

STATES OF JERSEY



THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED: NEW ARTICLES OF ASSOCIATION (P.26/2024): COMMENTS

**Presented to the States on 5th June 2024
by the Corporate Services Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

1. *The States of Jersey Development Company Limited: New Articles of Association - [P.26/2024](#)* (hereafter “the Proposition”) proposes the approval of new Articles of Association (hereafter “the new Articles”) for the States of Jersey Development Company Limited (hereafter “the SoJDC”), a States-Owned Entity (hereafter “a SOE”).
2. The new Articles align with the former Minister for Treasury and Resources’ 2023 [Ministerial Plan](#) (priority number 13) which focuses on developing governance arrangements for arm’s length bodies, including SOEs. This initiative follows the adoption of new Memoranda of Understanding (hereafter “the MoU”) with wholly owned SOEs in May 2022 and the project to review, draft and agree on new Articles of Association for the SOEs.
3. The objectives of this project included:
 - a. Reviewing existing Articles in light of recent amendments to the Companies (Jersey) Law 1991 and relevant recommendations of the Comptroller and Auditor General.
 - b. Incorporating modern corporate governance provisions, such as electronic communications, virtual meetings, and updated notice periods.
 - c. Standardising governance frameworks across SOEs, particularly in director appointments and office terms.
 - d. Providing flexibility for effective board succession planning.
4. The project involved extensive engagement with the SOE Boards and was endorsed by the Board of the SoJDC.

Background

5. In 2010, the States Assembly adopted *Property and Infrastructure Regeneration: The States of Jersey Development Company Limited - [P.73/2010](#)*, establishing the SoJDC as the successor to the Waterfront Enterprise Board Limited. This included approving revised Articles of Association for the SoJDC, which came into effect in June 2011 with the appointment of a new board of Non-Executive Directors.
6. Subsequent changes, brought by the States Assembly through the adoption of *States of Jersey Development Company: Amendments to the Board of Directors and Articles of Association - [P.70/2020](#)*, allowed the appointment of additional Non-Executive Directors to support succession planning and board diversity.
7. The Proposition follows the recent approval by the States Assembly of new Articles of Association for Andium Homes Limited ([P.11/2024](#)) (hereafter

“Andium”), reflecting substantive similarities tailored to their respective company structures.

Scrutiny of the Proposals

8. The Corporate Services Scrutiny Panel (hereafter “the Panel”) previously presented Comments on P.11/2024, which can be found [here](#). Having received a briefing at that time, a further briefing on the Proposition was not deemed necessary by the Panel.
9. The Panel compared the Articles of Association for Andium with the new Articles proposed for the SoJDC and also cross-referenced the new Articles with the provisions contained in the relevant MoU.

Panel's Observations

10. The Panel acknowledges the need for the consistency aimed for across the Articles of Association for all SOEs. However, given the different objectives of each SOE, it does raise concern as to whether the specific requirements and operational context of the SoJDC are being adequately addressed as a result.
11. The Panel notes that the accompanying report to P.11/2024 highlighted that the Articles of Association are not the ideal place for policy provisions, which should be positioned within the MoU.

“The Articles consequently are not the appropriate forum to include policy provisions which are better positioned in such forums as the Memorandum of Understanding, Ministerial policy plans and legislation.”¹

12. Therefore, it is the Panel’s view that this principle should also apply to the SoJDC to ensure clarity and proper governance.
13. The Proposition refers to the recently approved Articles of Association for Andium. The Panel considers that there is an important difference in that, by virtue of the fact that there was a Guarantor in the case of Andium, the new Articles for the SoJDC contain many provisions not found in those of Andium. However, rather than contest that in detail, the Panel suggests it is more important to focus on the fact that the new Articles are in a standard form where there is more than one beneficial owner and, with this not being the case in SoJDC, many of the provisions will simply be redundant whilst that situation continues. Perhaps of more relevance is the fact that, as identified above, matters of policy and financial operations will be subject to the obligations of the Minister for Treasury and Resources in accordance with the shareholder function of the role under the MoU.
14. Article 5 of the new Articles governs the appointment of Directors and the Chair, following the Jersey Appointments Commission recruitment process. However, Article 7.1 of the MoU states that Non-Executive Directors will be appointed by the States Assembly, suggesting a potential inconsistency. It is the

¹ [P.11/2024 – p. 3](#)

Panel's view that this inconsistency could lead to confusion and conflicts in governance practices.

15. Article 7 of the new Articles enables the Directors to appoint a suitable person to act as Chief Executive Officer, or to any other executive office of the company, "on such terms including remuneration as the Directors may resolve." Whilst there are specific provisions in the MoU regarding the remuneration of Directors (as explained in paragraph 16 below), there are no corresponding provisions as to remuneration of other officers. However, the Panel assumes that this aspect will be addressed within more general provisions such as business, budget plan and reporting requirements.
16. Article 19 of the new Articles addresses Directors' remuneration and expenses, providing these to be paid "as the Directors may resolve, subject to any rates or limits fixed by the Company by Ordinary Resolution". There are further controls vested in the Minister for Treasury and Resources under Article 16 of the MoU, providing as it does for the annual remuneration report of the Remuneration Committee to be voted on at the Annual General Meeting (AGM), and for terms of appointment of newly appointed Non-Executive Directors to be approved at the AGM.
17. Article 64 of the new Articles provides the Minister with the power to direct the Directors to take or refrain from certain actions, which the Directors shall be bound to comply with. Shown in the new Articles as follows:

64.1

If the Minister shall, in their discretion, be of the opinion that a matter of material public interest has arisen and that it is appropriate to do so, the Minister shall be entitled by notice in writing to give the Directors directions to refrain from doing a particular thing or to do a particular thing which the Directors have power to do and 30 the Directors shall be bound to comply with any such direction.²

64.2

Any such direction or other written instrument shall be validly executed on behalf of the Minister if recorded in accordance with ministerial procedures as a Ministerial Decision. Any such direction or other written instrument shall take effect upon delivery thereof to the Office of the Company.

It is the Panel's view that, although this provision appears unusual, its inclusion does highlight the fact that ultimate control of the company lies with the Minister for Treasury and Resources as opposed to the Directors. This may provide a level of assurance to the States Assembly.

18. The new Articles include several provisions related to the issuance, alteration, and repurchase of shares. Whilst accepting these are consistent with a standard set of Articles of Association and have not been 'tailored' to meet the particular situation here, the Panel considers it appropriate to draw attention to the following Articles:

² [P.26/2024 - Article 64.1](#)

- a. Article 22 grants the Directors the authority to allot, issue, grant options over, or otherwise dispose of unissued shares, including issuing shares with special rights or restrictions.
- b. Article 23 permits the company to alter its share capital by Special Resolution, detailing conditions for issuing new shares and treating them as part of the original capital.
- c. Article 24 allows the company to issue redeemable shares and repurchase shares of any class, including by purchasing depositary certificates.

Looking at these Articles in isolation, it would be possible under Article 22 for the Directors to allot unissued shares (thereby diluting the interests of the States to another party) without the consent of the States as shareholder. This contrasts with the situation covered by Articles 23 and 24 where action would need to be taken by special resolution (i.e. decision of the States as shareholder). Whilst the Panel acknowledges that no such allotment of shares might be in contemplation, it considered it appropriate to raise the matter so that either this particular Article might be amended further or that the Minister might satisfy herself that the MoU (as currently drafted) protects the position of the States.

19. While the new Articles are substantively similar to those of Andium (subject to differences occasioned by that company having a Guarantor), it is the Panel's view that the distinct nature of the SoJDC's operations might have been better reflected by the inclusion of specific provisions not found in those of Andium and that a one-size-fits-all approach may not have been the most appropriate course given the different operational environments and strategic objectives of these entities.
20. The Panel also wishes to highlight that it is the MoU, rather than the Articles, which has a more significant role in the operation of the SoJDC and that, whilst it is the Minister for Treasury and Resources who has responsibility for the shareholder function of the company, the influence of Government through other relevant Ministers should also be acknowledged. An example of this is *Policy R7: Housing Products Offered by States of Jersey Development Company* in the Minister for Housing's *Right-sizing Policy* [R.85/2024], which encourages the SoJDC to develop suitable right-sizing support packages and assisted home ownership products for first-time buyers and makes reference to expectations of the SoJDC. Policy 7 explains the following:

*“The Minister for Housing will encourage and support the development of suitable right-sizing support packages on SoJDC's future housing developments, in addition to the provision of assisted home ownership products that are aimed towards first-time buyers.”*³

*“SoJDC will also be expected to consider a right-sizing offer in the progression of new plans for housing at the waterfront.”*⁴

³ [Right-sizing Policy \[R.85/2024\] - p.17](#)

⁴ [Right-sizing Policy \[R.85/2024\] - p.17](#)

21. This example highlights the broader influence of Government on the SoJDC's operations beyond the new Articles and, therefore, it will be important to keep the MoU under review so as to recognise such influences.

Conclusion

22. The Panel appreciates the collaborative efforts in drafting the new Articles for the SoJDC and recognises the intent and importance to modernise governance frameworks across the SOEs.
23. The Panel acknowledges that the new Articles are in a standard format and, in practical terms, many of the provisions (catering for a situation where there are various shareholders) are effectively redundant. Notwithstanding this, it is not the view of the Panel that this requires the new Articles to be amended, given that the MoU in place would effectively override some of the provisions. Therefore, the Panel does not believe that the new Articles are inappropriate.
24. Nevertheless, the Panel does wish to raise awareness to the States Assembly of its observations and concerns, as explained within its Comments.
25. Considering the Panel's concerns and given the importance of maintaining transparency and accountability in the governance of the SoJDC, the Panel also requests the Minister for Treasury and Resources to reflect on these and provide, ahead of the States Assembly debate on the Proposition, further clarity to the Panel and States Assembly to address the concerns raised, in particular, the following key areas:

Articles 22, 23 & 24

- a. The specific circumstances under which shares are issued.
- b. How these actions would be managed to ensure they align with the strategic objectives and public interest.
- c. Any potential impacts on the governance and operational autonomy of the SoJDC as a result of these provisions.

Article 64

- a. The provision to provide the Minister with the power to direct the Directors to take or refrain from certain actions and the impact thereof.
26. Subject to the Panel receiving appropriate clarification in relation to its observations and concerns, thereby providing the necessary assurance that the governance framework for the SoJDC is both robust and tailored to its specific operational requirements, the Panel would be supportive, in the main, of the Proposition. However, the Panel wishes to emphasise its view that any future scrutiny of the operations of the SoJDC would be required through consideration of the MoU rather than the company's Articles of Association.