

# **STATES OF JERSEY**



## **WATERFRONT ENTERPRISE BOARD: REVISED MEMORANDUM AND ARTICLES OF ASSOCIATION**

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**Lodged au Greffe on 27th January 2009  
by the Council of Ministers**

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**STATES GREFFE**

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

to refer to their Act dated 12th December 1995 in which they approved the establishment of the Waterfront Enterprise Board Limited (WEB) as a separate legal entity and approved the Memorandum and Articles of Association of the Company, and –

- (a) to agree that the Memorandum and Articles of Association of the company should be revised in accordance with the recommendations of the Comptroller and Auditor General in his Report, “Waterfront Enterprise Board Limited: Review of Corporate Governance” dated 24th November 2008 and to approve the revised Memorandum and Articles of Association of the Company as set out in Annex 2 to the Report of the Council of Ministers dated 27th January 2009;
- (b) to approve the proposed role of the Minister for Treasury and Resources as laid out under the heading “Role of the Minister for Treasury and Resources” in Section 3 of the said Report.

**COUNCIL OF MINISTERS**

## REPORT

### 1. Introduction

This Report and Proposition is presented to States Members solely to ensure that the Board of Directors of the Waterfront Enterprise Board (WEB) is able to continue to be operationally viable when the current States Directors of the Board come to the end of their terms of office in the near future. The changes to the membership of the WEB Board of Directors proposed herewith address and implement the recommendations of the Comptroller and Auditor General (CAG) in the Review of Corporate Governance of the Waterfront Enterprise Board (WEB).<sup>[1][1]</sup>

Further work and research is currently being undertaken in developing proposals for directing the planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey. These proposals will take on board the comments of the Corporate Services Scrutiny Panel published in its report on 12th June 2008<sup>[2][2]</sup> and will be further shared with the Scrutiny process before being presented to the Assembly in the early part of 2009. These revised proposals will also reflect issues outlined in the Island Plan and will be cognisant of, and complement, the recommendations outlined in the attached Report and Proposition.

### 2. The need to maintain the WEB's Board of Directors

Members are asked to note that the term of office of the current States Directors on the WEB Board of Directors is due to expire on 31st March 2009. In order to maintain the operational viability of WEB's Board of Directors post-March 2009 there is a need to address the issue of membership of the Board in early course. The Council of Ministers is of the view that this should be done in the context of the CAG's recent review of the corporate governance of WEB referred to above.

The purpose of this Proposition is therefore a 'tidying-up' exercise enabling the Board of Directors of WEB to continue to operate and function.

### 3. Ministerial commitment

The Council of Ministers recognise that the amendment to the Articles of Association is important in order that the day-to-day business of WEB can continue and that States' assets under its control be properly administered while further thought is given to the long-term, and the structures for a new property development company are finalised.

Members have accepted the need to have an agency outside the States to be responsible for the land, shore and areas within the control of WEB so that –

- (a) the property can be developed efficiently and effectively, and;
- (b) commercial private sector operators who are needed for the purpose of such development have the confidence that they are dealing with an apolitical body.

At the same time, Members have had concerns about the need to ensure there is appropriate political accountability for the activities of WEB and that WEB has an awareness of the political will which ought to, and does, govern the development and use of these areas which are so significant for the Island.

The structures which are put in place must provide a practical basis on which persons outside the States will be prepared to work as non-Executive Directors of WEB.

Reconciling these objectives is not easy, but the Council of Ministers recommends that the new draft Articles of Association attached be approved as part of the solution. They provide the mechanism for the internal workings of the company.

In parallel with the new Articles, the Council of Ministers recognises that it is appropriate to have some political commitments for the Minister for Treasury and Resources, who would be politically accountable for WEB under the proposed arrangements. In order to promote accountability,

transparency and awareness these commitments are as follows:

#### Role of the Minister for Treasury and Resources

- (1) To bring relevant States' decisions to the attention of the WEB Directors.
- (2) To agree the key elements of the WEB Business Plan (including consolidated accounts, whilst observing commercial confidentiality) and ensure that they are reflected within the Treasury and Resources Business Plan.
- (3) To keep under review the actions of WEB and, where necessary, ensure that they are in accordance with States' policies and decisions.
- (4) To keep abreast of the latest developments at WEB, ensuring that the Minister is able to respond in an informed manner to questions by States Members.
- (5) To publish Ministerial Decisions relating to property transactions, or in the event of the issuing of a Direction pursuant to Article 22, or in relation to any other matters on which it is necessary to for the Minister to take decisions.

#### **4. Review of Corporate Governance – Comptroller and Auditor General**

Members will recall that, following debate by the States on the Esplanade Quarter in July 2008, the Comptroller and Auditor General was requested to review the Corporate Governance of the Waterfront Enterprise Board (WEB).

The aim of the review was to examine how the Board reached its decisions concerning the proposed development of the Esplanade Quarter. The CAG wanted to establish whether the proper rules of corporate governance had been established and applied by WEB in this instance. He also wanted to ascertain whether the Board had the required arrangements in place to recognize any potential conflicts of interest. The final aspect of the review was to ensure that the Board had gathered all commercial evidence and advice that was available to them and that their decisions had been based upon this.

The CAG examined WEB's records, met with all members (past and present) of the Board, and also with the senior officers of WEB. He also consulted with any other individuals whom he considered to have the required knowledge and access to relevant information.

The Comptroller and Auditor General completed his review which was published on 24th November 2008 and this is attached as Annex 1 to this Report for Members' consideration.

#### **5. Summary of Findings:**

In summary, the Comptroller has made the following findings and recommendations –

- ● WEB is in compliance with normal corporate governance practice;
- ● that WEB should recruit a professional company secretary;
- ● that WEB should be accountable to a single Minister;
- ● that –
  - (1) the position of States Director currently enshrined in WEB's Memorandum of Association should be discontinued,
  - (2) States members should not ordinarily be members of WEB's Board unless they serve as representatives of the Sponsoring Minister;
- ● that accountability arrangements should at least include the following –

- (1) the Sponsoring Minister should be accountable to the States for oversight of WEB's activities,
  - (2) where appropriate, the Sponsoring Minister's decisions in respect of WEB (for example, approving proposed transactions) should be recorded in the form of Ministerial Decisions. Decisions would therefore be in the public domain so that States Members would be able to subject them to such scrutiny as they think appropriate,
  - (3) the Sponsoring Minister should be responsible for laying WEB's annual report and accounts before the States formally when received. Members of the States would therefore be notified of the results of WEB's activities and thus have another opportunity to subject them to scrutiny;
- ● that WEB's Memorandum and Articles of Association should be reviewed and then revised thoroughly.

## **6. Council of Ministers' View**

At its meeting on 27th November 2008 the Council of Ministers fully endorsed the recommendations outlined above. It also agreed that WEB's Memorandum and Articles of Association should be revised accordingly and these are included as Annex 2 to this Report for Members' consideration.

Changes to WEB's current Memorandum and Articles of Association are shown in Annex 3 to this Report with tracked changes to aid the identification of the differences between the two sets of documents.

## **7. Recommendation:**

**Members are recommended to agree that the Memorandum and Articles of Association of the Waterfront Enterprise Board Limited should be revised, as laid out in Annex 2 to this Report, in accordance with the recommendations outlined in the Report of the Comptroller and Auditor General: "Waterfront Enterprise Board Limited: Review of Corporate Governance" dated 24th November 2009.**

**Members are also recommended to approve the role of the Minister for Treasury and Resources as laid out in Section 3 above.**

## **8. Financial and manpower implications**

The Waterfront Enterprise Board Limited is financially self-supporting. There will not therefore be any financial and manpower implications for the States arising directly from these proposals.

**COUNCIL OF MINISTERS  
27th January 2009**

**WATERFRONT ENTERPRISE BOARD LIMITED**

**REVIEW OF CORPORATE GOVERNANCE  
FINAL REPORT**

**24 NOVEMBER 2008**

## SECTION ONE ~ INTRODUCTION

1. On Monday 16 June 2008, I announced my intention of conducting a review of various matters which had come to public attention concerning Waterfront Enterprise Board Limited (WEB). In general, these matters relate to the decisions of WEB regarding development of what has come to be known as the Esplanade Quarter. The terms of reference for this review are as follows:

*“To investigate the circumstances surrounding the decisions made by the board of WEB concerning the proposed development to establish:*

- (1) Whether proper rules of corporate governance have been established and applied by WEB;*
- (2) In particular, whether proper arrangements were made by the board of WEB to identify potential conflicts of interest and ensure that Board decisions were not affected by them;*
- (3) Whether in all the circumstances, the decisions which were made by the Board of WEB in respect of the development were appropriately based on all of the commercial evidence and advice which the Board might reasonably have been expected to obtain and to take into account; and*
- (4) Any other issues that appear relevant to the matters set out in (1), (2) and (3) above”.*

2. On 30 June 2008, I published an interim report on the work that I had been able to do by that date: principally certain aspects of items (1) and (2) in the above terms of reference. I have now completed my review of corporate governance within WEB and the results of that work are set out in this report.
3. The review has consisted of an examination of records held by WEB itself, augmented by discussions with each of the members of WEB’s board (both past and current members) and with senior officers of WEB. I have also spoken to a number of others who appeared to have relevant information about the matters with which I have been concerned. A list of those people to whom I have spoken in the course of this review was set out in Appendix One to the interim report published on 30 June 2008.
4. In accordance with my normal practice, copies of a draft of this report were provided to the people who assisted me in this review of corporate governance so that they were able to alert me to any respects in which the report inadvertently distorted their recollection of events. I have sought to reflect their observations on matters of fact. I am grateful to all of those who have assisted in the conduct of the review and the preparation of this report.
5. A summary of my findings and recommendations is set out in Section Two of this report. My more detailed observations are set out in succeeding sections.

## SECTION TWO ~ SUMMARY OF FINDINGS AND RECOMMENDATIONS

### Corporate governance

#### *Finding*

6. The effect is that WEB is now in compliance with normal corporate governance practice.

#### *Recommendation*

7. I recommend that WEB should recruit a professional company secretary<sup>[3][3]</sup>.

### Accountability

8. I recommend that WEB should be accountable to a single Minister.
9. As it is evident that the existing position of States Director has placed those who have held this position in an irresolvable conflict of interest and has not served well the interests of the States because it has not provided a reliable means of protecting the States' interest in WEB, I recommend that:
- (1) the position of States Director currently enshrined in WEB's Memorandum of Association should be discontinued;
  - (2) States members should not ordinarily be members of WEB's board unless they serve as representatives of the Sponsoring Minister (for example, it may be thought appropriate for an appropriate Assistant Minister to serve as a director. In this capacity, the Assistant Minister would be accountable to the relevant Minister.
10. It would be inappropriate for this change in existing practice to be made unless appropriate arrangements are made to ensure that there is proper accountability to the States. I recommend that these arrangements should at least include the following:
- (1) the Sponsoring Minister should be accountable to the States for oversight of WEB's activities.
  - (2) the role of the Sponsoring Minister should be to maximise the long term value of the States' interest in WEB and to ensure that WEB operates in accordance with the agreed policies of the States.
  - (3) where appropriate, the Sponsoring Minister's decisions in respect of WEB (for example approving proposed transactions) should be recorded in the form of Ministerial Decisions. The effect of this would be that the decisions would be in the public domain so that members of the States would be able to subject them to such scrutiny as they think appropriate.
  - (3) the Sponsoring Minister should be responsible for laying WEB's annual report and accounts before the States formally when received.. The effect of this would be that members of the States would be formally notified of the results of WEB's activities and would thus be afforded another opportunity to subject them to such scrutiny as they think appropriate.
11. An analysis of the implications of these proposals for the protection of the States' interest in WEB is set out in Appendix Three.
12. Accordingly, I recommend that WEB's Memorandum and Articles of Association should be reviewed and then revised thoroughly.



## SECTION THREE ~ CORPORATE GOVERNANCE

### Introduction

13. In this Section of the report, I will set out the outcome of my review of corporate governance within WEB.
14. As mentioned in my interim report, a similar review of corporate governance was carried out by the States' Internal Audit Department in 2005. The principal outcomes of that review are set out in Appendix Two.

### Work undertaken

15. In the course of the review, the following subjects were examined in addition to those covered by the interim report:
  - (1) conduct of general meetings including Annual General Meetings;
  - (2) maintenance of registers (i.e. register of shareholders, directors, interests, gifts and hospitality;
  - (3) records of contracts and agreements;
  - (4) conduct of board meetings and of committee meetings (including the maintenance of minutes of meetings);
  - (5) preparation and audit of accounts; and
  - (6) business plans and accounts.

### Outcome

16. My conclusions may be summarised in the following way:
  - (1) on completion of the Internal Audit report in 2005, WEB sought to implement all of the recommendations that were made.
  - (2) at times since then, compliance with the new arrangements has lapsed from time to time (specifically the disclosure of interests as reported in the interim report).
  - (3) certain of the lapses in compliance were caused by the fact that requirements of WEB's Articles of Association do not reflect current practice within the States (e.g. the Articles' requirements with regard to business plans and interim accounting information).
  - (4) throughout 2008 these lapses have been corrected.
17. The effect is that WEB is now in compliance with normal corporate governance practice.
18. Nonetheless it remains the case that lapses in governance have occurred from time to time as explained above. It is possible that compliance with normal corporate practice (and in particular the maintenance of registers and minutes) has been the responsibility of WEB's managers in addition to their normal duties. It would be more satisfactory if WEB were to recruit a professional company secretary whose sole duty it should be to ensure that all necessary records and practices are maintained. In view of the significance of the business handled by WEB, the expense of such an appointment would be well justified.
19. I therefore recommend that WEB should recruit a professional company secretary. I understand that a recruitment process has commenced.

## SECTION FOUR ~ ACCOUNTABILITY

### Introduction

20. In my interim report dated 30 June 2008, I indicated that I was minded to make various proposals to deal with what I perceived to be conflicts in accountability:

“59. *In my view, the States should re-consider its customary practice of appointing members of the States to be members of WEB’s board. I will consider this matter further before making recommendations in my final report, however I am minded to suggest that:*

- (1) *WEB’s principal line of accountability should be to the relevant Ministers as representatives of WEB’s shareholder.*
- (2) *States members should not be members of WEB’s board unless they may serve as representatives of the shareholder (for example, it might be thought appropriate that an Assistant Minister from a relevant department should serve as a director of WEB).*
- (3) *the States’ proper oversight of the activities should be achieved by requiring an existing committee or creating a new committee whose task would be to oversee the actions of States companies such as WEB.*
- (4) *scrutinising where appropriate Ministerial Decisions approving the principal transactions and decisions of WEB (as at present).*

60. *It is implicit in this suggestion that a change of practice with regard to States Members of the board should not be made unless appropriate arrangements are made to ensure that there is proper accountability to the States.*

61. *Any change of this sort will require a change to WEB’s Memorandum and Articles of Association which in turn will require appropriate legal consideration and drafting. It cannot be accomplished by the simple expedient of the States refusing to appoint States Directors because WEB’s Articles require that two States Directors must be present if the directors are to transact business<sup>[4][4]</sup>. If there are no such directors, then WEB’s board will not be able to transact business.”*

21. I have considered these matters further and will set out the recommendations that I believe are appropriate.

### Accountability

22. It is important that WEB’s line of accountability should be clear and unconflicted. This can best be achieved by confirming that WEB’s principal line of accountability is to an appropriate Minister as representative of WEB’s shareholder (the Sponsoring Minister).

23. It is not necessary for the purpose of this report to specify to which Minister WEB should be accountable. In recent times, the Chief Minister has been fulfilling this role and, this may continue to be appropriate in view of the significance of the issues being managed by WEB<sup>[5][5]</sup>.

24. As a result of conditions which were imposed by the States when land was transferred to the company, WEB is obliged to seek the approval of the Treasury & Resources Minister for major land transactions. In effect, for most transactions, WEB is currently obliged to seek approval from two Ministers. I believe that this is unsatisfactory and that WEB should only be required to seek the approval of one minister for any particular transaction. This is not to suggest that the Treasury & Resources Minister does not have a legitimate interest in WEB’s management of assets that are so significant to the States’ finances. Rather it is to suggest that the Minister to whom WEB is accountable should be responsible for ensuring that all relevant Ministers are in agreement with the approval of any particular transaction. WEB should not be obliged to seek parallel approvals from a number of Ministers.

25. On this basis, I recommend that WEB should be accountable to a single Minister.

26. It would seem sensible that the Minister to whom WEB is accountable should also act in General Meetings of WEB as the representative of the States as shareholder. At present, this role is performed by the Greffier of the States who, before attendance at such meetings, seeks the advice of the Chief Minister's Department on the way in which the States' votes should be used. Where such advice or instructions are issued, they should be confirmed as Ministerial decisions (as, in comparable situations, is currently the practice of the Treasury & Resources Department).<sup>[6][6]</sup>

### **States' long term interest in WEB**

27. In making decisions, a sponsoring minister is bound to be concerned with the manner in which WEB is achieving the policy objectives agreed by the States but is also bound to be concerned with the way in which the long term value of the States' assets is being maximised and realised. This aspect of a sponsoring minister's concerns is similar to concerns which must be taken into account when the relevant minister is considering the States' interest in other States-owned companies (such as Jersey Electricity and Jersey Post). The role of the Sponsoring Minister is therefore to maximise the long term value of the States' interest in WEB and to ensure that WEB operates in accordance with the agreed policies of the States.
28. The question of how these interests are managed was raised in the report ("Emerging Issues") which was published in May 2008 at the end of the States' Spending Review, and, since then, has been the subject of further work. As a result of that work, I am minded to propose that the States should establish an Investment Advisory Board to advise sponsoring ministers on the way in which the long term value of the States' interests should be fostered.
29. The reports and recommendations of this Board would be published in the same way that the reports of the Fiscal Policy Panel are published.

### **States directors<sup>[7][7]</sup>**

30. In discussions since publication of my interim report, I have not encountered anyone who disagreed with my tentative proposal that the position of States Director should be discontinued. It appears to be accepted that the position is subject to conflicts of interest which cause difficulty for the States Directors themselves.
31. Accordingly, I recommend that:
- (1) the position of States Director currently enshrined in WEB's Memorandum of Association should be discontinued;
  - (2) States members should not ordinarily be members of WEB's board unless they serve as representatives of the Sponsoring Minister (for example, it may be thought appropriate for an appropriate Assistant Minister to serve as a director. In this capacity, the Assistant Minister would be accountable to the relevant Minister and not the States.
  - (3) Directors should be appointed by the States (as at present) but on the recommendation of the Chief Minister.

### **Accountability to the States**

32. It would be inappropriate for this change in existing practice to be made unless appropriate arrangements are made to ensure that there is proper accountability to the States. I recommend that these arrangements should at least include the following:
- (1) the Sponsoring Minister should be accountable to the States for oversight of WEB's activities.
  - (2) where appropriate, the Sponsoring Minister's decisions in respect of WEB (for example approving proposed transactions) should be recorded in the form of Ministerial Decisions. The effect of this would be that the decisions would be in the public domain so that members of the States would be able to subject them to such scrutiny as they think appropriate.

- (3) the Sponsoring Minister should be responsible for laying WEB's annual report and accounts before the States formally when received.. The effect of this would be that members of the States would be formally notified of the results of WEB's activities and would thus be afforded another opportunity to subject them to such scrutiny as they think appropriate.
- 33. In my interim report, I proposed that the States could appoint a committee to over see the activities of States companies such as WEB. I have not received favourable responses to this proposal and thus do not recommend the appointment of such a committee.
- 34. However, concerns have been expressed to me concerning the effectiveness of the States' oversight of WEB. In view of the seriousness of this subject, I have reviewed all of the principal occasions on which the States may wish and need to oversee the activities of WEB to demonstrate that there are effective arrangements in place and to permit gaps to be the more easily identified. The results of this analysis are set out in Appendix Three.

### **WEB's Memorandum and Articles of Association**

- 35. A decision to discontinue the appointment of States Directors of WEB will require a revision of the Articles of Association.
- 36. Revision of the Articles of Association to remove references to States Directors would afford an opportunity to up-date the Articles generally in the light of experience. A list of the individual Articles that should be considered for revision is set out in Appendix Four including the following principal issues:
  - (1) the possible removal of a limit on the number of directors; and
  - (2) the possible removal of over-detailed references to business planning and accounting information to be provided periodically by WEB. These requirements could be specified more effectively by means of Ministerial Decisions.
- 37. Accordingly, I recommend that WEB's Memorandum and Articles of Association should be reviewed and then revised thoroughly.

## APPENDIX ONE ~ INTERIM REPORT ~ SUMMARY OF CONCLUSIONS

### Introduction

App1-1 This summary of conclusions was taken from the interim report of the review which was dated 30 June 2008.

### Register of Directors' Interests

App1-2 It is the policy of WEB to maintain a register of directors' interests. I regard this practice as representing good practice.

App1-3 It is evident that between 2005 and 2008, whilst WEB continued to hold the Register that had been prepared in 2005, directors were not asked by WEB to up-date their declarations and in practice did not do so. As a result, WEB's Register was not accurate. I have not enquired into what happened before 2005.

App1-4 It is also evident that WEB has up-dated its records recently.

### Disclosure of conflicts of interest

App1-5 The evidence suggests that WEB's board generally observed normal practice with regard to the disclosure of conflicts of interest<sup>[8][8]</sup>.

### Conflicts of interest ~ cases of difficulty

#### *States Members of WEB's board*

App1-6 In my view, the States should re-consider its customary practice of appointing members of the States to be members of WEB's board.

#### *Mr Voisin*

App1-7 In my view:

- (1) Mr Voisin should have disclosed to WEB his appointment to the board of AIB CI Limited (AIB CI) for inclusion in the Register of Directors' Interests. He did not do this.
- (2) On a strict interpretation, Mr Voisin's appointment to the board of AIB CI did not represent a conflict of interest as defined by Companies Law and thus he was not required to disclose a conflict of interest at board meetings at which WEB's transactions with Harcourt were discussed.
- (3) Notwithstanding this strict interpretation, it would have been wise for Mr Voisin to make such disclosures.
- (4) I have found no evidence that Mr Voisin's failure to disclose distorted WEB's decisions.

## APPENDIX TWO ~ RECOMMENDATIONS IN INTERNAL AUDIT REPORT 2005

### Introduction

App2-1 This is a summary of the recommendations made in the 2005 report of the States' Internal Audit Department together with notes on the actions that have been taken since the preparation of that report to deal with the issues that were identified.

### Annual General Meetings

App2-2 Paragraph 4.6 of the 2005 report recommended that:

*"We were informed that no AGM's had been held since WEB was first incorporated but also that no request has been made to WEB to instigate one . . . It is recommended that WEB holds AGM's annually and considers the appointment of auditors at these meetings. Since our audit an AGM for 2005 has been organised for 3 June 2005".*

App2-3 Annual General Meetings have take place regularly since completion of the 2005 report.

### Register of interests and gifts and hospitality

App2-4 Paragraph 4.7 of the 2005 report recommended that:

*"We were concerned to note that at the time of our audit there was no register of interest available for scrutiny at the offices of WEB . . . Whilst a register of gifts and hospitality was located in the safe at WEB's offices we were surprised to note that this only contained three entries, the last one being on 16 May 1996 . . . It is recommended that from now any gifts received and provided are entered into the register".*

App2-5 As I indicated in my interim report, the register of interests was not in fact maintained. Since publication of my interim report, the register has been brought up to date. Directors have confirmed their understanding of the duty to declare their interests and possible conflicts and the board has made a commitment to refresh the register annually.

App2-6 A register of gifts and hospitality is now maintained electronically.

App2-7 I have also inspected the company's other registers (i.e. register of directors, shareholders, sealing of documents). At the time of my interim report, the registers of directors and of sealing of documents was not up to date. I have been informed that although the written register of the sealing of documents has not been maintained, a complete register of all documents signed for or on behalf of the company is maintained electronically.

### Audit Committee

App2-8 Paragraph 4.9 of the 2005 report recommended that:

*"WEB has an audit committee that meets four times a year. As part of the audit we reviewed the minutes of audit committees held since September 2004. However, it was not possible to review any of the minutes prior to this date as they could not be located in the offices of WEB during our audit visit".*

App2-9 Minutes have been prepared and filed. I was able to inspect them.

### Remuneration Committee

App2-10 Paragraph 4.10 to 4.15 of the 2005 report recommended that:

*"Formal minutes of the Remuneration Committee have not been kept, Many of the decisions being taken have been recorded by memo letter and email exchanges . . . It is also recommended that the membership of the Remuneration Committee be considered.*

*It is recommended that in 2005 and future years the Remuneration Committee should undertake the salary review for the Managing Director in advance of any pay awards being agreed for the rest of the WEB staff. This is to ensure that the staff pay award does not set a precedent for the increase to the Managing Director's salary".*

*"It is recommended that future decisions of the Board regarding remuneration of the Managing Director should be formally recorded in the minutes".*

*"It is recommended that all future recommendations regarding the remuneration of the Managing Director should be made to the Board by the Remuneration Committee and should be formally documented".*

App2-11 These recommendations have been implemented save that some difficulty arises over the recording of decisions as the company's full time staff do not attend meetings at which their remuneration is to be discussed. In these circumstances it is for the chairman of whichever meeting is considering these matters to ensure that a proper record is included in the minute book and confirmed at the next board meeting.

### **Business Plans and Accounts**

App2-12 Paragraph 4.17 of the 2005 report recommended that:

*"Article 25 (a)(ii) of the Articles of Association reads as follows:  
The Directors shall cause to be prepared annually and in consultation with all relevant Committees of the States a Business Plan and Report which shall be sent to the Committee at such time as may be reasonably required by the Committee setting out the objectives, policies and programmes of the Company and reporting on progress".*

*Article 3 states*

*"The Directors shall cause to be kept proper accounts of the Company for each accounting period to be prepared in accordance with the generally accepted accounting principals in the Island of Jersey consistently applied and that such accounts shall be forwarded to the Committee not more than four months after the end of the period to which they relate".*

*WEB accepts that this may not have happened in as formal a manner has been desired. WEB does send a copy of its accounts to every States Member and the Chief Officers of every States Committee, including Policy and Resources. Copies are also sent to the States Treasury. It is intended that in the future six monthly financial reports will be submitted to the Accounts Committee which will include actual spending budgetary information and that a more summarised report will be submitted to cover the intervening quarters."*

App2-13 In practice, the company complies with whatever requests for information are received from the Chief Minister's and Treasury and Resources Departments.

### APPENDIX THREE ~ ARRANGEMENTS FOR STATES' OVERSIGHT OF WEB

<i>Subject</i>	<i>Arrangement (assuming that the proposals in this report are implemented)</i>	<i>Comments</i>
Amendment to Memorandum and Articles of Association	Requires prior approval of the States on a proposal from the Chief Minister	
Appointment of Directors	Requires approval of the States on the recommendation of the Chief Minister	
Removal of directors	Requires prior approval of the States .	
Appointment of Auditors	Approved in General Meeting of WEB's shareholders at which the sponsoring minister acts as representative of the States as shareholder in WEB	This arrangement is different from the general arrangements of audit of the activities of the States
General strategic purpose of WEB	Requires the approval of the States in response to proposals submitted by the Council of Ministers	
Transfer of land to WEB	<p>If such a transfer were a significantly new policy direction, such a proposal would presumably be submitted by the relevant Minister to the States for prior approval.</p> <p>For a transfer in accordance with a policy already approved by the States, and subject to conditions similar to those already in force, the transfer would require the approval of the Treasury &amp; Resources Minister which would be expressed in a Ministerial Decision which would be made public in the normal way and would then be subject to scrutiny by the States according to the normal process.</p>	
Issue of directions to WEB by the Chief Minister (as envisaged by the Articles of Association)	To be recorded as Ministerial Decisions which would be subject to scrutiny by the States according to the normal process.	



<p>Proposals by WEB to dispose of land or enter into major developments of land (within existing policy approved by the States).</p>	<p>Require approval of the Treasury &amp; Resources Minister which would be expressed in a Ministerial Decision which would be made public in the normal way and would then be subject to scrutiny by the States according to the normal process.</p>	
<p>Proposals by WEB to raise funds by borrowing or by other means</p>	<p>If the proposal to raise significant funds lay outside existing policy, the proposal would require approval by the States.</p> <p>If the proposal lay within existing policy approved by the States, it would require the agreement of the Sponsoring Minister which would be recorded as a Ministerial Decision and thus be subject to scrutiny by the States according to the normal process.</p>	
<p>Proposals by WEB to apply the company's reserves either to the payment of a dividend or in some other way (e.g. to fund a further development)</p>	<p>Requires the approval of the Sponsoring Minister which would be recorded in a Ministerial Decision and thus be subject to scrutiny by the States according to the normal process.</p>	
<p>Issue of an instruction by the Sponsoring Minister to WEB to apply its reserves either to the payment of a dividend or in some other way</p>	<p>Would be recorded as a Ministerial Decision which would be subject to scrutiny by the States according to the normal process</p>	

## **APPENDIX FOUR ~ REVISIONS TO WEB'S MEMORANDUM AND ARTICLES OF ASSOCIATION**

### **Introduction**

App4-1 In this Appendix I will identify the individual Articles of Association which would require revision if the recommendations set out in this report were to be accepted.

### **Article 1 – Interpretation**

App4-2 This Article would require amendments if the distinction between States and non States directors were to be abolished.

### **Article 20 – Representative of the States**

App4-3 Assuming that it is agreed that the sponsoring minister (or his delegate) should act as the representative of the States at General Meetings, this Article will require amendment.

### **Article 22 – Direction**

App4-4 This Article refers to the “Committee”, which is a reference to the Policy and Resources Committee of the States of Jersey and thus to the arrangements that preceded ministerial government. This Article requires amendment to reflect changes to the machinery of government.

### **Article 23 – Numbers of Directors**

App4-5 This Article will require revision if the distinction between States and non States directors is abolished. In addition, the Article limits the size of the Board to eight (i.e. seven directors together with an additional director who shall be the managing director). Consideration should be given to whether this maximum number remains appropriate.

### **Article 25(b) – Powers of Directors**

App4-6 In its current form Article 25 states that the objectives of the company include the promotion, co-ordination and implementation of a comprehensive strategy for the development of the St Helier Waterfront. It may be appropriate to consider whether this description is a correct reflection of the current policy of the States. Further, on occasion, it has been expedient for WEB to undertake development directly. It may be prudent to give consideration to whether the words “implement a comprehensive strategy” include such direct activities and, if not, then the Article should be amended to permit appropriate activity.

### **Article 25 – Powers of Directors**

App4-7 This Article requires the directors to prepare and submit an annual business plan and report to be sent to the Policy and Resources Committee. Consideration should be given to changing this Article so that it obliges the Board to co-operate with whatever reasonable requests for information and reports are made to it. In other words, the Article should take account of the fact that the States’ systems for accounting and reporting change from time to time and would be better stated in practice notes than in formal constitutional documents.

### **Article 28 – Directors**

App4-8 This Article requires revision if the distinction between States and non States Directors is abolished (also Articles 29 and 30).

### **Article 33 – Remuneration of Directors**

App4-9 This Article will require revision if the distinction between non States directors and States directors is abolished.

### **Articles 38/45 – Proceedings of Directors**

App4-10 These Articles require revision in the event that the distinction between States directors and non States directors is abolished.

**Article 56 – Accounts and Audit**

App2-14 This Article provides that an audited interim accounts should be preferred in respect of each quarter in each accounting period of a company. In my view, it would be better for this detailed information to be covered by practice notes and decisions of the Board (also Article 58).

**COMPANIES (JERSEY) LAW 1991**  
**COMPANY LIMITED BY SHARES**  
**MEMORANDUM OF ASSOCIATION**  
**of**  
**WATERFRONT ENTERPRISE BOARD LIMITED**

1. 1. The name of the Company is: “Waterfront Enterprise Board Limited”.
2. 2. The capacity of the Company is unlimited and the Company shall have all the powers of a natural person.
3. 3. The liability of each member is limited.
4. 4. The capital of the Company is £1,000,000 divided into 1,000,000 shares of £1.00 each.
5. 5. We, the persons whose names and addresses are hereunto subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the numbers of shares in the capital of the Company noted opposite our respective names.
6. 6. The Company shall exist until dissolved by special resolution or otherwise according to law.
7. 7. The Company is a public company.

**ARTICLES OF ASSOCIATION**  
**OF**  
**WATERFRONT ENTERPRISE BOARD LIMITED**  
**INTERPRETATION**

1. In these Articles:

- “Articles”** means the Articles of Association of the Company and “Article” shall be construed accordingly;
- “Auditors”** means the auditors for the time being of the Company who shall be the auditors for the time being of the States of Jersey;
- “Board”** means the board of Directors of the Company from time to time;
- “Chairman”** means the chairman of the Board from time to time;
- “Company”** means the company incorporated under the Law in respect of which these Articles have been registered;
- “Director”** means the Ministerial Appointee or a Non-Executive Director or the Managing Director;
- “executed”** includes any mode of execution;
- “holder”** in relation to shares means the member whose name is entered in the register of members as the holder of the shares;
- “Managing Director”** means the person appointed in accordance with these Articles as the Managing Director;
- “Ministerial Appointee”** means a designated Assistant Minister for Treasury and Resources (or such other suitably qualified person (whether a member of the States or not) as the Minister shall determine);
- “Non-Executive Director”** means a person appointed in accordance with Article 30 as a non-executive director of the Company;
- “office”** means the registered office of the Company;
- “ordinary resolution”** means a resolution of the Company in general meeting adopted by a simple majority of the votes cast at that meeting;
- “seal”** means the common seal of the Company;
- “secretary”** means the secretary of the Company or other person appointed to perform the duties of the secretary of the Company including a joint, assistant or deputy secretary;
- “Minister”** means the Minister for Treasury and Resources
- “States”** means the States of Jersey;
- “the Law”** means the Companies (Jersey) Law 1991 including any statutory modification or re-enactment thereof for the time being in force.

Unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning

as in the Law, but excluding any statutory modification thereof not in force when these Articles became binding on the Company.

The Standard Table prescribed pursuant to the Law shall not apply to the Company and is hereby expressly excluded in its entirety.

#### **SHARE CAPITAL**

2. (a) Subject to the provisions of the Law, and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine.
- (b) Following incorporation of the Company 999,999 shares shall be issued to and registered in the name of the States and 1 share shall be issued to and registered in the name of the Treasurer of the States, as nominee for and on behalf of the States.

#### **CERTIFICATES**

3. Every member, upon becoming the holder of any shares, shall be entitled, without payment, to one certificate for all the shares of each class held by him. Every certificate shall be sealed with the seal and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up thereon.

#### **TRANSFER OF SHARES**

4. An instrument of transfer of a share may be in any usual form or in any other form which the Directors may approve and shall be executed by or on behalf of the transferor and, unless the shares are fully paid, by or on behalf of the transferee.

#### **GENERAL MEETINGS**

5. (a) The Company shall in each year hold a general meeting of the members of the Company as its annual general meeting in addition to any other meeting in that year. Annual general meetings shall be held once in each year at such time and place as may be determined by the Directors.
- (b) All general meetings other than annual general meetings shall be called extraordinary general meetings.
- (c) The Directors may call general meetings and on the requisition of members, pursuant to the provisions of the Law, shall forthwith proceed to call a general meeting for a date not later than two months after the receipt of the requisition. If there are not sufficient Directors to call a general meeting, any Director or any member of the Company may call such a meeting.

#### **NOTICE OF GENERAL MEETINGS**

6. An annual general meeting or a general meeting called for the passing of a special resolution shall be called by at least 21 clear days' notice. All other meetings shall be called by at least 14 clear days' notice but a general meeting may be called by shorter notice if it is so agreed by all the members entitled to attend and vote thereat. The notice shall specify the day, time and place of the meeting and the general nature of the business to be transacted and in the case of an annual general meeting, shall specify the meeting as such and shall be given to all the members, the Directors and the auditors.
7. The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

#### **PROCEEDINGS AT GENERAL MEETINGS**

8. No business shall be transacted at any meeting unless a quorum is present. One person entitled to vote upon the business to be transacted, being a member holding not less than fifty per cent (50%) in nominal value of the shares then in issue carrying the right to vote (or a proxy for such a member) shall

be a quorum, failing which two persons entitled to vote upon the business to be transacted, each being a member (or a proxy for a member) shall be a quorum.

9. The Chairman or in his absence some other Director nominated by the Directors shall preside as chairman of the meeting, but if neither the Chairman nor such other Director (if any) is present within 15 minutes after the time appointed for holding the meeting and willing to act, the members present shall elect one of their number to be chairman and, if there is only one member present and willing to act, he shall be chairman.
10. A Director or a representative of the auditors shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting.
11. The Chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for 14 days or more at least seven days' notice shall be given specifying the day, time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
12. A resolution put to the vote of a meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll is duly demanded. Any member shall be entitled to demand a poll.
13. Unless a poll is duly demanded, a declaration by the Chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
14. A poll shall be taken as the Chairman directs and he may appoint scrutineers (who need not be members) and fix a day, time and place for taking the poll and for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

#### **VOTES OF MEMBERS**

15. Subject to any rights or restrictions attached to any shares, on a show of hands every member who is present in person shall have one vote and on a poll every member present in person or by proxy shall have one vote for every share of which he is the holder.
16. On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion.
17. An instrument appointing a proxy shall be in writing in any usual common form, or as approved by the Directors, and shall be executed by or on behalf of the appointer.
18. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power or authority, shall be deposited at the office or at such other place as is specified for that purpose in the notice of meeting or in the instrument of proxy issued by the Company before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, before the time appointed for taking the poll and in default the instrument of proxy shall not be treated as valid.
19. A vote given or poll demanded by proxy or by the duly authorised representative of a body corporate shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

## **REPRESENTATIVES**

20. The States whilst a member of the Company may be represented at any meeting of the members of the Company or any meeting of any class of members of the Company by the Greffier of the States, the Deputy Greffier of the States or any other officer appointed to discharge the functions of the office of Greffier of the States under Article 5 of the Departments of the Judiciary and Legislature (Jersey) Law, 1965 or by any person duly authorised in writing in that regard by the Greffier of the States or the Deputy Greffier of the States. The States shall be deemed to be present in person at any meeting attended by any such person.

## **RESOLUTIONS OR NOTICES IN WRITING**

21. (a) Anything that may be done by a resolution passed at a meeting of the members of the Company (other than a resolution for the removal of an auditor) may be done by a resolution in writing signed by or on behalf of each member of the Company.
- (b) The States whilst a member of the Company shall be entitled to execute a resolution in writing or any other notice in writing by means of an instrument in writing signed by the Greffier of the States, the Deputy Greffier of the States or any other officer appointed to discharge the functions of the office of the Greffier of the States under Article 5 of the Departments of the Judiciary and Legislature (Jersey) Law, 1965. Any such resolution, notice or instrument shall take effect upon delivery thereof to the office.

## **DIRECTIONS**

22. (a) If the Minister shall, in his 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 the Directors shall be bound to comply with any such direction.
- (b) 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.

## **NUMBER OF DIRECTORS**

23. Unless and until otherwise determined by the Company by ordinary resolution, the number of Directors shall not be subject to a maximum but shall be at least six, one of whom shall be the Ministerial Appointee, at least four of whom shall be Non-Executive Directors and an additional Director who shall be the Managing Director appointed pursuant to Article 31.
24. A Director need not be a member of the Company.

## **APPOINTMENT, RETIREMENT AND REMOVAL OF DIRECTORS**

25. (a) Subject to the provisions of the Law, the memorandum and these Articles and to any directions given to the Directors by the members by special resolution or by the Minister by direction in writing made in accordance with the provisions of Article 22, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company in any part of the world. No alteration of the memorandum of Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Directors by these Articles and a meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- (b) In the exercise of their powers of management of the Company the Directors shall have regard to:
- (i) the objectives for which the Company is established, namely:



- (a) To promote, co-ordinate and implement a comprehensive strategy for the development of the St. Helier Waterfront area as shown on Map No: 3-92 approved by the States on 10<sup>th</sup> November, 1992 (the “**Waterfront**”) and where expedient, to undertake development directly.
    - (b) To exercise administrative control over the use of the land and the adjacent shore and water areas in the Waterfront and to liaise and consult with all relevant Ministers of Jersey and other governmental and regulatory authorities in relation to investment in infrastructure projects in and development of the Waterfront.
  - (ii) any decisions of the States which directly concern the land, shore and water areas within the control of the Company.
  - (c) The Directors shall cause to be prepared annually (in consultation with relevant parties) a business plan and report which shall be sent to the Minister at such time as may be reasonably required setting out the objectives, policies and programmes of the Company and reporting on progress. The Directors shall respond timeously to such reasonable requests for information and reports as are made to them by the Minister.
26. The Directors may, by power of attorney or otherwise appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.
27. Subject to the prior written consent of the Minister (which may be given generally or specifically and recorded in accordance with ministerial procedures as a Ministerial Decision), the Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, and to issue debentures and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party. All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments, and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.
28. The Ministerial Appointee shall be appointed and may be removed by the Minister. The Managing Director shall be appointed by the Directors pursuant to Article 31.
29. Subject to Article 30 and Article 32, the Non-Executive Directors shall initially be appointed for a fixed period expiring on the date which is four and a half years after the date of the Company’s incorporation, and thereafter shall be appointed for fixed periods of three years duration. Upon the expiration of the period of office for which they are appointed the Non-Executive Directors shall, ipso facto, retire from office but shall be eligible for re-appointment. Any Non-Executive Director appointed to fill a casual vacancy shall hold office only during such period as the Director whom he replaces would have held office if he had continued to act as a Director.
30. (a) All Non-Executive Directors shall be appointed by the States on the recommendation of the Minister and such appointment shall take effect upon delivery to the office of notice in writing to that effect executed in accordance with Article 21(b).
- (b) The States may remove any person from office as a Director and such removal shall take effect upon delivery to the office of notice in writing to that effect executed in accordance with Article 21(b).
31. The Directors shall have the powers at any time, from time to time without the sanction of the Company in general meeting or otherwise to appoint a person to act as the Managing Director of the Company and may enter into an agreement or arrangement with any Managing Director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a director of a company. Any such appointment, agreement or arrangement may be made upon such terms as the Directors determine and they may remunerate any such Managing

Director for his services as they think fit. Any appointment of a Managing Director to executive office shall terminate if he ceases to be a Director, but without prejudice to any claim to damages for breach of the contract of service between such Managing Director and the Company.

32. The office of a Director shall be vacated in any of the following events namely:
- (a) If he resigns his office by notice in writing under his hand to that effect sent to or left at the office which notice shall be effective upon such date as may be specified in the notice, failing which upon delivery, to the office.
  - (b) If he becomes bankrupt or insolvent or makes any arrangement or composition with his creditors generally.
  - (c) If he becomes of unsound mind.
  - (d) If he ceases to be a Director by virtue of any provision of the Law, or becomes prohibited by law from or is disqualified from, being a Director.
  - (e) If he be removed by ordinary resolution of the Company or by notice in writing pursuant to Article 30.
  - (f) If he shall for more than 6 consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the Directors resolve that his office be vacated.

#### **REMUNERATION OF DIRECTORS**

33. The Non-Executive Directors and the Managing Director shall be entitled to such remuneration as the Company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day. The Ministerial Appointee shall not be entitled to remuneration where he or she is a member of the States.

#### **DIRECTORS' EXPENSES**

34. The Directors may be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or general meetings or separate meetings of the holders of any class of shares or of debentures of the Company or otherwise in connection with the discharge of their duties.
35. Subject to the provisions of the Law, and provided that he has disclosed to the Directors the nature and extent of any material interests of his, a Director notwithstanding his office:
- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;
  - (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested;
  - (c) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
  - (d) may act by himself or his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as though he were not a Director.
36. For the purposes of the preceding Article:
- (a) a general notice given to the Directors that a Director is to be regarded as having an interest of

the nature and extent specified in the notice in any transaction or arrangement with a specified person or class of persons shall be deemed to be sufficient disclosure of his interest in any such transaction or arrangement; and

- (b) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

### **DIRECTORS' GRATUITIES AND PENSIONS**

- 37. The Company may provide such benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any Director who has held but no longer holds any executive office or employment with the Company or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, and for any member of his family (including a spouse and a former spouse) or any person who is or who was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit as the Directors think fit.

### **PROCEEDINGS OF DIRECTORS**

- 38. Subject to the provisions of the Law and these Articles, the Directors may regulate their proceedings as they think fit. A Director may, and the secretary at the request of a Director shall, call a meeting of the Directors. Questions arising at a meeting of Directors shall be decided by a majority of votes. In the case of an equality of votes the Chairman shall have a second or casting vote.
- 39. On the recommendation of the Minister, the States may by notice in writing executed in accordance with the provisions of Article 21:
  - (a) elect a Director as Chairman of the Board from among the number of Non-Executive Directors;
  - (b) determine the period for which he is to hold office;
  - (c) remove such person from the office of Chairman.

Unless he is unwilling to do so, the Chairman shall preside at all meetings of the Directors at which he is present. If the Chairman is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Directors present may appoint one of their number to be chairman of the meeting.

- 40. The quorum for the transaction of the business of the Directors shall be four Directors. Any Director enabled to participate in the proceedings of a meeting by means of a communication device (including a telephone) which allows all of the other Directors present at such meeting to hear at all times such Director and such Director to hear at all times all other Directors present at such meeting (in each case whether in person or by means of such type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum.
- 41. The continuing Directors or the only continuing Director may act notwithstanding any vacancies in their number, but, if the number of Directors is less than the number fixed as the quorum, the continuing Directors or Director may act only for the purpose of calling a general meeting.
- 42. All acts done by a meeting of Directors or by a person acting as a Director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.
- 43. A resolution in writing signed by all the Directors entitled to receive notice of a meeting of Directors shall be valid and effectual as if it had been passed at a meeting of Directors duly convened and held and may consist of several documents in the like form each signed by one or more Directors.
- 44. A Director may not vote in respect of any transaction, arrangement or proposed transaction or

arrangement, in which he has an interest but provided that he has disclosed any such interest in accordance with these Articles he may be counted towards a quorum at any meeting of the Directors at which any such transaction or arrangement or proposed transaction or arrangement shall come before the Directors for consideration.

45. The Directors shall cause minutes to be made:
- (a) of all appointments of officers made by the Directors;
  - (b) of the names of the Directors present at each meeting of Directors;
  - (c) of all resolutions and proceedings at all meetings of the Company and of the Directors.

Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were held, shall be evidence of the proceedings.

#### **SECRETARY**

46. Subject to the provisions of the Law, the secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit and any secretary so appointed may be removed by them.

#### **MINUTES**

47. The secretary shall cause minutes to be maintained in books kept for the purpose in accordance with the Law.

#### **THE SEAL**

48. (a) The common seal shall only be used by the authority of the Directors. The Directors may determine who shall sign any instrument to which the common seal is affixed and unless otherwise so determined it shall be signed by a Director and the secretary or by two Directors.
- (b) Subject to the provisions of the Law, the Directors may determine to have:
- (i) an official seal for use in any country, territory or place outside the Island of Jersey, which shall be a facsimile of the common seal of the Company. Any such official seal shall in addition bear either the name of the country in which it is to be used or the words "branch seal";
  - (ii) an official seal for use only in connection with the sealing of securities issued by the Company and such official seal shall be a facsimile of the common seal of the Company but shall in addition bear the word "securities".

#### **DIVIDENDS**

49. Subject to the provisions of the Law, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members save that no dividend shall exceed the amount recommended by the Directors.
50. Subject to the provisions of the Law, the Directors may pay interim dividends if it appears to them that they are justified by the profits of the Company available for distribution.
51. Any dividend or other moneys payable in respect of a share may be paid by cheque sent by post to the registered address of the person entitled thereto and payment of the cheque shall be a good discharge to the Company.
52. No dividend or other moneys payable in respect of a share shall bear interest against the Company unless otherwise provided by the rights attached to the share.

## **ACCOUNTS AND AUDIT**

53. The Directors shall cause to be kept proper accounts of the Company for each accounting period to be prepared in accordance with generally accepted accounting principles in the Island of Jersey consistently applied and that such accounts shall be forwarded to the Minister not more than four months after the end of the period to which they relate. The accounts shall include an income and expenditure statement of the Company in respect of the applicable accounting period and shall include the balance sheet as at the end of that accounting period.
54. The Company shall at each annual general meeting appoint the auditors to hold office from the conclusion of that meeting, until the conclusion of the next annual general meeting.
55. The accounts shall be audited by the auditors and shall be accompanied by a report by the auditors stating that the accounts and financial statements attached thereto have been examined in conjunction with the books and records of the Company and whether the Auditors have obtained all the explanations and information which they have required. The auditors shall further report whether the accounts are in their opinion properly drawn up in accordance with such books and records and give a true and fair view of the affairs of the Company.
56. The Directors shall submit to the Minister in each year by such date as may be appointed by the Minister a budget of the Company's estimated capital expenditure and receipts and of revenue expenditure and income for the next financial year of the Company.
57. Such person or persons as may be designated by the Minister from time to time shall at any time during the office hours of the Company be entitled to inspect all accounting records or other books or documents of the Company and the Directors shall upon request procure production of the same.

## **NOTICES**

58. Any notice to be given to or by any person pursuant to the Articles shall be in writing except that a notice calling a meeting of the Directors need not be in writing.
59. The Company may give any notice to the States by sending it by post in a pre-paid envelope (care of The Greffier of the States) to the States Greffe St. Helier Jersey JE1 1DD. The Company may give any notice to the Minister, the Ministerial Appointee or the Treasurer of the States by sending it by post in a pre-paid envelope to PO Box 353 Cyril Le Marquand House St. Helier Jersey JE4 8UL.
60. A member present, either in person or by proxy, at any meeting of the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
61. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

## **WINDING UP**

62. If the Company is wound up, the Company may, with the sanction of a special resolution and any other sanction required by the Law, divide the whole or any part of the assets of the Company among the members in specie and the liquidator or, where there is no liquidator, the Directors may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members, and with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

## **INDEMNITY**

63. In so far as the Law allows, every present or former officer of the Company shall be indemnified out of the assets of the Company against any loss or liability incurred by him by reason of being or having been such an officer. The Directors may without sanction of the Company in general meeting, authorise the purchase or maintenance by the Company for any officer or former officer of the

Company of any such insurance as is permitted by the Law in respect of any liability which would otherwise attach to such officer or former officer.

We, being the subscribers to the memorandum, are desirous of being formed into a Company subject to the above Articles of Association.

**SIGNED** by **THE GREFFIER OF THE STATES** on behalf of **THE STATES OF JERSEY**

**SIGNED** by **THE TREASURER OF THE STATES**

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Dated this                    day of                    2009

Witness to the above signatures

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**COMPANIES (JERSEY) LAW 1991**

**COMPANY LIMITED BY SHARES**

**MEMORANDUM OF ASSOCIATION**

**of**

**WATERFRONT ENTERPRISE BOARD LIMITED**

1. The name of the Company is: "Waterfront Enterprise Board Limited".
2. The capacity of the Company is unlimited and the Company shall have all the powers of a natural person.
3. The liability of each member is limited.
4. The capital of the Company is £1,000,000 divided into 1,000,000 shares of £1.00 each.
5. We, the persons whose names and addresses are hereunto subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the numbers of shares in the capital of the Company noted opposite our respective names.
6. The Company shall exist until dissolved by special resolution or otherwise according to law.
7. The Company is a public company.

ARTICLES OF ASSOCIATION

OF

WATERFRONT ENTERPRISE BOARD LIMITED

**INTERPRETATION**

1. In these Articles:

“Articles” means the Articles of Association of the Company and “Article” shall be construed accordingly;

“Auditors” means the auditors for the time being of the Company who shall be the auditors for the time being of the States of Jersey;

“Board” means the board of Directors of the Company from time to time;

“Chairman” means the chairman of the Board from time to time;

“Company” means the company incorporated under the Law in respect of which these Articles have been registered;

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“Committee” . . . means the Policy and Resources Committee of the States of Jersey.¶  
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“Director” means the ~~Ministerial Appointee or a Non-Executive Director~~ or the Managing Director;

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“executed” includes any mode of execution;

“holder” in relation to shares means the member whose name is entered in the register of members as the holder of the shares;

“Managing Director” means the person appointed in accordance with these Articles as the Managing Director;

~~“Ministerial Appointee” means a designated Assistant Minister for Treasury and Resources (or such other suitably qualified person (whether a~~

**Deleted:** “Non-States Director” . . . means a person who at the time of his appointment is not a member of the States and who has been appointed in accordance with these Articles as a Non-States Director.¶



	member of the States or not) as the Minister shall determine);	
<b>"Non-Executive Director"</b>	means a person appointed in accordance with Article 30 as a non-executive director of the Company;	
<b>"office"</b>	means the registered office of the Company;	
<b>"ordinary resolution"</b>	means a resolution of the Company in general meeting adopted by a simple majority of the votes cast at that meeting;	
<b>"seal"</b>	means the common seal of the Company;	
<b>"secretary"</b>	means the secretary of the Company or other person appointed to perform the duties of the secretary of the Company including a joint, assistant or deputy secretary;	
<b>"Minister"</b>	means the Minister for Treasury and Resources	Deleted: ¶
<b>"States"</b>	means the States of Jersey;	
<b>"the Law"</b>	means the Companies (Jersey) Law 1991 including any statutory modification or re-enactment thereof for the time being in force.	Deleted: ¶ "States Director" . . . means a person who at the time of his appointment is a member of the States and who has been appointed in accordance with these Articles as a States Director.¶
<p>Unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning as in the Law, but excluding any statutory modification thereof not in force when these Articles became binding on the Company.</p> <p>The Standard Table prescribed pursuant to the Law shall not apply to the Company and is hereby expressly excluded in its entirety.</p>		
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### **SHARE CAPITAL**

2. (a) Subject to the provisions of the Law, and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine.
- (b) Following incorporation of the Company 999,999 shares shall be issued to and registered in the name of the States and 1 share shall be issued to and registered in the name of the Treasurer of the States, as nominee for and on behalf of the States.

### **CERTIFICATES**

3. Every member, upon becoming the holder of any shares, shall be entitled, without payment, to one certificate for all the shares of each class held by him. Every certificate shall be sealed with the seal and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up thereon.

### **TRANSFER OF SHARES**

4. An instrument of transfer of a share may be in any usual form or in any other form which the Directors may approve and shall be executed by or on behalf of the transferor and, unless the shares are fully paid, by or on behalf of the transferee.

### **GENERAL MEETINGS**

5. (a) The Company shall in each year hold a general meeting of the members of the Company as its annual general meeting in addition to any other meeting in that year. Annual general meetings shall be held once in each year at such time and place as may be determined by the Directors.
- (b) All general meetings other than annual general meetings shall be called extraordinary general meetings.

- (c) The Directors may call general meetings and on the requisition of members, pursuant to the provisions of the Law, shall forthwith proceed to call a general meeting for a date not later than two months after the receipt of the requisition. If there are not sufficient Directors to call a general meeting, any Director or any member of the Company may call such a meeting.

#### **NOTICE OF GENERAL MEETINGS**

6. An annual general meeting or a general meeting called for the passing of a special resolution shall be called by at least 21 clear days' notice. All other meetings shall be called by at least 14 clear days' notice but a general meeting may be called by shorter notice if it is so agreed by all the members entitled to attend and vote thereat. The notice shall specify the day, time and place of the meeting and the general nature of the business to be transacted and in the case of an annual general meeting, shall specify the meeting as such and shall be given to all the members, the Directors and the auditors.
7. The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

#### **PROCEEDINGS AT GENERAL MEETINGS**

8. No business shall be transacted at any meeting unless a quorum is present. One person entitled to vote upon the business to be transacted, being a member holding not less than fifty per cent (50%) in nominal value of the shares then in issue carrying the right to vote (or a proxy for such a member) shall be a quorum, failing which two persons entitled to vote upon the business to be transacted, each being a member (or a proxy for a member) shall be a quorum.
9. The Chairman or in his absence some other Director nominated by the Directors shall preside as chairman of the meeting, but if neither the Chairman nor such other Director (if any) is present within 15 minutes after the time appointed for holding the meeting and willing to act, the members present shall elect one of their number to be chairman and, if there is only one member present and willing to act, he shall be chairman.

10. A Director or a representative of the auditors shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting.
11. The Chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for 14 days or more, at least seven days' notice shall be given specifying the day, time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
12. A resolution put to the vote of a meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll is duly demanded. Any member shall be entitled to demand a poll.
13. Unless a poll is duly demanded, a declaration by the Chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
14. A poll shall be taken as the Chairman directs and he may appoint scrutineers (who need not be members) and fix a day, time and place for taking the poll and for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

#### **VOTES OF MEMBERS**

15. Subject to any rights or restrictions attached to any shares, on a show of hands every member who is present in person shall have one vote and on a poll every member present in person or by proxy shall have one vote for every share of which he is the holder.
16. On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion.

17. An instrument appointing a proxy shall be in writing in any usual common form, or as approved by the Directors, and shall be executed by or on behalf of the appointer.
18. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power or authority, shall be deposited at the office or at such other place as is specified for that purpose in the notice of meeting or in the instrument of proxy issued by the Company before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, before the time appointed for taking the poll and in default the instrument of proxy shall not be treated as valid.
19. A vote given or poll demanded by proxy or by the duly authorised representative of a body corporate shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

#### **REPRESENTATIVES**

20. The States whilst a member of the Company may be represented at any meeting of the members of the Company or any meeting of any class of members of the Company by the Greffier of the States, the Deputy Greffier of the States or any other officer appointed to discharge the functions of the office of Greffier of the States under Article 5 of the Departments of the Judiciary and Legislature (Jersey) Law, 1965 or by any person duly authorised in writing in that regard by the Greffier of the States or the Deputy Greffier of the States. The States shall be deemed to be present in person at any meeting attended by any such person.

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#### **RESOLUTIONS OR NOTICES IN WRITING**

21. (a) Anything that may be done by a resolution passed at a meeting of the members of the Company (other than a resolution for the removal of an

auditor) may be done by a resolution in writing signed by or on behalf of each member of the Company.

- (b) The States whilst a member of the Company shall be entitled to execute a resolution in writing or any other notice in writing by means of an instrument in writing signed by the Greffier of the States, the Deputy Greffier of the States or any other officer appointed to discharge the functions of the office of the Greffier of the States under Article 5 of the Departments of the Judiciary and Legislature (Jersey) Law, 1965. Any such resolution, notice or instrument shall take effect upon delivery thereof to the office.

#### **DIRECTIONS**

22. (a) If the ~~Minister~~ shall, in ~~his~~ 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 the Directors shall be bound to comply with any such direction.

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- (b) 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.

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#### **NUMBER OF DIRECTORS**

23. Unless and until otherwise determined by the Company by ordinary resolution, the number of Directors shall ~~not be subject to a maximum but shall be at least six, one of whom shall be the Ministerial Appointee, at least four of whom shall be Non-Executive Directors and an additional Director who shall be the Managing Director appointed pursuant to Article 31.~~

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24. A Director need not be a member of the Company.

**APPOINTMENT, RETIREMENT AND REMOVAL OF DIRECTORS**

25. (a) Subject to the provisions of the Law, the memorandum and these **Articles** and to any directions given to the Directors by the members by special resolution or by the **Minister** by direction in writing made in accordance with the provisions of Article 22, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company in any part of the world. No alteration of the memorandum of Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Directors by these Articles and a meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- (b) **In the exercise of their powers of management of the Company the Directors shall have regard to:**
- (i) the objectives for which the Company is established, namely:
    - (a) To promote, co-ordinate and implement a comprehensive strategy for the development of the St. Helier Waterfront area as shown on Map No: 3-92 approved by the States on 10<sup>th</sup> November, 1992 (the "**Waterfront**") and where expedient, to undertake development directly.
    - (b) To exercise administrative control over the use of the land and the adjacent shore and water areas in the Waterfront and to liaise and consult with all relevant **Ministers** of Jersey and other governmental and regulatory authorities in relation to investment in infrastructure projects in and development of the Waterfront.
  - (ii) any decisions of the States which directly concern the land, shore and water areas within the control of the Company.

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(c) The Directors shall cause to be prepared annually (in consultation with relevant parties) a business plan and report which shall be sent to the Minister at such time as may be reasonably required setting out the objectives, policies and programmes of the Company and reporting on progress. The Directors shall respond timeously to such reasonable requests for information and reports as are made to them by the Minister.

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26. The Directors may, by power of attorney or otherwise appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

27. Subject to the prior written consent of the Minister (which may be given generally or specifically and recorded in accordance with ministerial procedures as a Ministerial Decision), the Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, and to issue debentures and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party. All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments, and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.

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28. The Ministerial Appointee shall be appointed and may be removed by the Minister. The Managing Director shall be appointed by the Directors pursuant to Article 31.

**Deleted:** APPOINTMENT, RETIREMENT AND REMOVAL OF DIRECTORS\*

**Deleted:** The first Directors, who shall have been nominated by the States, shall be appointed by the subscribers to the Memorandum of Association who shall designate each of the Directors so appointed as a States Director or a Non-States Director.

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29. Subject to Article 30 and Article 32, the Non-Executive Directors shall initially be appointed for a fixed period expiring on the date which is four and a half years after the date of the Company's incorporation, and thereafter shall be appointed for fixed periods of three years duration. Upon the expiration of the period of office for which they are appointed the Non-Executive Directors shall, ipso facto, retire

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from office but shall be eligible for re-appointment. Any ~~Non-Executive~~ Director appointed to fill a casual vacancy shall hold office only during such period as the ~~Director~~ whom he replaces would have held office if he had continued to act as a Director.

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30. ~~(a) All Non-Executive Directors shall be appointed by the States on the recommendation of the Minister and such appointment shall take effect upon delivery to the office of notice in writing to that effect executed in accordance with Article 21 (b).~~

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~~Deleted:~~ Non-States Directors and the Managing Director shall initially be appointed for a fixed period expiring on the date which is four and a half years after the date of the Company's incorporation, and thereafter shall be appointed for fixed periods of three years duration. Upon the expiration of the period of office for which they are appointed the Non-States Directors and Managing Director shall, ipso facto, retire from office but shall be eligible for re-appointment. Any Non-States Director or Managing Director appointed to fill a casual vacancy shall hold office only during such period as the Director whom he replaces would have held office if he had continued to act as a Director.¶

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- 30. (a) . Subject to Article 28, all States Directors and Non-States Directors shall be ¶  
. appointed by the States

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(b) The States may remove any person from office as a Director and such removal shall take effect upon delivery to the office of notice in writing to that effect executed in accordance with Article 21 (b).

31. ~~The~~ Directors shall have the powers at any time, from time to time ~~without the sanction of the Company in general meeting or otherwise to appoint a person to act as the Managing Director of the Company and may enter into an agreement or arrangement with any Managing Director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a director of a company. Any such appointment, agreement or arrangement may be made upon such terms as the Directors determine and they may remunerate any such Managing Director for his services as they think fit. Any appointment of a Managing Director to executive office shall terminate if he ceases to be a Director, but without prejudice to any claim to damages for breach of the contract of service between such Managing Director and the Company.~~

32. The office of a Director shall be vacated in any of the following events namely:

(a) If he resigns his office by notice in writing under his hand to that effect sent to or left at the office which notice shall be effective upon such date as may be specified in the notice, failing which upon delivery, to the office.

(b) If he becomes bankrupt or insolvent or makes any arrangement or composition with his creditors generally.

- (c) If he becomes of unsound mind.
- (d) If he ceases to be a Director by virtue of any provision of the Law, or becomes prohibited by law from or is disqualified from, being a Director.
- (e) If he be removed by ordinary resolution of the Company or by notice in writing pursuant to Article 30.
- (f) If he shall for more than 6 consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the Directors resolve that his office be vacated.

#### **REMUNERATION OF DIRECTORS**

33. The Non-Executive Directors and the Managing Director shall be entitled to such remuneration as the Company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day. The Ministerial Appointee shall not be entitled to remuneration where he or she is a member of the States.

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#### **DIRECTORS' EXPENSES**

34. The Directors may be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or general meetings or separate meetings of the holders of any class of shares or of debentures of the Company or otherwise in connection with the discharge of their duties.
35. Subject to the provisions of the Law, and provided that he has disclosed to the Directors the nature and extent of any material interests of his, a Director notwithstanding his office:

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;
- (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested;
- (c) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
- (d) may act by himself or his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as though he were not a Director.

36. For the purposes of the preceding Article:

- (a) a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement with a specified person or class of persons shall be deemed to be sufficient disclosure of his interest in any such transaction or arrangement; and
- (b) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

**DIRECTORS' GRATUITIES AND PENSIONS**

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37. The Company may provide such benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any Director who has held but no longer holds any executive office or employment with the Company or with any body corporate which is or has been a subsidiary of the Company or a predecessor in

business of the Company or of any such subsidiary, and for any member of his family (including a spouse and a former spouse) or any person who is or who was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit as the Directors think fit.

### **PROCEEDINGS OF DIRECTORS**

38. Subject to the provisions of the Law and these Articles, the Directors may regulate their proceedings as they think fit. A Director may, and the secretary at the request of a Director shall, call a meeting of the Directors. Questions arising at a meeting of Directors shall be decided by a majority of votes. In the case of an equality of votes the Chairman shall have a second or casting vote.

39. ~~On the recommendation of the Minister, the~~ States may by notice in writing executed in accordance with the provisions of Article 21:

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(a) elect a Director as Chairman of the Board from among the number of Non-~~Executive~~ Directors;

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(b) ~~determine the period for which he is to hold office;~~

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(c) remove such person from the office of Chairman.

Unless he is unwilling to do so, the Chairman shall preside at all meetings of the Directors at which he is present. If the Chairman is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Directors present may appoint one of their number to be chairman of the meeting.

40. The quorum for the transaction of the business of the Directors shall be four ~~Directors~~. Any Director enabled to participate in the proceedings of a meeting by means of a communication device (including a telephone) which allows all of the other Directors present at such meeting to hear at all times such Director and such Director to hear at all times all other Directors present at such meeting (in each case whether in person or by means of such type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum.

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41. The continuing Directors or the only continuing Director may act notwithstanding any vacancies in their number, but, if the number of Directors is less than the number fixed as the quorum, the continuing Directors or Director may act only for the purpose of calling a general meeting.
42. All acts done by a meeting of Directors or by a person acting as a Director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.
43. A resolution in writing signed by all the Directors entitled to receive notice of a meeting of Directors shall be valid and effectual as if it had been passed at a meeting of Directors duly convened and held and may consist of several documents in the like form each signed by one or more Directors.
44. A Director may not vote in respect of any transaction, arrangement or proposed transaction or arrangement, in which he has an interest but provided that he has disclosed any such interest in accordance with these Articles he may be counted towards a quorum at any meeting of the Directors at which any such transaction or arrangement or proposed transaction or arrangement shall come before the Directors for consideration.
45. The Directors shall cause minutes to be made:
- (a) of all appointments of officers made by the Directors;
  - (b) of the names of the Directors present at each meeting of Directors;
  - (c) of all resolutions and proceedings at all meetings of the Company and of the Directors.

Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were held, shall be evidence of the proceedings.

**SECRETARY**

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46. Subject to the provisions of the Law, the secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit and any secretary so appointed may be removed by them.

#### **MINUTES**

47. The secretary shall cause minutes to be maintained in books kept for the purpose in accordance with the Law.

#### **THE SEAL**

48. (a) The common seal shall only be used by the authority of the Directors. The Directors may determine who shall sign any instrument to which the common seal is affixed and unless otherwise so determined it shall be signed by a Director and the secretary or by two Directors.
- (b) Subject to the provisions of the Law, the Directors may determine to have:
- (i) an official seal for use in any country, territory or place outside the Island of Jersey, which shall be a facsimile of the common seal of the Company. Any such official seal shall in addition bear either the name of the country in which it is to be used or the words "branch seal";
  - (ii) an official seal for use only in connection with the sealing of securities issued by the Company and such official seal shall be a facsimile of the common seal of the Company but shall in addition bear the word "securities".

#### **DIVIDENDS**

49. Subject to the provisions of the Law, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members save that no dividend shall exceed the amount recommended by the Directors.

50. Subject to the provisions of the Law, the Directors may pay interim dividends if it appears to them that they are justified by the profits of the Company available for distribution.
51. Any dividend or other moneys payable in respect of a share may be paid by cheque sent by post to the registered address of the person entitled thereto and payment of the cheque shall be a good discharge to the Company.
52. No dividend or other moneys payable in respect of a share shall bear interest against the Company unless otherwise provided by the rights attached to the share.

**ACCOUNTS AND AUDIT**

53. The Directors shall cause to be kept proper accounts of the Company for each accounting period to be prepared in accordance with generally accepted accounting principles in the Island of Jersey consistently applied and that such accounts shall be forwarded to the **Minister** not more than four months after the end of the period to which they relate. The accounts shall include an income and expenditure statement of the Company in respect of the applicable accounting period and shall include the balance sheet as at the end of that accounting period.
54. The Company shall at each annual general meeting appoint the auditors to hold office from the conclusion of that meeting, until the conclusion of the next annual general meeting.
55. The accounts shall be audited by the auditors and shall be accompanied by a report by the auditors stating that the accounts and financial statements attached thereto have been examined in conjunction with the books and records of the Company and whether the Auditors have obtained all the explanations and information which they have required. The auditors shall further report whether the accounts are in their opinion properly drawn up in accordance with such books and records and give a true and fair view of the affairs of the Company.

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56. The Directors shall submit to the **Minister** in each year by such date as may be appointed by the **Minister** a budget of the Company's estimated capital expenditure and receipts and of revenue expenditure and income for the next financial year of the Company.

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57. Such person or persons as may be designated by the Minister from time to time shall at any time during the office hours of the Company be entitled to inspect all accounting records or other books or documents of the Company and the Directors shall upon request procure production of the same.

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### NOTICES

58. Any notice to be given to or by any person pursuant to the Articles shall be in writing except that a notice calling a meeting of the Directors need not be in writing.

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59. The Company may give any notice to the States by sending it by post in a pre-paid envelope (care of The Greffier of the States) to the States Greffe St Helier Jersey JE1 1DD. The Company may give any notice to the Minister, the Ministerial Appointee or the Treasurer of the States by sending it by post in a pre-paid envelope to PO Box 353 Cyril Le Marquand House St Helier Jersey JE4 8UL.

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60. A member present, either in person or by proxy, at any meeting of the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

61. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

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### WINDING UP

62. If the Company is wound up, the Company may, with the sanction of a special resolution and any other sanction required by the Law, divide the whole or any part of the assets of the Company among the members in specie and the liquidator or, where there is no liquidator, the Directors may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members, and with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like

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sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

**INDEMNITY**

63. In so far as the Law allows, every present or former officer of the Company shall be indemnified out of the assets of the Company against any loss or liability incurred by him by reason of being or having been such an officer. The Directors may without sanction of the Company in general meeting, authorise the purchase or maintenance by the Company for any officer or former officer of the Company of any such insurance as is permitted by the Law in respect of any liability which would otherwise attach to such officer or former officer.

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We, being the subscribers to the memorandum, are desirous of being formed into a Company subject to the above Articles of Association.

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**SIGNED by THE GREFFIER OF THE STATES on behalf of THE STATES OF JERSEY**

\_\_\_\_\_

**SIGNED by THE TREASURER OF THE STATES**

\_\_\_\_\_

Dated this            day of            2009

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Witness to the above signatures            \_\_\_\_\_

[1][1] R.122/2008 “Waterfront Enterprise Board Limited: Review of Corporate Governance” Comptroller and Auditor General, 24th November 2008

[2][2] S.R.9/2008 “Review into the Proposed Establishment of the Jersey Enterprise Board”, Corporate Services Scrutiny Panel, 12th June 2008

[3][3] I understand that WEB has started a recruitment process.

[4][4] Article 40.

[5][5] Currently, Article 22(a) empowers the Chief Minister to issue directions to WEB.

[6][6] If the sponsoring minister were to act as representative of the States at General Meetings, it would be necessary to amend Article 20 of WEB's Articles of Association.

[7][7] Article 23 provides that there shall be seven directors of whom three are to be States Directors, there shall be Non-States Directors and one shall be Managing Director. Article 40 provides that the quorum for board meetings shall be two States Directors and two Non-States Directors. All directors are appointed by the States.

[8][8] The normal practice is described in Section Four of this report.