



# Public Accounts Committee



£200,000

**GRANT TO FILM COMPANY**

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Presented to the States on 25<sup>th</sup> April 2013



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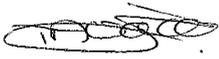
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## 1. CHAIRMAN'S FOREWORD

- 1.1 Diversification of the economy in Jersey continues to be a priority for the Economic Development Department and there is wide support for this aim including the agreement of the Economic Growth Strategy by the States Assembly in 2012.
- 1.2 Although visions and aims are always encouraging to the wider community, there are reasons why good governance practice and financial management are important to the delivery of those ideals.
- 1.3 In 2007 a PAC report entitled Battle of Flowers (PAC2/2007) recommended two key areas to be reviewed by internal audit. A response was never received to this report and yet the recommendations are as relevant today, some 6 years later, as they were then.
- 1.4 Financial Directions play a key role in ensuring clear guidance to ALL departments in the execution of their duties when using public funds. A failure to comply with Financial Directions in this case is not only disappointing to the Committee but also concerning as to how they can be enforced going forward.
- 1.5 Fit for purpose procedures must be adhered to and not seen as stifling improvement, diversification and growth.
- 1.6 High expectations in the governance and financial management of public funds are not unreasonable. Jersey promotes its reputation on the basis of "excellence" in Offshore financial services and yet we, as a public sector, are unable to apply the same principles in the provision of monies to businesses for the delivery of the States of Jersey aims for our economy.
- 1.7 I would like to take this opportunity to thank all members of PAC for their time and commitment, in particular, Deputy Richard Rondel for taking the lead on this review. Thanks are due to those who submitted information to the Committee including EDD for providing all the information relating to Canbedone Productions Ltd grant.

- 1.8 We wish Canbedone Productions Ltd all the success in their endeavours and look forward to seeing the delivery of promises made to Economic Development which are now due in September 2013.



Deputy Tracey Vallois

Chairman

Public Accounts Committee

## **2. KEY FINDINGS**

- 5.12 KEY FINDING** There was no reference within the Financial Report and Accounts 2011 to the initial grant being part of a multi-year grant.
- 9.3** The Ministerial Decision confirming the grant was signed only after the first tranche of the grant (£50,000) had been paid.
- 9.6** The grant had been paid to a different company from that stated in the Ministerial Decision.
- 9.9 KEY FINDING:** The contract between EDD and Canbedone Productions Ltd was not signed until some three months after the first payment was made to the company.
- 9.13 KEY FINDING:** The first payment was made to Canbedone Productions Limited without any contractual conditions having been effected.
- 9.15 KEY FINDING:** The second tranche of the grant (£75,000) was made without regard for confirmation of the funding milestones as required in the contract.
- 9.21 KEY FINDING:** The contract was poorly written and executed and left the Jersey taxpayer exposed to undue risk.
- 9.24 KEY FINDING:** The requirements of Ministerial Decision MD-E-2011-0104 were not properly reflected in the contract between the Economic Development Department and Canbedone Productions Ltd, notably a stipulation that the grant monies were to be expended in Jersey.
- 9.30 KEY FINDING:** The Economic Development did not maintain inspection of Canbedone Productions financial records prior to the Public Accounts Committee hearing and this poor financial governance left the Department exposed.
- 9.33 KEY FINDING:** There is no clear indication as to whether monies have been expended in Jersey as per the Ministerial Decision MD-E-2011-0104.

- 10.9 KEY FINDING:** There is no evidence of anything having been done by the Department in response to concerns raised by persons familiar with the film industry about the bona fides of the project, although the Department accepted that such concerns had emerged.
- 10.15 KEY FINDING:** The production of 'Knights of Impossingworth' is a high risk project.
- 10.19 KEY FINDING:** Due diligence on the key figures was not undertaken
- 10.22 KEY FINDING:** The due diligence into the company was materially insufficient.
- 10.30 KEY FINDING:** The due diligence undertaken by Tesco Stores Ltd was for a different purpose than that of the Economic Development Department, however it was used as part of the Economic Development Departments decision to go ahead.
- 10.33 KEY FINDING:** The due diligence undertaken by BDO for the Department was not for a grant of £200,000 to be provided to Canbedone Productions Ltd.
- 10.38 KEY FINDING:** No 'Know Your Client' process was undertaken by the Economic Development Department.
- 10.40 KEY FINDING:** Financial Directions do not require full due diligence to be undertaken when dealing with grants.
- 11.5 KEY FINDING:** The dates of the relevant documentation and the fact that key but basic financial information was obtained from the company by the Department only after the Committee had requested it indicates clear non-compliance with Financial Direction 5.4
- 11.14 KEY FINDING:** The grant was not paid from budgeted funds but from a windfall surplus from funds, including TV licence fees, paid by Jersey residents.
- 12.7 KEY FINDING:** There is a claw back clause within the contract but there are concerns as to its enforceability in practice against the recipient company (which is a UK company).

### **3. RECOMMENDATIONS**

*Please note: Each recommendation is accompanied by a reference to that part of the report where further explanation and justification may be found.*

**5.13 RECOMMENDATION:** The Financial Report and Accounts must make reference to the Ministerial Decision where a grant entry is part of a multi-year grant project.

**9.25 RECOMMENDATION:** In every case where the grant is for a high risk endeavour, following the application process, legal advice should be obtained in relation to the terms of the contract.

**9.31 RECOMMENDATION:** The Treasurer of the States must ensure that all departments have a precise framework for the proactive management of contracts to ensure robust monitoring, guaranteeing that evidence is obtained where clauses permit.

**10.41 RECOMMENDATION:** The Treasurer of the States must include due diligence requirements within Financial Direction 5.5.

**10.42 RECOMMENDATION:** A guidance note should be introduced to all departments for robust contract management aligned to financial directions.

**10.43 RECOMMENDATION:** Prior to Ministerial Decisions being signed, Accounting Officers must sign a compliance statement to say that Financial Directions have been complied with.

**10.46 RECOMMENDATION:** SEB must put specific procedures in place to deal with those who fail to comply with Financial Directions.

**12.8 RECOMMENDATION:** Should delays continue after 30<sup>th</sup> September 2013, the claw-back clause must be activated.

#### **4. TERMS OF REFERENCE**

1. To establish the levels of governance that has been applied to grants and subsidies provided to Canbedone Productions Ltd to ensure that the public funds have been applied for the purpose intended by the States.
2. To consider the safeguards attached to provision of grants of public money to Canbedone Productions Ltd.
3. To establish if the public funds provided to Canbedone Productions Ltd represent value for money

## 5. PAC INITIAL INTEREST

5.1 The PAC is required to receive, from the Comptroller and Auditor General, the results of the audit of the States of Jersey financial statement. That document is entitled 'States of Jersey Financial Report and Accounts'.

5.2 The Financial Report and Accounts for 2011 had been published on 12<sup>th</sup> June 2012. On 29<sup>th</sup> June 2012, the then Jersey Comptroller and Auditor General (C&AG) resigned. The Committee decided that it would review the accounts notwithstanding the absence of a C&AG.

5.3 In a general examination of the States Accounts, it was noted that there were two lists of grants to organisations and individuals made by several different departments. The first was a list of grants of over £100,000 provided by the States of Jersey in 2011<sup>1</sup>. The second list related to grants of less than £100,000<sup>2</sup>. The amount of the grants taken together was substantial, some £38 million.

5.4 As the lists were scrutinised by the Committee it was noted that the information given in the list of smaller grants included:

- Grantee
- Reason for the Grant
- Amount

5.5 One grant which raised immediate interest was:

Grantee	Reason for Grant	Amount
Canbedone Productions Ltd	Explore economic effects of the filming of a mainstream movie in Jersey	£50,000

5.6 It was considered reasonable that the Financial Report and Accounts document was not the place for fuller descriptions of the grants on an individual basis; however, this grant raised particular interest because of its unusual nature.

<sup>1</sup> Page 157 of the Financial Report and accounts 2011.

<sup>2</sup> Page 183, Appendix A of the Annex to the Financial Report and accounts 2011.

5.7 During the following few weeks, it emerged that the total grant provided to the company was significantly more than the sum quoted in the 2011 Accounts. Some tranches of the grant were to be paid after 1<sup>st</sup> January 2012. The total payment was £200,000. The Committee decided to undertake a review into the grant to establish

- the levels of governance that had been applied to grants and subsidies provided to Canbedone Productions Ltd.
- to ensure that the public funds had been applied for the purpose intended by the States and
- to consider the safeguards attached to the provision of grants of public money to Canbedone Productions Ltd.

5.8 These requirements created the Terms of Reference for the review.

5.9 On 18<sup>th</sup> December 2012, the review into the grant provided by the Economic Development Department to Canbedone Productions Ltd was launched. The Committee requested copies of all documentation held by the Economic Development Department relating to the grant from the first contact, including minutes of meetings and decisions pertaining to the grants.

5.10 Over the Christmas period, the Department supplied two large files of almost 200 documents pertaining to the grant and the Committee spent some time digesting the information contained in the file.

5.11 It was at this early point that the decision was made to focus the Committee's investigations on the processes and procedures undertaken by the Economic Development Department. The focus was purely on whether the money provided by the taxpayer was properly paid to the company, having regard to all requisite rules of financial management and the considerations arising regarding value for money for the taxpayer.

**5.12 KEY FINDING: There was no reference within the Financial Report and Accounts 2011 to the initial grant being part of a multi-year grant.**

**5.13 RECOMMENDATION: The Financial Report and Accounts must make reference to the Ministerial Decision where a grant entry is part of a multi-year grant project.**

## **6. ROLE OF THE ECONOMIC DEVELOPMENT DEPARTMENT**

6.1 The Public Accounts Committee will not generally examine policy. This is the function of the Scrutiny Panels. However, it is necessary to understand relevant policies in order to establish if suitable processes have been followed to ensure proper use of taxpayers' funds.

6.2 The Strategic Plan 2009-2014 is the vision for all that the States of Jersey aim to do. It is the starting point for all policies and the focus of the output of the Departments. Priority 2 within that document states:

*Maintain a strong, environmentally sustainable and diverse economy.*

6.3 Within priority 2, the Strategic Plan states, amongst other things, that the States of Jersey will:

- Lay the foundations for a genuinely diverse economy
- Continue to work to diversify the economy, support new and existing businesses, attract low footprint / high value business from elsewhere and foster innovation.

6.4 The Economic Development Department has sought to drive these priorities forward, through its Economic Growth and Diversification Strategy. This document was adopted by the States on 17<sup>th</sup> July 2012. There was no relevant strategic guidance document in place during 2011, when the grant to Canbedone Productions Ltd was approved. The Economic Development Department was using the Economic Growth Strategy 2005-2009 as guidelines during 2011.

6.5 The Department has been working for many years with a range of partners across many sectors of Jersey's economy to support development and diversification. A key function has been supporting new and established businesses through Jersey Business, encouraging inward investment and developing international trade.

6.6 One of the major areas of the Economic Development Department focus is the development of Jersey's visitor economy, including, but not limited to, the promotion of Jersey as a visitor destination through Jersey Tourism.

- 6.7 One of the vehicles the Department uses to achieve these aims is providing money to assist in the establishment of start up or early stage growth businesses. This is done through offering business support in the form of advice and grants. This is based on a case by case assessment of the business plan of each application.
- 6.8 The grant to Canbedone Productions Ltd was one such case.

## 7. DECISION ON THE GRANT

### Extent

7.1 The initial approach to the Department about this film was in November 2010. This approach came from the principals of a Jersey company, Canbedone Productions (Jersey) Ltd. A request was made for the investment of £2 million by the States of Jersey in return for 8% of worldwide revenue from a film to be known as 'The Knights of Impossingworth' and its ancillaries. There were other conditions attached to this request such as free use of offices and Fort Regent.

### Intent

7.2 It was the intention of Canbedone (Jersey) Ltd to film in Jersey for two weeks making a significant part of the film based in Jersey. A film crew of 41 people would be in the Island for three weeks. As the storyline had an element of Chinese connection, other parts of the film would be filmed in China.

7.3 The Economic Development Department rejected this proposal as there was no mechanism available under the Public Finance (Jersey) Law 2005 for the States to take an equity position in a private business.

7.4 During a public hearing, the Chief Officer of the Economic Development Department referenced a previous report commissioned by the Department on financial support for creative industries:

*"We had a report done on support for creative industries and clearly the conclusion of that, as it is for many other sectors, is that the most effective way of supporting them is through grant funding."<sup>3</sup>*

### Risks

7.5 Therefore a grant was considered the most appropriate response to the request. It was considered that it was within the remit of the Department to approve a grant to secure as much of the pre-production work and production filming in Jersey as possible.

7.6 When weighing up the risks associated with such a grant it was recognised by the Department that real risks existed. The Chief Officer explained to the Committee:

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<sup>3</sup> Public Hearing 11<sup>th</sup> February 2013 page 4

*“There is a risk, and it cannot be avoided - I will touch on this, I am sure, later - that the film will not ultimately go ahead. Yes, that risk does exist. It would be wrong to suggest that it does not.”<sup>4</sup>*

7.7 The Committee recognise that the assessment of risk is a core requirement for the Economic Development Department in the approval of grants.

7.8 In this case it was argued that, should the film be made and prove to be a success, there could be benefits to the Island. These might be significant if the film were to be a global success. Such arguments were advanced strongly and optimistically in correspondence from the representative of Canbedone (Jersey) Ltd to the Department<sup>5</sup>. The document was supplied by the Department to the Committee and includes the following statements:

- 1) *Film making would attract worldwide media coverage and ‘Knights’ shooting in Jersey would instantly bring the Island to the attention of people who might never have heard of it before or ever of thought of going there on holiday. During production we will have ongoing opportunities to bring global media people to visit Jersey not only to watch our movie being filmed, but to experience firsthand the pleasures of being in Jersey. This group of media people would include not only those who cover movies, but those who report on travel since “Hollywood comes to Jersey” is a particularly good travel story angle.*
- 2) *Film making in Jersey would require the construction of movie sets that would then remain standing as tourist attractions for years to come. In building these sets, “Knights” would create a more substantial structures than the usual movie facades because (a) being a franchise its clear that these sets will need to be used repeatedly over a period of years for the filming of future films in the “Knights” saga; and (b) knowing that tourism is to be promoted, these sets can be built to function to an extent like a theme park. It would be easy and relatively inexpensive, for instance, to build tracks for trams to carry tourists around the sets just as is the case at Universal Studios in Los Angeles.*
- 3) *Photos of the stars of the film at seaside resorts and in fine restaurants and hotels will wind up being published or aired in media around the world. When stories start*

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<sup>4</sup> Public Hearing 11<sup>th</sup> February 2013 page 12

<sup>5</sup> Email 31<sup>st</sup> October 2010. (PAC 1.5)

*circulating having found a new international resort in Jersey, people everywhere will become interested in finding out about Jersey for themselves.*

- 4) *Moviemaking is a valuable non-polluting industry that countries compete to attract because productions spend a lot of money locally on things like hotels to house cast and crew members, restaurants for daily meals during shooting, lumber used to construct sets, local labour to build sets and do other work during production, local drivers to take cast and crew members around the Island as necessary, local utilities like electricity and water used during production, etc. "Knights" would be able to launch awareness in Hollywood and the UK, in particular, of Jersey as a "film friendly" environment that offers financial benefits to film makers. What film makers are always looking for is a location that enables them to stretch their production dollars or pounds while working in an environment that actors are happy to go to.*
- 5) *When "Knights" opens in theatres, the publicity generated at the time will again call widespread attention to Jersey as a desirable tourist destination. Movie goers will be able to see for themselves on the big screen what the Island looks like and this will clearly help drive tourism to Jersey.*
- 6) *In short, by investing in "Knights" Jersey will receive an elevated global profile that will put it on the map for tourists everywhere. Unlike television and print ads that are quickly forgotten, the impact of this exposure on the movie screen will live on for years to come in cinemas as well as in DVD release and on cable and satellite television.*
- 7) *Moreover, the money Jersey puts into "Knights" can be expected to generate a return on that investment. Clearly the upside potential is there for future profits from the success of the film and its franchise. This stands in great contrast to Jersey putting the same amount of money into advertising that offers no potential profits whatsoever and no immediate return from production spending.*

7.9 The Committee appreciates that this communication could be said to contain a compelling argument for States involvement in the project. It recognises, however, on the other hand, that this was the pitch of a company seeking financial support from taxpayers' funds. It was possible that there might be some truth in many of the benefits. Equally, the reverse was possible. Delivery of such potential benefits as were described, obviously depended on the assumption that the film would achieve the best possible success in global markets.

- 7.10 Film making is generally known to be a risky business. It is said that many planned films never get made at all. Many are delayed for years prior to production. And even if the proposed film was made, would the blockbuster level of success suggested by its representatives actually come to pass, and was the company capable of undertaking such a project, requiring substantial upfront investment of many millions of pounds, and seeing it through to fruition? Thus the assessment of the case for any grant by the States needed to be particularly well-founded and cognisant of all the risks involved.
- 7.11 In July 2012 some months after the full amount of £200,000 had been paid to the UK film company, it decided to move some of the interior filming, which had been suggested could be at Fort Regent, to Pinewood Studios in the United Kingdom. This was done , it was put to the Department, for tax reasons and to meet funding constraints by reducing a five week shoot to two weeks.<sup>6</sup>

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<sup>6</sup> Information from email dated 26<sup>th</sup> September 2012. (PAC 1.169)

## 8. DECISION MAKER

### Basis for Decision

- 8.1 The reasons the Economic Development Department might like to put Jersey taxpayers' funds, of which it had stewardship, into this film had been put to it in terms, as described above. The package presented to the Department included a script, a suggestion of the star actors who might be involved and importantly, a signed contract with Tesco Stores Ltd which had agreed to invest a significant amount in the distribution and marketing of the film once made.
- 8.2 It is of particular note that Tesco Stores Ltd agreed to provide funding only on delivery of the film. So whilst the amount of money ostensibly on offer was quite considerable, Tesco was at no risk if the film was not made.

### Considerations attached to grant

- 8.3 By considering an upfront grant, the Economic Development Department was envisaging a very different arrangement from that entered into by Tesco. The Chief Officer was asked<sup>7</sup>:

***Deputy R.J. Rondel:***

*"So Jersey really are the only ones giving an upfront risk to the money?"*

***Chief Officer, Economic Development Department:***

*"We have given a grant in order to secure an element of the filming in Jersey because we believe that there are both direct and indirect benefits for that happening, so the answer is yes."*

### Ministerial Decision

- 8.4 Following consideration of the application, the advice to the Minister in July 2011 was that a grant of £200,000 should be provided to Canbedone (Jersey) Ltd for the purposes of securing as much filming in Jersey as was possible.
- 8.5 Ministerial decision MD-E-2011-0104 dated 19<sup>th</sup> August 2011 states:

*EDD will make a grant of £200,000 to Canbedone (Jersey) Ltd (See Appendix 1<sup>8</sup>)*

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<sup>7</sup> Exchange at Public Hearing 11<sup>th</sup> February 2013 page 30

<sup>8</sup> (PAC 1)

## 9. PAYMENT DATES

### When

9.1 It is to be expected that only following the Ministerial Decision would the Department move towards agreeing a contract with the recipient and therefore commence payment. The first tranche of the grant (£50,000), however, was approved for payment on 1<sup>st</sup> August 2011<sup>9</sup>, 18 days prior to the signing of the Ministerial Decision with a departmental stamp on the payment docket showing 11<sup>th</sup> August 2011, still 8 days prior to the Ministerial Decision.

9.2 The Ministerial Decision (reproduced at appendix 1) contains various dates:

- A decision made 19 August 2011
- Date of Decision Summary: 15<sup>th</sup> July 2011
- Date of Written Report: 15<sup>th</sup> July 2011
- Assistant Director Liberation Place, 11 August 2011

**9.3 KEY FINDING: The Ministerial Decision confirming the grant was signed only after the first tranche of the grant (£50,000) had been paid.**

### To Whom

9.4 Whilst the initial payment of £50,000 was sent in the form of a cheque to Canbedone (Jersey) Ltd on 1<sup>st</sup> August 2011, the Department had not been informed by Canbedone (Jersey) Ltd that on 28<sup>th</sup> January 2011 the rights of the film had been sold by the Jersey company to 'Canbedone Productions Ltd' a UK company based in Oxfordshire. The principals of this latter company were closely associated with those of the former but it was a wholly separate entity<sup>10</sup>. The Jersey-based company returned the cheque to the Department with a request for it to be re-issued to the UK company.

9.5 There is no evidence of any challenge or questioning by the Department to this significant change. In particular, no inquiry was made as to the financial status of the UK company or request to scrutinise its financial records; nor is there evidence of any questioning of the commercial relationship between the two entities and the principals of each pursuant (especially) to the sale of the rights. Notwithstanding the change, the Ministerial decision remained unaltered and thus, technically, provides no authorisation for the disbursement of public funds as was eventually made.

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<sup>9</sup> Invoice 46195. (PAC108)

<sup>10</sup> Assignment (PAC 1.203)

**9.6 KEY FINDING: The grant had been paid to a different company from that stated in the Ministerial Decision.**

9.7 The Committee accepts that the purpose of the grant remained the same, but criticises in strong terms the Department's failure to undertake any due diligence at all in respect of these new circumstances and to ensure that the Minister was invited to revise his decision accordingly.

#### Conditions attached to payments

9.8 A contract between the Economic Development Department and Canbedone Productions Ltd was signed on 23<sup>rd</sup> and 24<sup>th</sup> November 2011. The contract was now with the UK company. This contract will not be reproduced in this report, but relevant aspects will be discussed.

**9.9 KEY FINDING: The contract between EDD and Canbedone Productions Ltd was not signed until some three months after the first payment was made to the company.**

9.10 The contract related to a grant of £200,000 payable in three tranches: one of £50,000 and two of £75,000.

9.11 According to the contract, the first payment of £50,000 could be made on either the 1<sup>st</sup> September 2011 or upon signature of the contract (whichever was the earlier).

9.12 The Committee accepts that the first payment of £50,000 was finally made to Canbedone Productions Ltd on 6<sup>th</sup> December 2011 following the return of the money from the Canbedone (Jersey) Ltd. That does not, however, negate the fact that the Department had initially sent the first payment to the Jersey company in August 2011, prior to either the 1<sup>st</sup> September or the signing of the contract.

**9.13 KEY FINDING: The first payment was made to Canbedone Productions (Jersey) Limited without any contractual conditions having been effected.**

9.14 The contract states that the second tranche of £75,000 could be made on 1<sup>st</sup> January 2012 or upon confirmation of certain major funding commitments to the film from Jersey investors who had been identified by the company. On 4<sup>th</sup> January 2012 (1<sup>st</sup> January was a Sunday followed by a bank holiday on 2<sup>nd</sup> January 2012) this second tranche of £75,000 was paid to Canbedone Productions Limited on the basis of an invoice dated 1 January

2012. The criterion of funding commitments from Jersey investors having been received had not been met, but the second tranche was payable regardless due to the poor wording of the contract. In the absence of any evidence on the point we presume that the second tranche of payments was made without regard to the funding milestones being met.

**9.15 KEY FINDING: The second tranche of the grant (£75,000) was made without regard for confirmation of the funding milestones as required in the contract.**

9.16 The contract allowed the third tranche of the grant to be payable on 1<sup>st</sup> February 2012 upon confirmation of further funding commitments. The Department was required to pay the third tranche only having obtained confirmation of a given level of investment funding to complete the project financing and secure the completion guarantee bond.

9.17 Whilst there is evidence of this funding being questioned, there is, however, no evidence that the Department obtained suitable confirmation before paying over the final tranche<sup>11</sup>.

9.18 The contract stated that the Economic Development Department:

*“...had received sufficient material evidence, most significantly the financing contract with Tesco Stores, to satisfy its reasonable expectations that the balance of funding required to produce the film would be forthcoming in a timely manner.”*

9.19 There are problems with the wording of the contract. The above quote suggests that no further evidence of funding is required. The contract then stipulates that:

*‘3. Prior to the second and third tranches of payment, the Economic Development Department must receive evidence from Canbedone that qualifying criteria (funding milestones) have been met.’*

9.20 The drafting of this contract meant the whole grant would become payable without confirmation of the company’s position. This left the Jersey taxpayer exposed, to say the least, and was maladministration on the part of the Department.

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<sup>11</sup> Emails (PAC 1.160, 1.164 & 1.165)

**9.21 KEY FINDING: The contract was poorly written and executed and left the Jersey taxpayer exposed to undue risk.**

9.22 The contract also states that:

*The grant is made towards approved expenditure incurred in connection with the filming costs arising from the logistical planning, re-writing and general re-organising of the location schedule in order that the film may be undertaken significantly in Jersey, Channel Islands.*

The Ministerial Decision states that:

*Action Required: The Assistant Director to prepare a contract with Canbedone Ltd (Jersey) which stipulates that the EDD funds will be used on Island.*

9.23 These requirements are inconsistent with each other. There is no evidence of action by the Department to seek to ensure that the requirement of the Ministerial Decision on use of Jersey taxpayers' funds was met.

**9.24 KEY FINDING: The requirements of Ministerial Decision MD-E-2011-0104 were not properly reflected in the contract between the Economic Development Department and Canbedone Productions Ltd, notably a stipulation that the grant monies were to be expended in Jersey.**

**9.25 RECOMMENDATION: In every case where the grant is for a high risk endeavour, following the application process, legal advice should be obtained in relation to the terms of the contract.**

9.26 The contract states:

*The Economic Development Department reserves the right to undertake detailed inspection of the work carried out and request supporting paperwork, invoices and financial records before releasing instalments.*

9.27 In pursuance of this point, the matter was discussed during the public hearing with the Chief Officer. There was a considerable discussion on the use to which the grant money had been or might have been utilised. It was established that the information that had

been supplied to the Committee on this point was a forecast of company expenditure activity, not evidence of actual expenditure, which the Department at that time did not have. The Chief Officer offered to provide the Committee with the latter<sup>12</sup>. This was obtained from the company a few days later, in the form of draft accounts for the year ending 31 August 2012.

9.28 The Department had not obtained this data or undertaken an inspection of the financial records prior to the hearing with the Committee. In order to provide information to the Committee, the department had to obtain it from the company. The public hearing was on 11<sup>th</sup> February 2013. Evidence in the form of management accounts was provided to the Committee on 19<sup>th</sup> February 2013.

9.29 Whilst it is accepted that there had been regular communication between the company and the Economic Development Department, in which the company outlined its progress, or otherwise, the Departments not having sought data essential to give effect to the Ministerial Decision and safeguard the taxpayer was unsatisfactory to a high degree and calls into question the Department's governance arrangements on the payments of grants generally.

**9.30 KEY FINDING: The Economic Development Department did not maintain inspection of Canbedone Productions financial records prior to the Public Accounts Committee hearing and this poor financial governance left the Department exposed.**

**9.31 RECOMMENDATION: The Treasurer of the States must ensure that all departments have a precise framework for the proactive management of contracts to ensure robust monitoring, guaranteeing that evidence is obtained where clauses permit.**

9.32 Inspection by the Committee of publicly available records at Companies House revealed that at 31 August 2011 Canbedone Productions Ltd had negative shareholders' funds of just over £200,000 (before any payment by the Department had been credited). The accounts information eventually received by the Committee covering 2011-12 showed that the States of Jersey credits to the company were its largest single source of income in 2011-12 - £200,000 out of a total income of some £488,000. It showed a long list of payments to individuals involved in the planning of the project. There are records of payments for flights and hotel accommodation which may or may not refer to some spending in Jersey in accordance with the requirement of the Ministerial Decision. It is

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<sup>12</sup> Public Hearing 11<sup>th</sup> February 2013 page 18 & 19

evident that a significant proportion of the total expenditure was in the form of payments to various individuals including the person who had principally advanced the case for the grant with the Department. The grant from Jersey was possibly digested in quite lavish running costs.

**9.33 KEY FINDING: There is no clear indication as to whether monies have been expended in Jersey as per the Ministerial Decision MD-E-2011-0104.**

## 10. DUE DILIGENCE.

10.1 The Committee then turned to the due diligence undertaken in the provision of this grant, in line with its terms of reference:

1. To establish the levels of governance that has been applied to grants and subsidies provided to Canbedone Productions Ltd to ensure that the public funds have been applied for the purpose intended by the States.
2. To consider the safeguards attached to provision of grants of public money to Canbedone Productions Ltd.

10.2 The Committee had been approached by two members of the public who submitted evidence in relation to this review. The evidence provided by one of the submissions was compelling but for reasons that are not appropriate for publication, the Committee considered that evidence to be conflicted. However, the second submission was unconnected with the initial submission, but made essentially the same point.

10.3 On 4 October 2011, 11:54am<sup>13</sup>, an officer at the Economic Development Department was sent an email asserting that there were serious concerns with the company and the grant.

10.4 The email stated:

*"I told [Officer at EDD] back in March that the project was a turkey and [Company Director] was financially misrepresenting the States at the time and blatantly lying about the investment/distribution structure."*

10.5 There was no documentary evidence supplied to the Committee by the Department that relates to this email.

10.6 There was no documentary evidence supplied to the Committee that suggested concerns were considered within the Department as a result of this email.

10.7 During the public hearing, the following exchange took place:

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<sup>13</sup> Copy of email with PAC. (ref 13.01.25)

**Deputy R.J. Rondel:**

*“By that stage, did you have any concerns or did other people raise concerns to you about the film?”*

**Chief Officer, Economic Development Department:**

*“Yes. Obviously other people have raised concerns regarding whether or not the film will go ahead, and had done at that time. We received assurances on numerous occasions, both by email and in meetings.”*

**Deputy R.J. Rondel:**

*“From who?”*

**Chief Officer, Economic Development Department:**

*“From Canbedone that the production was going ahead, and I think there is evidence in here about significant levels of activity that were undertaken to establish production schedules, to establish filming schedules. There were discussions undertaken regarding the utilisation of Fort Regent, so we had no grounds at that point to suggest that ultimately the film would not be shot.”<sup>14</sup>*

10.8 The Committee notes the above while recognising that the file provided by the department did show continued contact with the Director of the company, all of whose communications contained positive assurances of the progress of the film.

**10.9 KEY FINDING: There is no evidence of anything having been done by the Department in response to concerns raised by persons familiar with the film industry about the bona fides of the project, although the Department accepted that such concerns had emerged.**

10.10 Given that the film industry is a complex and risk laden industry, the probability of the project failing to provide the promised returns was a clear risk. A rudimentary risk assessment would, no doubt, place the risk as high or extremely high.

10.11 In most professional circumstances, risks which manifest themselves as high or extremely high would be considered unacceptable. Significant effort should be invested in mitigating

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<sup>14</sup> Public Hearing 11<sup>th</sup> February 2013 page 28

the risks to a more acceptable, lower level. Where the risk is extreme, the advice is generally not to embark on the project until the risks have been mitigated.

10.12 In this case, the Department has attempted to mitigate the risks by having a claw back clause in the contract with the company and by keeping in close contact with the principal company representatives. However even then, the risks remain high.<sup>15</sup>

10.13 There may be an argument that the business of the Economic Development Department involves taking risks on fledgling businesses and entrepreneurial projects to encourage diversity in the business community within the Island. The amount of money involved in this grant and the level of risk involved, given the current financial climate, has raised significant public feeling. This has repeatedly been expressed to some Members of the Committee as they have gone about their everyday business.

10.14 There are however standard methods of continuing to mitigate the risks. Sufficient mitigation can reduce the risk significantly, making the undertaking of the venture more acceptable.

**10.15 KEY FINDING: The production of 'Knights of Imposingworth' is a high risk project.**

10.16 One such mitigation tool is to undertake due diligence on the key players of the company, the object being to establish the track record, history and professional capabilities of the individuals. This provides information upon which a reasonable decision can be based about the likelihood of the project being successful.

10.17 In the hearing the following exchange took place:

***Deputy R. Rondel***

*"Did you carry out any due diligence on the film director himself?"*

***Chief Officer, Economic Development Department:***

*"We researched his track record, his history of film, which is documented on the MD and other sources. Other than that, no, we did not. What we did do is we did due diligence obviously on the business plan presented to us, which*

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<sup>15</sup> PAC Ref 1.40

*showed the revenues and the potential advantages to Jersey that would flow.*<sup>16</sup>

10.18 There are various companies available to assist in the process of due diligence. The Economic Development Department did not undertake that process on the principal representatives of the company.

**10.19 KEY FINDING: Due diligence on the key figures was not undertaken**

10.20 Further mitigation would have been available by undertaking similar due diligence on the company. The Chief Officer of the Economic Development Department was asked:

*“...what action did you take to seek further independent advice on the company itself?”*

**Chief Officer, Economic Development Department:**

*“We sought assurances from the principals of Canbedone Productions that the film production was going ahead. The direct answer to your question, did we seek independent assurance to that at the time? No, we did not.”<sup>17</sup>*

10.21 The exchange went on:

**Mr. J. Mills:**

*“Did you investigate the finances of the U.K. company before any of these arrangements were entered into?”*

**Chief Officer, Economic Development Department:**

*“We did not do any deep financial due diligence on the company, no, because the company was set up for the purposes of producing the film, so by definition, it would not have had any significant ...”*

**Mr. J. Mills:**

*“So you did not do any due diligence? You did not look at its previous accounts, for example, did you?”*

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<sup>16</sup> Public Hearing 11<sup>th</sup> February 2013 page 35

<sup>17</sup> Public Hearing 11<sup>th</sup> February 2013 page 30/31

**Chief Officer, Economic Development Department:**

*“No, because Canbedone (UK) Limited was established for the purposes of producing the film, so no, we did not undertake any previous ...”<sup>18</sup>*

**10.22 KEY FINDING: The due diligence into the company was materially insufficient.**

10.23 Another area of examination available to the department to assist in mitigating the risks was the financial history of the company.

**Mr. J. Mills:**

*“Because its accounts for the year ending 31st August 2011 are available at Companies House.”*

**Chief Officer, Economic Development Department:**

*“Yes.”*

**Mr. J. Mills:**

*“You have looked at those, have you? I do not mean you personally, but your team.”*

**Chief Officer, Economic Development Department:**

*“I would have to confirm that to you, but I have not seen them personally.”<sup>19</sup>*

10.24 At this point in the proceedings, the Committee had not been supplied with anything which suggested that such checks had been made. There was nothing contained within the documentation supplied to the Committee and, as previously mentioned, the Department had not seen the Company’s most recent accounts (for 2010-11) which were readily available on the Companies House website.

10.25 None of the significant risks had therefore been mitigated.

10.26 There was significant discussion during the hearing about the due diligence procedures undertaken by the department:

<sup>18</sup> Public Hearing 11<sup>th</sup> February 2013 page 31

<sup>19</sup> Public Hearing 11<sup>th</sup> February 2013 page 31

**Chief Officer, Economic Development Department:**

*“Ultimately the decision through ... as you can see, we did quite a lot of analysis of the film and independent due diligence was undertaken. We also relied on due diligence from Tesco, who are a co-investor and remain a co-investor in the film, but ...”<sup>20</sup>*

10.27 The due diligence that Tesco Stores Ltd had done was in preparation for their contract which exposed them to very little risk. The Chief Officer then went on to explain:

**Deputy R.J. Rondel:**

*“Sorry to interrupt. Could you just explain Tesco acted on behalf of us or ...?”*

**Chief Officer, Economic Development Department:**

*“No, no. When the proposal was brought to us in November 2010, at that time Tesco had already been secured as an investor and had undertaken due diligence and we had subsequent sight of the contract that exists between Canbedone and Tesco, and indeed had conversations, both telephone conversations and direct meetings, with the Director of Entertainment at Tesco, who could obviously confirm the level of examination they had done.”*

**Deputy R.J. Rondel:**

*“So really you are saying you relied on Tesco to do the due diligence?”*

**Chief Officer, Economic Development Department:**

*“No, let us be absolutely clear, that is not what I am saying. What I am saying is that we undertook an element of due diligence ourselves based on information presented to us in terms of a business plan for the film and I think you certainly have everything that we have had. In addition to that, we were aware that Tesco had undertaken a complete due diligence exercise themselves, and on the basis of that had made the decision to enter into a contract with Canbedone. I think it was fair on that basis of those 2 things to assume that both from our own work and indeed the work done by other parties that ...”<sup>21</sup>*

10.28 There is a contradiction in the above exchanges.

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<sup>20</sup> Public Hearing 11<sup>th</sup> February 2013 page 4

<sup>21</sup> Public Hearing 11<sup>th</sup> February 2013 page 4

10.29 Examining the work done by the department from the documentation supplied to the Committee, it can be seen that a business plan for the film was amongst the information supplied. The information relating to the film was indeed comprehensive and included scripts, spending forecasts, contracts between Canbedone (Jersey) Ltd and Canbedone Productions Ltd and much more, but then it would be, since it was supplied to Economic Development by the company making the application. There was also a copy of a contract with Tesco and a signed contract with a Company in China, for the distribution rights in China.

**10.30 KEY FINDING: The due diligence undertaken by Tesco Stores Ltd was for a different purpose than that of the Economic Development Department, however it was used as part of the Economic Development Departments decision to go ahead.**

10.31 In addition the file provided some documentation relating to an exercise in due diligence done by BDO Alto Limited, an independent financial institution offering services in auditing, tax and financial advice, on behalf of the Department. The work makes some interesting observations that discuss the risks. For example,

*“...a higher risk exists given this is [the director’s] first film as Director...”<sup>22</sup>*

10.32 It is noteworthy that the work had been undertaken by BDO Alto Ltd on due diligence, which was done at the initial stages when the application was for a £1.8 million investment in equity of the film applied for by Canbedone Ltd (Jersey).

**10.33 KEY FINDING: The due diligence undertaken by BDO for the Department was not for a grant of £200,000 to be provided to Canbedone Productions Ltd.**

10.34 It was mentioned in the firmest of tones at the hearing that the grant of £200,000 was not for production costs following the bonding of the film, but to assist in the pre-production costs and encourage the filming to be done in Jersey.

***Chief Officer, Economic Development Department:***

*“No. There is a difference between the money being committed subject to bonding for the film production, and again I will reiterate that the purpose of our grant funding is not for that.”<sup>23</sup>*

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<sup>22</sup> Email 28<sup>th</sup> January 2011. (1.37)

- 10.35 Considering the significant references to the differences of intent of the original application and the eventual grant, the Committee notes that there is nothing pertaining to due diligence in relation the actual grant of £200,000. Other than the note about the Director above, drafted for a different purpose, there is no documentation pertaining to the due diligence on the key players or indeed of the company involved in the pre-production of the film.

#### Know Your Customer

- 10.36 Know your Customer (KYC) refers to due diligence activities that financial institutions must perform to ascertain relevant information from their clients for the purpose of doing business with them. The term is also used to refer to regulation that govern these activities. KYC processes are also employed by companies of all sizes for the purpose of verifying the probity and integrity of the client. Such policies are becoming increasingly important globally to prevent criminal activity such as financial fraud or money laundering.
- 10.37 As it appeared reasonable when entering financial contracts with companies for this process to be undertaken, the Committee enquired about this area of due diligence:<sup>24</sup>

***Deputy T.A. Vallois:***

*“But going back to the discussion that you had with Mr. Mills earlier, what does concern me is that we have a regulation in terms of finance companies where you have to have your Know Your Client basis and areas like that. You stated, you can tell me if I am wrong, that that has not been carried out on the directors of the company or the principals of the company.”*

***Chief Officer, Economic Development Department:***

*“No, we do not perform the same K.Y.C. (Know Your Customer) that is required by the Financial Services Commission of the banks.”*

***Senator S.C. Ferguson:***

*“But if you are lending money to people or granting money then surely you do a bit of investigation?”*

***Chief Officer, Economic Development Department:***

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<sup>23</sup> Public Hearing 11<sup>th</sup> February 2013 page 30

<sup>24</sup> Public Hearing 11<sup>th</sup> February 2013 page 51

*“We look at the nature of the proposal, we do due diligence on whether or the business plan stacks up, we have a grant agreement that exchanges funds for a particular activity, particular outputs and outcomes, and we receive regular updates from them.”*

**Senator S.C. Ferguson:**

*“Yes, but you do some background investigation of the people to whom you are lending the money, surely?”*

**Chief Officer, Economic Development Department:**

*“The people to whom we are lending the money in this case, we believe based on all the information available to us, are intent on producing this film.”*

**10.38 KEY FINDING: No ‘Know Your Client’ process was undertaken by the Economic Development Department.**

10.39 The Committee notes that the Financial Directions (F.D.) which relate to grants, F.D. 5.4 and subsequently 5.5, do not require ‘Know Your Client’ processes to be undertaken.

**10.40 KEY FINDING: Financial Directions do not require full due diligence to be undertaken when dealing with grants.**

**10.41 RECOMMENDATION: The Treasurer of the States must include due diligence requirements within Financial Direction 5.5.**

**10.42 RECOMMENDATION: A guidance note should be introduced to all departments for robust contract management aligned to financial directions.**

**10.43 RECOMMENDATION: Prior to Ministerial Decisions being signed, Accounting Officers must sign a compliance statement to say that Financial Directions have been complied with.**

10.44 The Public Finance (Jersey) Law 2005 offers various articles that deal with offences in relation to breaches of the law. There are offences which relate to the production of records, appearing before and answering the Comptroller and Auditor General, intention to deceive failing to pay money into correct accounts and improper use of money to or for other persons.<sup>25</sup> Nothing within the Law, however, creates an offence for failing to conform to Financial Directions.

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<sup>25</sup> Public Finance (Jersey) Law 2005 Articles 57 to 61.

10.45 There needs to be a specific method of dealing with such failures. It cannot be sufficient that failure to conform to Financial Directions has no direct recourse to action.

10.46 **RECOMMENDATION: SEB must put specific procedures in place to deal with those who do not comply with Financial Directions.**

## 11. THE FUNDS

11.1 The overarching aim of the use of grants is:

*"to deliver growth, improve competitiveness, diversify the local economy and create employment."*

Whilst this particular quote has been taken from the Economic Growth and Diversification Strategy which was published in 2012, it is accepted that the Department was working to the 2005 Economic Growth Strategy which had, as a key objective, economic diversification as did all subsequent States Strategic Plans.

11.2 Although the strategy was not in place during 2011, the Department's [aim was to](#) ensure that all grants met the conditions contained within the Financial Direction that related to grants.

11.3 Financial directions are issued under Article 34 of the Public Finances (Jersey) Law 2005 and have been updated during 2012. In 2011, financial direction 5.4 provided advice, assistance and mandatory requirements [for](#) Departments which fund third party organisations or individuals via grants. Financial direction 5.4 states:

*Paragraph 5.11*

*Once the Grant is approved, and before payment is made, there must be drawn up a clear written agreement detailing the rights and obligations of both parties.*

11.4 FD 5.4 goes on:

*Paragraph 5.13.*

*It is the awarding department's responsibility to ensure that the expenditure of public money by the recipient is properly audited and spent for the purpose which it was intended.*

**11.5 KEY FINDING: The dates of the relevant documentation and the fact that key but basic financial information was obtained from the company by the Department only after the Committee had requested it indicates clear non-compliance with Financial Direction 5.4**

11.6 In 2012, FD 5.4 has been replaced with FD 5.5<sup>26</sup>. Notably, neither requires full due diligence or 'Know Your Client' processes to be undertaken. (See Key finding 10.40 and Recommendation 10.41.

11.7 The Tourism Development Fund supports organisations through investing in events, projects and marketing activity that will attract visitors to Jersey and stimulate the Tourism industry.<sup>27</sup> Voluntary, public and private sector organisations are eligible to apply.

11.8 The Committee has confirmed that the Tourism Development Fund did not receive any approach for funding directly or through an intermediary to request or discuss a grant to assist with a film production.<sup>28</sup>

11.9 The Committee noted that the aims of the Tourism Development Fund and the benefits to the Island as described by the company earlier in this report appear to correspond well. On Tuesday 10th July 2012 The States adopted a proposition (P.26/2012) of the Minister for Treasury and Resources, which agreed to allow the Minister for Economic Development to grant financial assistance to private sector entities to support the development of the tourism sector in Jersey.

11.10 The option of referring this project to the Tourism Development Fund did not exist in 2010/11 when this matter was being considered.

11.11 The grant money was taken from monies forwarded to the Department by Treasury from Ofcom.

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<sup>26</sup> The requirements specified in section 2 of the 5.5 version aim to strengthen governance arrangements and improve the delivery of value for money. The most notable changes are enhanced requirements around Service Agreements, the provision and publication of financial accounts and the submission of Grant Assurance Statements by grant recipients.

<sup>27</sup> TDF Web page. <http://www.jersey.com/business/marketing/tourismdevelopmentfund/Pages/default.aspx>

<sup>28</sup> Letter from TDF Chairman 28<sup>th</sup> February 2013.

- 11.12 The Committee were informed that Ofcom, the independent regulator and competition authority for the UK communications industries, deliver certain services on behalf of Jersey, particularly related to television licensing and spectrum allocation. Where there are excess funds that are gathered from Jersey, over and above the cost of providing the services, those funds are remitted back to the Treasury. The money is then provided to the Economic Development Department for discretionary use. Ministerial Decision MD TR-2011 0105 refers.
- 11.13 The amount received by the Department from Ofcom, via the Treasury, was reported to the Committee to be in the order of £300,000 per annum. The amount concerned fluctuates according to usage and thus there were sufficient funds at the time to support the Ministerial Decision to allocate £200,000 to Canbedone.<sup>29</sup>

**Chief Officer, Economic Development Department:**

“At that time? Oh, at our own discretion. I think we were looking at a sum ... because part of this is related to income that we receive from Ofcom on an annual basis, and the amount of that is uncertain until we receive it, but it is in the order of £300,000 per annum. Now, I think we had accumulated - if my memory serves me correctly, and I will have to confirm this to you - £734,000 that we had at our disposal at that time.”

**Deputy R.J. Rondel:**

“Okay, for making your own discretionary ...”

**Chief Officer, Economic Development Department:**

“Yes. It is the department, so discretionary allocation subject to ministerial decision.”

**11.14 KEY FINDING: The grant was not paid from budgeted funds but from a windfall surplus from funds, including TV licence fees, paid by Jersey residents.**

- 11.15 The Committee is troubled by such use of the money from Ofcom and further consideration will be given to this within its more general review into grants.

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<sup>29</sup> Public Hearing 11<sup>th</sup> February 2013 page 9

## 12. PRODUCTION

- 12.1 It is with some interest that the Committee notes the first suggested filming date was April 2011.<sup>30</sup> The Economic Development Department has been in regular correspondence with the company. In February 2013, correspondence was received by the Department that explained the then current position<sup>31</sup>.
- 12.2 The company said that it still intended to film in Jersey and maintained that a number of Jersey landmarks would feature in the film. Arrangements in China were also being finalised.
- 12.3 The company continued to maintain that there is potential to bring significant benefits to the Island including not only added value to the tourism market but employment for islanders.
- 12.4 The filming has been re-scheduled several times and the company's latest position<sup>32</sup> is that it now hopes to commence filming in Jersey in September 2013 as soon as the shooting schedule and principal cast is confirmed.
- 12.5 The Committee notes that the contract with Canbedone Promotions Ltd contains a claw back clause reserving the right of the Department to require repayment of the grant, either in full or in part, in the event of certain failures on the part of the company. Activation of this clause should be enforced should the delays and promises to the future continue beyond the latest stipulated expectations.
- 12.6 That clawback would be difficult given that the company is not in Jersey and may have few, if any, liquid assets but that the current situation cannot be allowed to go on much longer. The company should be told now, in a proper letter, that if production has not begun as proposed by 30 September, claw back will be activated.

**12.7 KEY FINDING: There is a claw back clause within the contract but there are concerns as to its enforceability in practice against the recipient company (which is a UK company).**

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<sup>30</sup> BDO Email 26<sup>th</sup> January 2011 (1.37)

<sup>31</sup> Email of 11<sup>th</sup> February 2013 (1.224)

<sup>32</sup> Information received through Economic Development Department February 2013.

12.8 **RECOMMENDATION:** Should delays continue after 30<sup>th</sup> September 2013, the claw-back clause must be activated.

## 13. CONCLUSION

13.1 The findings of this review may easily be mistaken for the feelings of the Committee towards grants and in particular, grants for high risk industries. Nothing could be further from the truth. The Committee wishes it to be known that it supports the efforts of the Economic Development Department in the work it does towards economic diversity and growth in Jersey.

13.2 The Committee does not wish to second guess the decision for approving the money to this project. Accepted that there is a degree of subjectivity in the making of such a decision and there may be a case both for and against the grant.

13.3 The responsibility of the Committee lies firmly in establishing whether a suitable process of governance was followed towards the point where the decision was made and whether taxpayers funds have been suitably utilised or safeguarded.

13.4 The enquiries made by the Committee have revealed a catalogue of errors that show the governance of the grant was not at an appropriate level to ensure that taxpayer's money was being appropriately disbursed. The evidence submitted and established by the Committee points clearly to this:

- i) **There was no reference within the Financial Report and Accounts 2011 to the initial grant being part of a multi-year grant.**
- ii) **The Ministerial Decision confirming the grant was signed only after the first tranche of the grant (£50,000) had been paid.**
- iii) **The grant had been paid to a different company from that stated in the Ministerial Decision.**
- iv) **The contract between EDD and Canbedone Productions Ltd was not signed until some three months after the first payment was made to the company.**
- v) **The first payment was made to Canbedone Productions Limited without regard for confirmation of the funding milestones as required in the contract.**
- vi) **The second tranche of the grant (£75,000) was made without regard for confirmation of other funding for the film.**
- vii) **The contract was poorly written and executed and left the Jersey taxpayer exposed to undue risk.**
- viii) **The requirements of Ministerial Decision MD-E-2011-0104 were not properly reflected in the contract between the Economic Development Department and**

Canbedone Productions Ltd, notably a stipulation that the grant monies were to be expended in Jersey.

- ix) The Economic Development did not maintain inspection of Canbedone Productions financial records prior to the Public Accounts Committee hearing and this poor financial governance left the Department exposed.
- x) There is no clear indication as to whether monies have been expended in Jersey as per the Ministerial Decision MD-E-2011-0104.
- xi) There is no evidence of anything having been done by the Department in response to concerns raised by persons familiar with the film industry about the bona fides of the project, although the Department accepted that such concerns had emerged.
- xii) The production of 'Knights of Impossingworth' is a high risk project.
- xiii) Due diligence on the key figures was not undertaken
- xiv) The due diligence into the company was materially insufficient.
- xv) The due diligence undertaken by Tesco Stores Ltd was for a different purpose within the film production however, was used as part of the Economic Development Departments decision to go ahead.
- xvi) The due diligence undertaken by BDO was not for a grant of £200,00 to be provided to Canbedone Productions Ltd.
- xvii) No 'Know Your Client' process was undertaken by the Economic Development Department.
- xviii) Financial Directions do not require full due diligence to be undertaken when dealing with grants.
- xix) The dates of the relevant documentation and the fact that key but basic financial information was obtained from the company by the Department only after the Committee had requested it indicates clear non-compliance with Financial Direction 5.4
- xx) The grant was not paid from budgeted funds but from a windfall surplus from funds, including TV licence fees, paid by Jersey residents.
- xxi) There is a claw back clause within the contract but there are concerns as to its enforceability in practice against the recipient company (which is a UK company).

13.5 Bringing this back to the terms of reference the Committee set out to fulfil,

1. To establish the levels of governance that has been applied to grants and subsidies provided to Canbedone Productions Ltd to ensure that the public funds have been applied for the purpose intended by the States.

- 13.6 The quality of governance undertaken in this case is completely unacceptable, particularly as it involved a large amount of money in a high risk project.
- 13.7 Have the public funds been applied for the purposes intended by the States? Perhaps only time will reveal the answer to that. The Committee will be asking this question in a broader sense in its review into Grants.
- 13.8 The next term of reference:
2. To consider the safeguards attached to provision of grants of public money to Canbedone Productions Ltd.
- 13.9 The 21 key findings contained in this report show categorically that the safeguards attached to the provision of this grant were insufficient, incomplete and deficient. Serious consideration has to be given to the failure to act in accordance with Financial Direction 5.4 (now 5.5) which is governed by the Public Finances (Jersey) 2005 Law and established, we assume, to ensure good governance across all departments in the management of public monies.
- 13.10 The corporate governance shortcomings identified created an unsafe decision making platform from which to approve this grant. The third term of reference for the Committee was:
3. To establish if the public funds provided to Canbedone Productions Ltd represent value for money.
- 13.11 This review has raised issues about the transparency and accountability of the Economic Development Department discretionary funds. Some areas, such as the use of money returned from Ofcom, through the Treasury, has troubled the Committee and this will be looked at within the review into grants generally that is currently being undertaken by the Committee.
- 13.12 It remains arguable whether or not the film will ever be made. The delays to date are hardly a good omen. The extent of any Jersey element remains uncertain. It might, though, still happen and if it did the Committee hopes that it would be successful and

advantageous for the Island's economy. We are also clear that if nothing has happened by the end of the summer (30<sup>th</sup> September) the public interest requires clawback of the taxpayers' funds paid to Canbedone Productions for diversion to more productive use in the Island's interest.

## 14. COMMITTEE MEMBERSHIP

The current membership of the Public Accounts Committee (as at the date of the presentation of this report) comprises:

### **States Members**

Deputy Tracey Vallois (Chairman)

Senator Sarah Ferguson

Deputy Richard Rondel (Lead Member)

Deputy Gerard Baudains

### **Independent Members**

Ian Ridgway

John Mills CBE.

*Officer Support: Mick Robbins*

## 15. THE ROLE OF THE PUBLIC ACCOUNTS COMMITTEE

The primary function of the Public Accounts Committee is defined in Standing Orders<sup>33</sup> to review reports by the Comptroller and Auditor General and to report to the States upon any significant issues arising from those reports regarding :-

- The audit of the Annual Accounts of the States of Jersey
- Investigations into the economy, efficiency and effectiveness achieved in the use of resources by the States, States funded bodies, independently audited States bodies (apart from those that are companies owned and controlled by the States), and States aided independent bodies
- The adequacy of corporate governance arrangements within the States, States funded bodies, independently audited States bodies, and States aided independent bodies,
- and to assess whether public funds have been applied for the purpose intended and whether extravagance and waste are being eradicated and sound financial practices applied throughout the administration of the States.

The Public Accounts Committee may also examine issues, other than those arising from the reports of the Comptroller and Auditor General.

The Public Accounts Committee represents a specialised area of scrutiny. Scrutiny examines policy whereas the Public Accounts Committee examines the use of States' resources in the furtherance of those policies. Consequently initial enquiries are made of Chief Officers rather than Ministers.

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<sup>33</sup> Standing Orders of the States of Jersey 1<sup>st</sup> January 2006, No. 132.

## APPENDIX1 – Ministerial Decision.

### Grant: Filming of a Jersey based movie

A decision made 19 August 2011 regarding:

Decision Reference: MD-E-2011-0104

Decision Summary Title (File Name):	Approval of funds to assist with the filming of a movie in Jersey.	Date of Decision Summary:	15 July 2011
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Decision Summary Author:	Assistant Director	Decision Summary:	Public
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Type of Report:	Written	Public or Exempt?	
		Person Giving	n/a

Oral or Written?		Oral Report:	
Written Report Title (File Name):	Approval of funds to assist with the filming of a movie in Jersey.	Date of Written Report:	15 July 2011

Written Report Author:	Assistant Director	Written Report :	Public
		Public or Exempt?	

Subject: Approval of funds to assist with the filming of a movie in Jersey.

Decision(s): The Minister approved the grant of £200,000 to be used to assist in the filming of a Jersey based movie.

Reason(s) for Decision:

The tourism industry in Jersey is under a significant threat arising from the ongoing economic climate in the main source market the UK. The filming of a movie in Jersey will help both the Tourism Industry and aid diversification in helping this fledgling industry in Jersey.

Resource Implications:

£200,000 from the EDD budget.

Action required:

The Assistant Director to prepare a contract with Canbedone Ltd (Jersey) which stipulates that the EDD funds will be used on Island.

Signature:	Position:
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Senator AJ Maclean

Minister for Economic Development

Date Signed: \_\_\_\_\_ Date of Decision (If different from Date Signed): \_\_\_\_\_

EDD support for the filming of Knights of Impossingworth in Jersey

### Introduction

Canbedone Ltd (Jersey) (Canbedone) will film a movie called Knights of Impossingworth in Jersey in autumn 2011. The movie is written and directed by Keith Cavele and will star, subject to contract, Bill Nighy and Malcolm McDowell. It is being part funded by Tesco who also plan to distribute the DVD and the computer game throughout their retail network.

### Details

1. In October 2010 Keith Cavele and his production team approached EDD to secure request funding to film part of the Knights of Impossingworth in Jersey.
2. Jersey is considered a perfect location for shooting some of the scenes due to its historical forts and fortifications and beach and country scenery.
3. EDD put Keith and his team in touch with many local contacts including Education, Sport & Culture and Jersey Heritage Trust and there was considerable support for the concept, so much in fact that Keith decided to move more of the production to Jersey
4. EDD is not in a position to grant the total amount requested by Canbedone but the department will provide a grant of £200,000 to help with on- island production costs. It being acknowledged that bringing the film to Jersey increased considerable the total cost of production.
5. The attached documents go into greater detail on the production costs and programme but the movie is expected to cost in the region of £12,000,000.
6. Canbedone expect to shoot 59 days in total of which 23 will be filmed in Jersey. There will also be an additional 14 days pre production on the Island.
7. Parts of the movie will be filmed in China and there is a Chinese connection both in the story line and in the funding of the movie.
8. A [Knights of Impossingworth] computer game is also being produced in China, and there is a possibility of a stage show based on the movie. If

successful sequels to the first movie are planned and the crew would return to Jersey to film.

9. It is anticipated that Impresario Bill Kenwright will produce a stage version of Knights.

#### Action Plan

1. EDD will work closely with Canbedone to ensure that Jersey obtains maximum benefit and coverage from this movie.

#### Conclusion

EDD will make a grant of £200,000 to Canbedone. EDD and ESC will work with the Director and Producer to ensure that Jersey provides the appropriate level of assistance and also uses the opportunity to help develop a media industry. Working with Jersey Tourism we will also use the movie as a way of promoting Jersey as a destination.

#### Assistant Director

Liberation Place, 11 August 2011

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## APPENDIX 2 - Invoice for First Payment.

DOR 1-108  
- urgent payment  
for this week's  
run.

CANBEDONE LTD. JERSEY.

La Tour, La Rue Du Crocquet, St. Aubin, Jersey JE3 8BZ, Channel Islands.

Re: £200,000 grant from The Office of Economic Development, St. Helier, Jersey,  
to assist with and facilitate the preparation and filming, in Jersey, of the motion  
picture, "Knights of Impossingworth.

INVOICE August 1<sup>st</sup> 2011

First payment.....£ 50,000

TOTAL.....£ 50,000

EDD	ORDER NO: H6195
RECEIPTED..... <i>[Signature]</i>	DATE 11.8.11

24/8/11  
26/8/11

# APPENDIX 3 – Invoice for Second Payment

D.O.R

1-035



<p><b>Canbedone Productions Limited,</b> Farmhouse, Weald, Bampton, Oxfordshire. OX19 2HW</p> <p>Company No: 5213572 Email: canbedoneproductions@gmail.com</p>	<p><b>Invoice</b></p> <p>Invoice #002 Date: 1 January, 2012</p>
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<p><b>To:</b></p> <p><b>Economic Development Department,</b> Jubilee Wharf, Esplanade, St Helier, Jersey. JE1 1BB</p>	<p><b>For:</b></p> <p>"Knights of Impossingworth"</p>
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Description	Amount
2nd Stage Grant Payment (as per contract dated 24 November 2011.)	£75,000.00
<b>Total</b>	<b>£75,000.00</b>

EDD	
	ORDER NO: 47168
RECEIVED.....	DATE 4/1/12