



States Greffe: Scrutiny

Deputy Susie Pinel
Minister for Treasury and Resources
By email

4th February 2022

Dear Minister

Economic and International Affairs Scrutiny Panel

Memoranda of Understanding - States-owned entities and Arm's Length Organisations

Thank you for your letter of the 21st January with the various attachments.

First, I thank you and your officers for providing the recent briefing and which, from the Panel's perspective, was essentially as regards Ports of Jersey Limited (PoJ). I would therefore be grateful if you could read the following comments in that light though some of them may well apply to other States Owned Entities (SOEs).

1. I note from the email of 26 February 2021 from Steven Robinson to Peter Longstaffe that the Memorandum of Understanding (MoU) approval process might be achieved by Ministerial Decision. However, the Panel did at the briefing refer to Article 5.1 of the present Agreement which, for ease of reference, I set out below;

"This MoU applies from 1st October 2015 until it is superseded or agreed between the parties that it is no longer valid. This MoU may be modified from time to time by agreement between the parties and presented to the States Assembly prior to any agreed changes coming into effect."

I consider this clause is consistent with what happened at the time of incorporation when, as I recall, the draft MoU was made available to States Members and, following on from this, I respectfully submit that any new one should similarly be made available for approval. I assure you that the Panel have no wish to delay the process unnecessarily but, having regard to the above, I would be grateful if you would kindly confirm that any revised version will be put before the Assembly.

2. As indicated at the outset, I make these comments principally in relation to PoJ but, in the interests of transparency, I presume you might wish to adopt a similar process in relation to the other MoUs.
3. At our briefing (and also at the Panel's previous meeting with representatives of PoJ), the Panel drew your attention to Article 13.2 of the present version which provides that

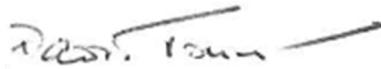
“In particular, the Board will not sell any land previously owned by the Public of the Island unless the Minister gives his or her consent. Valid consent cannot be given by the Minister unless the proposal for the sale has been laid before the States Assembly for 15 days, and either no objection has been made to the sale, or the States have approved the sale notwithstanding any objection.”

This particular clause has not been replicated in the new version and, whilst the Panel takes the point that such a sale might be deemed to be sale of a material part of its assets (and thus ‘caught’ by that particular clause), it must be recognised that, unlike Andium Homes or the States of Jersey Development Company (SoJDC), property is not its main function. As such, we request that this clause be reinstated in the new version.

4. We note the comments made as to the lack of application of Standing Order 168 to sales of property by an SOE. The Panel does not disagree and it is for that reason, and to ensure that States Members are fully informed, that we consider the clause referred to in the preceding paragraph need to be retained.
5. The Panel notes your comments as to the definition of “Policy Leads”. The basic point from the Scrutiny perspective is Ministerial Accountability and the concern is that, if certain aspects are effectively delegated to a civil servant, that thread of accountability is broken. Unfortunately, we have encountered instances where Ministers have appeared not to have been fully aware of conclusions reached by their officers and it is for this reason (of political accountability) that we consider this term should be limited to Ministers.
6. We thank you in particular for the PWC Review of Shareholder Governance. Whilst we note that it was based on information only up to 31st January 2019 and that its scope covered Jersey Telecom and Jersey Post only, it is accepted that some of its recommendations might equally apply to PoJ and other SOE’s. We are in the course of reviewing those recommendations in that light and hope to revert to you shortly.

We hope that the above initial comments are of assistance and, as mentioned above, hope to revert to you shortly as to other matters.

Yours sincerely



Deputy David Johnson
Chair
Economic and International Affairs Scrutiny Panel