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Deputy D Johnson
Chair
Economic and International Affairs Scrutiny Panel

Via Email

18 February 2022

Dear Deputy,

Memorandum of Understanding (MOU) – States Owned Entities (SOE)

Thank you for your further correspondence of 4 February on this subject, I am responding in the absence of the Minister who is currently on leave. I have given consideration to the points made in your letter and, whilst I am satisfied with the content of the current version of the MoUs, I have decided to accommodate, where I consider it appropriate and proportional, the Panel's comments.

I would therefore advise as follows, using the numbering contained within your letter for ease of reference:-

1. Clause 5.1 of the current Ports of Jersey (PoJ) MoU states in part "*This MoU may be modified from time to time by agreement between the parties and presented to the Assembly prior to any agreed changes coming into effect*".

Therefore, in the spirit of the existing MoU and the Panel's comments, I will be presenting a Report to the Assembly with the new PoJ MoU as an Appendix.

2. Whilst it is apparent from the advice from the Law Officers' Department that the MoUs can be implemented by a Ministerial Decision, I am proposing that all the MoUs of the other SOEs will similarly be published as part of the same Report referred to above.
3. For all the reasons that were explained at the briefing and in my previous correspondence, I believe there are already sufficient safeguards and mitigating factors around the potential sale of a piece of "*land previously owned by the Public of the Island*". However, there is precedent with the States of Jersey Development Company, through P.73/2010, whereby land transactions that receive Ministerial approval are laid before the Assembly for 15 days before that approval becomes effective.

Accordingly, I am proposing that a similar provision be included in the MoU of PoJ only, whereby if the PoJ Board propose a Material land sale that is not included in a previously approved Strategic Business Plan, the Ministerial decision to approve the sale will be laid before the Assembly for 15 days from the signing of the decision.

4. I am confident that this proposal provides the Panel with additional comfort and will ensure that States Members are indeed fully informed. I would add that the recently presented Strategic Business Plan for PoJ covering 2022 to 2026 does not propose any asset sales.
5. I would re-emphasise the points I have made previously, that “Policy Leads” are only relevant to the formulation of a Strategic Business Plan and in agreeing future KPIs based on that Plan. These Plans need Ministerial approval, in conjunction with the endorsement of any Policy Leads, the identity of which is agreed between the SOE and the Shareholder from time to time. This latter measure is an important mitigating factor to the risk the Panel articulates around the thread of accountability.

Nevertheless, I am prepared to concede this point and “Policy Leads” will simply be defined as Ministers of the States of Jersey.

6. I note that the Panel will be reviewing further the PwC January 2019 report and its recommendations. I would observe that, following the publication of the report, PwC themselves drafted and provided the first form of a new MoU taking into account their own recommendations. Following extensive dialogue with the SOEs and other stakeholders, which resulted in relatively minor changes to the original draft, PwC were satisfied that the final version of the MoUs provided to your Panel address not only their own findings but also those that the Comptroller & Auditor General made in previous reports.

I trust this provides the further assurance the Panel desires. I will need to engage again with the SOEs to advise them of these changes to their MoUs, before they can be re-approved by their Boards. Only after that will I be able to present my Report to the Assembly.

Yours sincerely



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