

STATES OF JERSEY



ANDIUM HOMES LIMITED: ARTICLES OF ASSOCIATION (P.11/2024): COMMENTS

Presented to the States on 10th April 2024
by the Corporate Services Scrutiny Panel

STATES GREFFE

COMMENTS

Introduction

1. The proposition *Andium Homes Limited: Articles of Association- [P.11/2024]* - (hereafter the ‘Articles of Association’) proposes the new Articles of Association for approval by the States Assembly for Andium Homes Limited, a States Owned Entity (SOE).
2. The proposition was lodged on 26th February 2024 for earliest debate by the States Assembly (hereafter the ‘Assembly’) on 16th April 2024.
3. The new Articles of Association are part of the former Minister for Treasury and Resources’ 2023 Ministerial Plan, specifically priority number 13, which involves developing governance arrangements for arm’s length bodies, including SOEs. Following the adoption of a new Memoranda of Understanding with the wholly owned SOEs in May 2022, a project was initiated to review, draft, and agree on new articles of association for these entities.
4. The objectives of this project were to:
 - a. Review the existing Articles in light of recent amendments to the Companies (Jersey) Law 1991, as some of the existing SOE Articles date back to 2004, and relevant reports and recommendations of the Comptroller and Auditor General.
 - b. Include modern corporate governance arrangements and provisions, such as notice periods of meetings, company seals, provision for electronic communications, and virtual meetings.
 - c. Bring consistency between the SOEs in terms of matters such as the appointment of directors and officers.
 - d. Provide a measure of flexibility in relation to terms of office of directors to assist with effective Board succession planning.
5. The project involved extensive engagement with the SOE Boards and the former Minister for Housing and Communities was consulted throughout this process, as required by Article 90 of the existing Andium Articles of Association.

Background

6. The Assembly adopted [P.33/2013](#) on 16th May 2013, which approved the reform of social housing, leading to the creation of a new housing company, wholly owned by the States of Jersey.
7. It was agreed that the States of Jersey, acting through the Minister for Treasury and Resources, would be the sole member and guarantor of this company. The

role of the member was outlined in the draft Articles of Association for the Housing Company and within the proposed Transfer Agreement.

8. In 2014, the Assembly approved the Memorandum and Articles of Association of Andium Homes Limited. The Articles of Association, which are the written rules about running the company agreed by the shareholders or guarantors, directors, and the company secretary, contain requirements around the appointment and resignation of directors, proceedings of the directors, and meeting provisions. These requirements are in addition to the legislative requirements of the Companies (Jersey) Law 1991, as amended, and other legislation.

Scrutiny of the Proposals

9. The Corporate Services Scrutiny Panel that served from 2022 to January 2024 (hereafter the “former Panel”), was briefed on the Articles of Association for SOEs on 20th February 2023.
10. Subsequently, the current Corporate Services Scrutiny Panel (hereafter “the Panel”) received a briefing on the Articles of Association on 2nd April 2024.
11. Both Panels raised a number of queries to the Minister for Treasury and Resources in scrutiny of the proposals.

Article 11

12. The former Panel questioned Clause 11 and learnt that it was a standard provision that ensured the validity of decisions made by the directors. This clause was designed to prevent challenges to these decisions in the future, for instance, if it is later demonstrated that a director or decision maker was invalidly appointed. This provision provides certainty to anyone or any business transacting with Andium, as it ensures that decisions cannot be unpicked in the future due to an issue over appointments. Therefore, they can rely on the decisions of the Andium Board.

Article 14

13. The Panel enquired about the rules regarding Boards being quorate, to which it was clarified that there is no prescribed minimum in law. The Panel was referred to Article 14.2, stating that directors will decide on their own rules, which will not be less than two members present. However, if they do not set their own rules, it will default to five.

Article 15

14. The former Panel understood that Andium would not be able to give pay increases without undergoing the necessary approval process. The new Articles of Association needed to be read in conjunction with the updated Memorandum of Understanding (MoU). Specifically, paragraphs 15.1 and 15.2 of Schedule 2 stated that changes to either the structure or quantum of remuneration paid to Executive Directors for their executive responsibilities in the business,

including those relating to bonus payments, were to be approved by the Guarantor in advance of them taking effect.

15. The former Panel also learnt that any changes to the level of remuneration paid to Non-Executive Directors must be agreed, in advance, by the Guarantor. Newly appointed Non-Executive Directors would have the terms of their appointment approved, if appropriate, in accordance with normal practice at the annual general meeting subsequent to their appointment or in accordance with any other process specifically set out in applicable legislation.
16. The former Panel noted that it was clear that increases in both Executive and Non-Executive Director remuneration had to be approved by the Guarantor. The process was learnt, therefore, that the Andium Remuneration Committee Chair was required to formally request Guarantor approval for any increases.

Article 18

17. The Panel observed that Article 18.1 (g) under the general heading of directors' interests provides that a director shall not be liable to account to the Company for any profit or gain etc arising from a contract in which they have an interest, provided that they have declared the extent of such interest under 18.2. The Panel questioned the absence of a counter measure that would hold a director liable if they had not declared such interest, but assumed that this would be the case under the general law.
18. In response, the Panel was informed that the Articles of Association provide the framework within which the Board operates and that it is important to ensure shareholders are comfortable with this framework. It was added that while a director would be unwise not to declare an interest, the decision ultimately lies with them. It was clarified that under the UK Corporate Governance Code, it is a personal liability on the director's behalf and advised that the Code in the UK is more detailed than in Jersey.

Article 19

19. Upon questioning Clause 19, related to directors' remuneration and expenses, the former Panel learnt that the Company may pay the directors such remuneration for their services as the directors may resolve, subject to any rates or limits fixed by the Company by Ordinary Resolution.
20. The former Panel also learnt that Andium is a company limited by guarantee which means it has the States of Jersey as Guarantor which is similar to that of being a shareholder. The States of Jersey as Guarantor passes Ordinary Resolutions, so there was no need for further ratification.
21. The former Panel further discovered that since there is only one Guarantor, the States of Jersey can pass an Ordinary Resolution at any time to fetter the remuneration paid to directors.
22. The former Panel noted that the updated Articles of Association refer to 'Directors' whereas the 2014 version referred to 'Non-Executive Directors'. The 2014 Articles had separate remuneration provisions relating to the Chief

Executive and the Finance Director, together with the Executive Directors. These new Articles of Association do not have separate paragraphs for the Executives and are therefore included together with Non-Executive Directors in the new Article 19.1.

23. The former Panel also noted that Article 19.2 (b) appears in the updated version, however, does not appear in the 2014 version of the Articles. The 2014 version at Article 87(ii) referred to remuneration as including “pensions, contributory pension payments, payment of premiums to pension policies and terminal grants and gratuities”, which was quite restrictive. The new Articles of Association provide that the remuneration can include the provisions of Article 19.2(b).
24. The Panel identified that the provisions included matters related to the appointment and removal of directors, and notably, their remuneration which required approval by the Guarantor. The Panel found this particularly relevant because Article 19 stipulates that the Company may pay such remuneration “as the Directors may resolve”. Without what could be interpreted as the overriding provision in the MoU, the Panel questioned whether this particular Article would need to be modified. In response, the Panel learnt that the MoU would be necessary in this instance to balance the interests of all parties involved.
25. Further, the Panel questioned if this would include bonus payments. It was confirmed to the Panel that it did and that the wording of the MoU is quite clear on its structure and quantum. Therefore, if there was a significant change, specific consent would be needed. It was added that remuneration would not be provided for merely fulfilling one’s job responsibilities.

Additional Queries

26. The Panel inquired about the MoUs and their role in setting the operating framework. It was explained that the MoU outlines several aspects, including how it should be framed, and that Andium would consult with the Minister for Housing and discuss policy before producing a strategic business plan that aligns with Government policy.
27. The Panel asked about the review and update process of the MoUs. It was indicated that it was an ongoing piece of work, requiring a comprehensive review or update process which is currently underway.

Panels Observations

28. Upon review of the presentation received by the former Panel in February 2023, the Panel learnt that the Articles of Association are understood to be the ‘internal rules’ of the company and seem to be based on a standard format used by local lawyers. The Panel identified that there are certain aspects it would typically expect greater clarity. However, the Panel accepts and recognises that in a case such as this, where the shareholder/Guarantor is the States of Jersey, it is appropriate to address those aspects through the Memorandum of Understanding rather than the Articles of Association.

29. The Panel also considered the current MoU which was among those approved by the Assembly in April 2022. Broadly speaking, it outlines matters such as the Company's objectives, key performance indicators, obligations to perform and consult, Strategic Business Plan, obligations for approval, and the procedure for such approval. The Panel has recognised it will be its responsibility to ensure it is suitably informed of ongoing progress.
30. The Panel observed that among the documents forwarded to it was the SOE MoU and Articles of Association timeline demonstrating the scrutiny undertaken to date. The Panel understood that this referred to previous action by the Economic and International Affairs Scrutiny Panel, which was mainly concerned with the MoU relating to Ports of Jersey (PoJ). The Panel questioned the extent of scrutiny of each of the other individual MoUs, as it had seen reference to the terms of such MoUs being revisited every three years. With two years having already elapsed since approval of the current ones, the Panel intends to stay abreast of this area.
31. In response, the Panel identified that the review and update process of the MoUs was an ongoing piece of work, requiring a comprehensive review or update process which was currently underway. The Panel expressed its satisfaction with the regularity of these reviews, indicating the importance of consistent updates to these governance documents. It was clarified that in the past MoUs did not undergo regular reviews.

Conclusion

32. The Panel is appreciative of the briefing received and for the timely clarification received from the Minister for Treasury and Resources and officials to its queries, which has provided further insight regarding the proposals.
33. Having examined P.11/2024, the Panel has concluded it is supportive of the proposition. Moreover, that the new Articles of Association will ensure that the governance arrangements and provisions for Andium can be modernised in line with other SOEs, where their Articles of Association have already been revised and approved by the Assembly.