was ignored by the board. There is evidence that the normal procedure and practice were being observed.
43. This conclusion is of course subject to the observations in the next Section of this report in which I will examine some cases of difficulty.

SECTION SIX ~ DIRECTORS' DECLARATIONS OF CONFLICTS OF INTEREST ~ CASES OF DIFFICULTY

Introduction

44. In the course of my review, two cases of difficulty concerning conflicts of interest have been drawn to my attention:

- (1) the position of States members who are appointed to serve as members of the board of WEB; and
- (2) the alleged conflict of interest caused by the current Chairman's appointment to the board of AIB CI.

45. In the course of my review, I have limited my work to considering both of these cases. I will deal with each of these cases in turn below.

States members

Introduction

46. It has been a requirement, since the creation of WEB, that the board should include a number of members of the States (referred to in the Memorandum and Articles of Association as 'States Directors'^[12]). Recent exchanges within the board and within the States have suggested to me that such members can be conflicted in certain situations.

Accountability

47. WEB has two shareholders: the States of Jersey (holding 999,999 shares) and the Treasurer of the States (holding 1 share). As far as the States shares are concerned, the Greffier of the States represents the States of Jersey at general meetings.

48. Following the introduction of ministerial government, the Chief Minister, as successor to the Policy & Resources Committee has the power to give directions to WEB:

"If the Committee shall, in its discretion, be of the opinion that a matter of material public interest has arisen and that it is appropriate to do so, the Committee shall be entitled by notice in writing to give the Directors directions to refrain from doing a particular thing or to do a particular thing . . . and the Directors shall be bound to comply with any such direction."^[13]

49. Moreover, certain powers of the board (e.g. those to borrow and to mortgage the company's property) may only be exercised with the prior written consent of the Chief Minister (as successor to the Policy and Resources Committee).^[14]

50. At the same time, under arrangements by which land was transferred to WEB, the Treasury & Resources Minister's approval is required for certain transactions.

51. In practice, WEB's board is accountable to the Chief Minister for honouring the instructions which have been given and for seeking approval when it is required by the Articles. In practice, therefore, the Chief Minister exercises the rights of the Public as shareholder in WEB. ^[15]

52. WEB's board is also accountable to the Treasury & Resources Minister for seeking approval when that is required by the terms under which land was transferred to WEB.

53. These Ministers are accountable to the States in the normal way.

States Directors

54. The purpose of the Articles in providing that the States should appoint States members to serve as directors (i.e. the States Directors) appears in part to be to require that WEB should in some way be accountable directly to the States through these members.

Conflict of accountability

55. This analysis suggests that States Directors may face conflicting duties. On the one hand they are accountable to the company and thence to the Chief Minister and in some cases to the Treasury & Resources Minister. On the other hand, they may be accountable to the States by virtue of their capacity as members of the States.

Practical experience

56. I have discussed this theoretical analysis with the two remaining States members of WEB's board and they both agree that from time to time this conflict has concerned them. Senator Perchard has told me that the conflict was also a matter of concern to him. Other members of the board share their view.

Companies Law

57. I do not regard this conflict of accountability as a conflict of interest for the purposes of Companies Law. Thus it is not a conflict that requires disclosure. ^[16]

58. This does not mean however that the conflict is not real and does not present difficulty.

Provisional conclusion and recommendation

59. In my view, the States should re-consider its customary practice of appointing members of the States to be members of WEB's board. I will consider this matter further before making recommendations in my final report, however I am minded to suggest that:

- (1) WEB's principal line of accountability should be to the relevant Ministers as representatives of WEB's shareholder.
- (2) States members should not be members of WEB's board unless they may serve as representatives of the shareholder (for example, it might be thought appropriate that an Assistant Minister from a relevant department should serve as a director of WEB).

(3) the States' proper oversight of the activities should be achieved by requiring an existing committee or creating a new committee whose task would be to oversee the actions of States companies such as WEB.

(4) scrutinising where appropriate Ministerial Decisions approving the principal transactions and decisions of WEB (as at present).

60. It is implicit in this suggestion that a change of practice with regard to States Members of the board should not be made unless appropriate arrangements are made to ensure that there is proper accountability to the States.

61. Any change of this sort will require a change to WEB's Memorandum and Articles of Association which in turn will require appropriate legal consideration and drafting. It cannot be accomplished by the simple expedient of the States refusing to appoint States Directors because WEB's Articles require that two States Directors must be present if the directors are to transact business.^[17] If there are no such directors, then WEB's board will not be able to transact business.

Mr Voisin

Nature of the difficulty

62. In August 2006, Mr Voisin became chairman of WEB. In November 2006 he became a member of the board of AIB CI as a prelude to becoming chairman of AIB CI in March 2007.

63. AIB CI's ultimate holding company in Dublin has a relationship as banker with the 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 Island site') under contract from WEB. It is also the preferred developer for the Esplanade Quarter site.

64. It has been suggested that by becoming a director and then chairman of AIB CI, Mr Voisin became subject to a conflict of interest which was significant to his responsibilities as chairman of WEB.

Disclosure

65. I began my review by asking whether Mr Voisin disclosed to WEB the fact of his appointment first as a director and then as chairman.

66. In fact no such disclosure was made until 11 June 2008, when Mr Voisin wrote to the company secretary in the terms I have already quoted. In that letter he also disclosed another interest: his appointment in August 2007 as a director of Flying Brands Limited.

67. There is no question in my mind that these interests should have been disclosed to WEB and placed in the Register of Directors' Interests. I understand that Mr Voisin accepts this.

68. I understand that when he was invited to accept appointment to the board of AIB CI, although he did not disclose the appointment to WEB, Mr Voisin did report the appointment orally to the Chief Minister. Further, when he was appointed to the board of Flying Brands Limited, Mr Voisin also declared that appointment to the Chief Minister (in a letter dated 15 August 2007).

69. I also understand that when he was appointed to the board of AIB CI, Mr Voisin made the appropriate declaration of his interests to the company secretary of AIB CI.

70. It has been suggested to me that Mr Voisin's appointment to the board of AIB CI was not a secret matter and that on various occasions it was mentioned in public. Nonetheless, a number of Mr Voisin's colleagues on WEB's board have told me that they were not aware of his appointment until disclosures were made to the board during June 2008.

Disclosure of conflicts of interest

71. At no point since his appointment to the board of AIB CI has Mr Voisin made any declaration to WEB's board that he would be conflicted in discussing any subject as a result of that appointment.

72. Mr Voisin has told me that he made no such declarations because he did not consider that he was potentially conflicted by his AIB CI appointment.^[18]

73. I have therefore considered whether there was a conflict that should have been disclosed.

Was there a disclosable conflict?

74. I began this analysis by employing the analysis of the three elements of the Companies Law's requirements that I have set out in Section Four above.

75. In short, I believe that a strict interpretation of the Companies Law suggests that there was no conflict that should have been disclosed.

76. The reason for this is that Mr Voisin would have no interest in WEB's transactions with Harcourt unless AIB CI had an interest in Harcourt or WEB's transactions with Harcourt. Mr Moynihan, the CEO/Managing Director of AIB CI has confirmed to me that AIB CI has no banking relationship with Harcourt. Thus Mr Voisin had no interest which could have been in conflict with WEB's interests and there was no conflict of interest which the Companies Law might have required Mr Voisin to disclose.

77. However, in Section Four, I suggested that whatever a strict interpretation of the Companies Law might require, these are matters of judgement and in my view it is good practice for directors to err on the side of caution when making declarations. In my view, whatever a strict interpretation might have required, it would have been wise for Mr Voisin to disclose the possible conflict to his board colleagues at all board meetings which considered WEB's transactions with Harcourt so that they could decide for themselves whether there was a conflict.

78. In my view this was particularly important in view of the fact that Mr Voisin had not disclosed his appointment to the board of AIB CI for the Register of Directors' Interests.

Did the possible conflict distort WEB's decisions?

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.

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^[19] 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.

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.

Summary of conclusions

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.

APPENDIX ONE ~ PEOPLE WHO ASSISTED WITH THE REVIEW

P Crespel	Non-executive director, WEB
L Henry	Director of Finance, WEB
P Horsfall CBE	Formerly chairman, WEB
Deputy JJ Huet	States Director, WEB
S Izatt	Managing director, WEB
J Moynihan	CEO/Managing Director, AIB (CI) Limited
B Ogley	Chief Executive, Chief Minister's Department
A Ohlsson	Advocate, Carey Olsen, legal adviser to WEB
Senator JL Perchard	Formerly States Director, WEB
P Redfern	Chief Internal Auditor, States of Jersey
Senator P Routier	States Director, WEB
Jurat Tibbo	Non-executive director, WEB
FG Voisin	Chairman, WEB
R Woolf	Formerly company secretary, WEB

APPENDIX TWO ~ DIRECTORS OF WEB

	<u>Appointed</u>	<u>Resigned/retired</u>	<u>Service to date</u>
M Bralsford	21 August 2000	20 August 2003	
A Burgess	9 November 1993	13 July 1994	
S Crowcroft	12 February 2002	21-Feb-03	
PJ Crespel	13 February 1996		12 years 4 months
Deputy J Dorey	3 February 1999	15 July 1999	
JG Filleul	13 February 1996	20 August 2000	
PF Horsfall CBE	2 March 2004	20 August 2006	
Deputy J Huet	1 April 2003		5 years 2 months
S Izatt	7 May 2007		1 year 1 month
Connetable Le Brocq	13 February 1996	17 January 2002	
DR Maltwood	18 March 1997	31 March 2003	
D Margason		3 August 2006	
Deputy L Norman	9 November 1993	12 February 1996	
Senator P Ozouf	1 April 2003	2 March 2004	
Senator J Perchard	1 April 2006	June 2008	
Senator P Routier	4 April 2000		8 years 2 months
Deputy Rumboll	9 November 1993	18 March 1997	
JC Russell	9 November 1993	12 February 1996	
Jurat JC Tibbo	17 January 1995		13 years 5 months
VA Tomes	18 March 1997	11 December 1998	
FG Voisin	11 May 2004	31 March 2006	
	20 August 2006		1 year 10 months
Deputy FH Walker	9 November 1993	18 March 1997	
RB Wade OBE	9 November 1993	12 February 1996	

The information set out in the above table has been taken from WEB's Register of Directors and in the case of some omissions, from the recent annual accounts of WEB.

This list omits the name of J Scally, who was for some time Managing Director of WEB, because his name does not appear in the Register.

[1] The normal practice is described in Section Four of this report.

[2] Minute 5.3.

[3] Paragraph 1.4 of the report.

[4] Minute 6.

[5] This appears from Minute 5.1 of the board meeting on 25 July 2005.

[6] Senator Perchard has confirmed to me that on his appointment to WEB's board, he was not requested to make a declaration of his interests. He noted, of course, that as a member of the States, he is required to make a formal declaration of his interests to the States.

[7] Mr Voisin was appointed a States director of WEB on 11 May 2004 (when he was a member of the States). His appointment as a States director ended on 31 March 2006. The Articles of Association provide that the quorum for the transaction of the business of the directors shall be 'four individuals comprising two States Directors and two Non-States Directors'. A States Director is 'a person who at the time of his appointment is a member of the States and who has been appointed in accordance with these Articles as a States Director'. States Directors are to be appointed by the States (Article 29). In effect, unless the States appoint at least two States Directors, the board is unable to transact any business as no meeting of the directors could be quorate.

[8] Although, as I note below, the Articles of Association deal explicitly with the consequences of a failure to

disclose conflicts of interest.

[9] Article 75(1).

[10] I make these observations as an accountant and auditor and not as a lawyer.

[11] Article 44.

[12] Article 1 of WEB's Articles of Association.

[13] Article 22(a).

[14] Article 27.

[15] Appropriately, I understand that it is the practice of the Greffier of the States to seek the guidance of the Chief Minister when called upon to vote at meetings of WEB's shareholders.

[16] This is because the conflict of accountability does not mean that a States Director has an interest in any transaction being considered. In any case, there can be no question that WEB is aware of the position because the appointment of States Directors is enshrined in the Articles of Association.

[17] Article 40.

[18] I note at one meeting during this period Mr Voisin did declare a conflict of interest for another reason.

[19] PWC's report is subject to confidentiality restrictions but has entered the public domain. I have therefore limited my references to the report to the minimum necessary.